

## They are considered as heirs

## כיוורשים הוו –

### OVERVIEW

In a case where the מלוה confiscated the share of one of the brothers' fields, for their father's debt, the גמרא cites a מחלוקת between רב and שמואל (and אסי). רב maintains that בטלה מחלוקת and the loss is not carried by the disinherited son only. שמואל, however maintains that the disinherited son forfeits his rights and has no claim against his brother. The גמרא explained שמואל's reasoning that he maintains that when brothers divide an estate their subsequent relation to each other is as (two) purchasers who purchased fields from each other without any guarantees.<sup>1</sup> Therefore if one of the purchasers loses his property, he has no claims against the seller (the other purchaser). Similarly here the brothers, once they divided, are separate entities, for there is no אחריות. It would seem that in order to explain the view of רב, it is necessary to assume that they are compared to purchasers with אחריות, therefore if one son is disinherited, he has a claim against his brother and he does not forfeit his share. The גמרא however does not state this; instead it considers the brothers as still being heirs even after they divided.<sup>2</sup> This seems to be a little far fetched. האחים שחלקו will explain the necessity of the גמרא to assume that האחים are כיוורשים דמי according to רב.

### דאי כלקוחות באחריות הוו -

**For if the brothers are considered as purchasers** (from each other) **with a guarantee**; that if any one loses his property due to their father's debt (or similar circumstances), then the remaining brother will guarantee the disinherited brother's purchase (or share). If this is the reason why רב disagrees with שמואל who says that the disinherited brother forfeited his loss, there will be a difficulty with understanding why בטלה מחלוקת. For -

### אמאי בטלה מחלוקת -

**why should the initial division of the properties be nullified**, and the remaining heir will be required to divide his property with the disinherited brother?! It should not be so. The remaining brother (merely) guaranteed that his brother will not lose anything if he is disinherited, so therefore the remaining heir -

### ישלם לו מעות:

<sup>1</sup> Initially all the heirs own the entire estate (jointly). When they divide, each of the (two) heirs forfeits (gives [up]) his rights of half the estate to his brother (the purchase price) for which he receives in return (his purchase) the other half of the estate (which the other brother forfeits).

<sup>2</sup> This indicates that even after they divided, in certain aspects the estate is considered as a whole; as if it was not divided.

**should compensate** the disinherited heir **with money**; he should pay him half the debt, but he should not be required to divide anew. However since רב says בטלה מחלוקת and they have to divide anew, this proves that רב maintains that even after the division they remain heirs in the estate. They did not disentangle completely. The entire property of the estate is subject to the lien (even if it was an אפוטיקי). When the מלוה collected his debt he decreased the estate. Now they are required to divide anew.

### **SUMMARY**

If we were to maintain that האחים שחלקו כלקוחות באחריות דמי, then if a בע"ח collected his debt from one of the brothers the other brother would only be required to compensate with money. The division however would remain intact.

### **THINKING IT OVER**

Why does כיורשים דמי force a new division of the estate (more than כלקוחות [באחריות] דמי)?