

וטרף חלקו של אחד מהם – And he confiscated the portion of one of them

OVERVIEW

The גמרא presents a case where brothers inherited property and their father's creditor came and confiscated the share of one of the brother's property. תוספות will discuss the propriety of being able to confiscate the property of only one of the heirs.

תוספות asks:

ואם תאמר והא כל אחד חייב לפרוע חוב אביהן ואין יכול ליטול חלק האחד -

And if you will say; but each one of the brothers is obligated to pay up their father's debt, and the creditor cannot take the portion of just one of the brothers alone, without taking from all the brothers equally.

תוספות proves this point:

כדקתני בפרק יש נוחלין (בבא בתרא דף קכד,א) יצא עליהם שטר חוב בכור נותן פי שנים -

As it was taught in a ברייתא in פרק יש נוחלין; that if a note of debt (which their father owed) was presented to the יתומים, the rule is that the בכור pays two shares proportionally of the debt (each of the other brothers pays one share proportionally). It is evident from that גמרא that the מלוה cannot collect indiscriminately from whomever he chooses, but rather must collect his debt from all the heirs proportionally. Why therefore does the גמרא indicate here that he may collect his entire debt from one of the heirs only?!

תוספות answers:

ויש לומר דמיירי הכא שעשאו אפותיקי¹:

And one can say; that here we are discussing a case where the father assigned this particular field as an אפותיקי². Therefore the בע"ה collects from this field alone. Nevertheless this brother who inherited the אפותיקי may receive compensation from his brothers (according to רב and אסי רב).

SUMMARY

Generally the creditor collects from all the heirs equally; except if any property has been assigned as an אפותיקי. He takes the אפותיקי, regardless.

THINKING IT OVER

When there is no אפותיקי, is the מלוה required to collect separate parcels of land from the various brothers?

¹ See previous footnote # 3. See also מהר"ם here.

² An אפותיקי is similar to the present day mortgage. The מלוה assigns a specific field which is mortgaged to the debt. The word אפותיקי is an abridged version of אפה תהא קאי; 'on this (field) you will stand'.