

**ותשעה לאו בר עשורי גינהו –**

## OVERVIEW

אביי maintained that the *הספיקות* וכו' of *ברייטא* is discussing a case where the *ישראל* had nine sheep and one *חמור* *פטר*. Therefore (even if we maintain *אין מוציאין אותו מידו*) he should be *מעשר*, for *ממה נפשך* he will not be *כהן*. If the *ספק* belongs to the *ישראל*, then it is a proper *פטר* *ממונו בממונו של כהן*. If the *ספק* belongs to the *כהן*, then the *ישראל* owns only nine sheep, and there is no *חוב מעשר* for nine sheep. The *ספק* is not *פטר* the *ישראל* for he never had a *חוב* to give *מעשר*. Our *תוספות* explains when we combine flocks that have less than ten sheep and when not.

תוספות responds to an anticipated difficulty:<sup>1</sup>

דאין צריך לצרפו לגורן<sup>2</sup> אחר דלא באו לעולם לכלל חיוב ודאי<sup>3</sup> –

**For it is not necessary to combine them with a different flock since they never were certainly obligated** to be tithed -

**ודוקא היכא דהוו עשרה מתחלה<sup>4</sup> הוא דאיצטריך לצרפו לגורן אחר:**

**And it is only where initially there were ten sheep that it becomes necessary to combine them with a different flock.**

## SUMMARY

If there were ten sheep or more initially then the remainder must be combined לגורן אחר; however if initially there were less than ten then there is no חיוב מעשר at all.

## THINKING IT OVER

Why could not תוספות answer that we are discussing a case where he has no <sup>5</sup>לא בר עיבורי and therefore the nine sheep are גורן אחר

<sup>1</sup> There is a rule that if the farmer had more than ten sheep and he gave מעשר, but since there was not an exact multiple of ten, he remained with less than ten sheep; he is then obligated to combine this small flock with another flock so that all his sheep will go through the מעשר process. This indicates that even less than ten sheep have to be tithed (through צירוף), so how does אביי state that עישורי הוא תשעה לאו בר עישורי?

<sup>2</sup> The word גורן means a threshing place for grain; it is used here as a borrowed terminology, that just as grain is מעשר בהמה after the גורן, so too there are times in the year which are called גורן when מעשר בהמה takes place. See ג' גרנות למעשר בהמה וכו' and משנה בכורות נז, ב – ג' גרנות למעשר בהמה וכו'.

<sup>3</sup> It is possible that the **ספק פדיון פטר חמור** belongs to the **כהן**. The **ישראל** then has only nine sheep.

<sup>4</sup> In this case there was a **ודאי חיוב מעשר**, therefore in case one of the sheep died or was lost before **מעשר** was performed; the remaining sheep have to be combined with another flock.

<sup>5</sup> See סוכ"ד אות פט.