

וחכמים אומרים יחלוקו – And the חכמים say, they should divide it

OVERVIEW

The גמרא cited a ברייתא concerning where monies were sent to a recipient and he died before he received the monies. There are differing opinions as to where the monies should go. The חכמים rule that the monies be divided between the (heirs of) the grantor and the heirs of the recipient; seemingly because we are unsure what should be done with the monies. תוספות will discuss whether this is a universal ruling (that when in doubt divide) or not.

כל תיקו שבש"ס מפרש בשערים דרבינו האי דחולקים¹ –

In the גמרא of ספר שערים it is explained that every time the גמרא concludes with תיקו (meaning the issue is unresolved) the ruling is that we divide the monies in dispute among the litigants.

disagrees: תוספות

ואין נראה לרבינו יצחק אלא היכא דאשכחן בהדיא יחלוקו –

And the ר"י disagrees for generally when in doubt we do not rule יחלוקו, unless where we find that the גמרא states explicitly יחלוקו, for otherwise -

דאדרבה אומרים אוקי ממונא בחזקת מריה:

On the contrary we rule that the money should remain in the possession of the (original²) owner.

SUMMARY

Regarding the ruling of תיקו it is the view of רב האי that we say יחלוקו, while the ר"י maintains that we say אוקי ממונא בחזקת מריה.

THINKING IT OVER

According to the ר"י that generally we rule בחזקת מריה אוקי, why indeed do the חכמים rule here יחלוקו and not (קמא) מריה?³

¹ משלח may derive this from our גמרא where there is a dispute as to whom the monies belong (whether to the מקבל or the גמול) and since the חכמים could not resolve the issue they ruled יחלוקו; the same should apply everywhere else. See מהר"ם.

² See 'Thinking it over'.

³ See אב"מ # 169-170.