ואי אשמעינן שדה משום דלחומרא -
And if he would inform us regarding **a field, because it is stringent**

Overview

ר' יוחנן taught the rule of אין ברירה twice, once regarding a גט, and the other regarding heirs that they are considered as bartering with each other and must re-divide the fields by יובל. We could not derive that he maintains אין ברירה by גט (where it is a קולא [for she can still marry a כהן]) from the case of a field, since by a field (forcing them to return the fields and redivide) is a חומרא. Our תוספות shows that even if it can also be a קולא, nevertheless we cannot derive גט from ירושה.

תוספות asks:

ואם תאמר לקולא נמי שמעינן ליה דאין ברירה בפרק בתרא דבכורות (דף נו,ב) -
And if you will say; we have learnt in the last פרק of מסכת **בכורות** that ר"י maintains **אין ברירה even לקולא** in reference to heirs; this is -

גבי מעשר בהמה[1] דקאמר אפילו חלקו היורשין תשעה כנגד תשעה עשרה כנגד עשרה -
Regarding tithing cattle, where ר"י rules even if the heirs divided nine cows against nine cows and ten cows against ten cows -

אין אומרים זהו חלקו המגיעו -
We do not say that this is his portion which he rightfully **deserves.**

תוספות answers:

ויש לומר דמכל מקום לא שמעינן גט מינה כדאמר התם[2] -
And one can say that nevertheless we cannot derive גט from that ruling, **as the** גמרא **states there -**

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[1] The rule is that cattle which belong to partners (שותפים) is פטור from מעשר בהמה. Therefore when someone dies and leaves over his twenty cows to his two sons, so if they did not divide the estate, they are not considered שותפים (for it is still one estate) and they are חייב במעשר. However (the issue begins) if they divided the estate and then rejoined in a partnership; are they considered partners (and פטור ממעשר), or do we say since they inherited equally and now by rejoining, it is as if they never divided and they are חייב במעשר. There are those who maintain if it was not an equal division, meaning that nine cows were as valuable as the other eleven cows, and that's how they divided it and then became partners, it is a valid partnership and they are פטור from מעשר (since they did not inherit nine and ten cows respectively but rather half of each cow, and they traded their shares). However if all the cows were of equal value and they divided ten for ten, we assume that יש ברירה and this is exactly what they inherited, and when they joined together in partnership, it is as if they never divided (it is like the original estate) and are חייב במעשר. However ר"י maintains even if it was divided equally we say אין ברירה (they were never destined to get this ten animals specifically, rather they exchanged their portions) and if they rejoin in a partnership it is valid and they are פטור ממעשר. We see that he rules אין ברירה even לקולא, for on account of אין ברירה they are פטור ממעשר, so we can derive the אין ברירה by גט from the אין ברירה of ירושה!

[2] The גמרא there asks a (similar) question, why did ר"י say this ruling of אין ברירה regarding a field and regarding מעשר.

דאי אתמר בהא בהא קאמר רבי יוחנן דומיא דבנך[3] מה בנך ברור לך אף צאנך ברור לך :

For if ר"י **would say** his ruling of אין ברירה **in this** case of מעשר, we would think only **in this** case of מעשר does ר"י **say** אין ברירה, because מעשר **is similar to 'your son'** (בנך), **just as** בנך **is clear to you, so too your flock must be clear[4] to you.**

Summary

We cannot derive from מעשר that אין ברירה even לקולא, for מעשר requires an extra level of בירור.

Thinking it over

Why did not the גמרא here also cite the ruling of ר"י regarding מעשר and explain (as תוספות did) why we cannot derive גט from מעשר?[5]

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[3] The תורה writes (in שמות [משפטים] כב,כח כט) **בְּכוֹר בָּנֶיךָ תִּתֶּן לִי. כט כֵּן תַּעֲשֶׂה לְשֹׁרְךָ לְצֹאנֶךָ**, equating צאנך to בנך.

[4] Here by מעשר it is not clear to us that these ten cows belong to him, etc. Therefore ר"י says in this case since we are not sure, we say אין ברירה, since the פסוק requires that we are sure (so even though the rule may generally be יש ברירה, but here the תורה requires an extra measure of assuredness which ברירה cannot provide), however by ירושה regarding יובל, where there is no such לימוד perhaps he would agree that יש ברירה. The same answers applies here that we cannot derive גט from מעשר, since by מעשר there is a special פסוק that אין ברירה even לקולא, but by גט where there no such לימוד perhaps we say יש ברירה.

[5] See אוצר מפרשי התלמוד # 54.