

אי לא דאמר רבי יוחנן קנין פירות כולי -

Were it not that *Rabi Yochanon* said; acquisition of the fruits, etc.

Overview

maintains that brothers who divided up their estate are considered as if they are buyers who bought out their brothers for their share.¹ The גמרא said that if יוחנן ר' would not maintain דמי הגוף דמי we could not find anyone who could bring unless he was a יהושע עד.² Our תוספות reconciles these two הלכות (of according to how we rule. (קנין פירות לאו כקנין הגוף דמי and האחין שחלקו לקוחות הן

asks: תוספות

הקשה רבינו תם ואנו איך מצאנו ידינו ורגלינו -

The ר"ת asked but how can 'we find our hands and feet' to reconcile these two rulings -

דקיימא לן כריש לקיש דלאו כקנין הגוף דמי כדאמרינן בריש החולץ³ (יבמות דף לו, ב) -

For we have established the הלכה is like ר"ל that קנין פירות is not like קנין הגוף, as the גמרא states in the beginning of פרק החולץ -

וקיימא לן נמי בדאורייתא אין ברירה⁴ -

And we have also established that regarding דאורייתא issues the rule is אין ברירה.

- אין ברירה בדאורייתא offers various proofs that we maintain

דבסוף מסכת ביצה (דף לח, א) פסקינן כרבי אושעיא -

¹ When two brothers inherit their father's estate and then divide it, we can either assume that they are יורשים and each son took his share which rightfully belongs to him (this will be called ברירה יש), or we can say (the view of ר' יוחנן) that we are not sure which share belongs to which son (אין ברירה), rather when dividing the estate the two brothers agree that whichever portion falls to each one, they agree to relinquish their right in the part which the other brother took, in exchange that the other brother will relinquish his part in which he took. In short they are bartering or exchanging their portions which is the equivalent of buying and selling. If we make this assumption they will need to return the fields to each other on יובל (since they 'bought it' from each other) and make a new division. None of the brothers who inherit are considered true owners of the fields since they only have a קנין פירות in it.

² This means he was a sole heir and his father was a sole heir etc. up until יהושע so there never was any sharing of the inheritance. However when there are multiple heirs they are all לקוחות and only have a קנין פירות in the property and if קנין פירות is no like קנין הגוף דמי, no one can say (regarding his property) אשר נתת לי (since he does not own it; he only has a קנין פירות).

³ ר"י and ר"ל are referencing the משנה which states that if a father wrote over his assets to his son מיתה and the son owns the גוף הקרקע and the father owns the פירות (until he dies), and neither can sell the property while they are both alive. In a case where the son sold it while the father was alive; ר"י maintains the it is not sold even after the father died since קנין פירות כקנין הגוף דמי the son had no right to sell it. ר"ל, however maintains that it is a valid sale, since קנין פירות לאו כקנין הגוף דמי, so the buyer can keep it after the father (who currently has the right to eat פירות) dies. This is one of three cases where we rule like ר"ל against ר"י.

⁴ The ruling regarding האחין שחלקו whether they are יורשין or לקוחות depends respectively whether ברירה or יש ברירה, and since we rule אין ברירה the ruling is also that האחין שחלקו לקוחות הן (see footnote # 1).

For in the end of ביצה we rule like ר"א that בדאורייתא אין ברירה -

ורב נחמן דקיימא לן (כתובות יג, א) **כוותיה בדיני קאמר בריש פרק ב' דקדושין** (דף מב, ב) -

And regarding ר"נ, whose rulings we follow in monetary issues, states in the beginning of the second פרק of קדושין -

האחים שחלקו הרי הן כלקוחות פחות משתות⁵ נקנה מקח -

The brothers who divided an estate are considered like לקוחות in this regard [as well] that if the assessment was off less than a sixth, the sale is accomplished -

ופסקינן נמי בהמוכר את הבית (בבא בתרא דף סה, א) **דאין להן דרך זה על זה⁶ -**

And in המוכר את הבית we also rule that brothers who divided the estate have no claim of right of way, one on the other; the reason is -

דמוכר בעין רעה⁷ מוכר⁸ אלמא⁹ לקוחות הן¹⁰ -

For one who sells, does so with a '(bad) [good] eye'; it is evident that אחים שחלקו are לקוחות.

לקוחות הן we maintain to his assertion that addresses various challenges תוספות

והא דפסקינן בפרק בית כור¹¹ (שם דף קז, א) כרב דאמר בטלה מחלוקת¹² -

And regarding this which we rule in פרק בית כור like רב who maintains the division is nullified –

⁵ When buying or selling, if the price is less than a sixth more or less than the market price, the sale is valid (for people forgo such a small difference). In any event we see that ר"נ maintains that the אחים are לקוחות and all the laws of buying and selling apply to them.

⁶ Let us assume that there was two fields adjacent to each other; an outer field by the road side and an inner field, which has no direct access to a road except via the outer field. The son's divided the two fields. The one who received the inner field has no claim of right of way to go from the road to his field via his brother's outer field (even though their father obviously did that). The owner of the inner field must purchase his right of way from his brother (the outer field).

⁷ The מהרש"א amends this to read 'פה' (instead of רעה). See מהרש"א.

⁸ We assume that the brothers, when dividing, are really exchanging their shares in the respective fields. The owner of the inner field is selling the owner of the outer field all his interests in the outer field, in turn that ראוּבֵן is selling to שמעון all his interests in the inner field. We say that שמעון is selling his share to יפה, that he is giving שמעון everything in the outer field, including giving up the right of way to go from the road to the inner field through the outer field.

⁹ What is relevant to us is that we consider the division as a מכירה; buying and selling, meaning that האחין שחלקו לקוחות הן

¹⁰ In any event it is obvious that we rule דמי קנין פירות לאו כקנין הגוף דמי and we also rule הן לקוחות, so we have this (same) problem (like יוחנן ר') how can anyone bring בייכורים?!

¹¹ The case there is when two brothers divided their father's estate, and then their father's creditor took away one field (from ראוּבֵן), for his debt. The rule according to רב is that the original division is nullified, and they have to redivide all the assets which are left in the estate that the מלוה did not take (even the share which שמעון took). The גמרא explains the reasoning of רב is because he maintains that האחין שחלקו יורשין הן (therefore the obligation of paying the debt is on [the property of] both brothers equally). See the ד"ה יורשין וד"ה כלקוחות there רשב"ם for a more detailed explanation.

¹² The גמרא concludes there that the הלכה is according to רב, since יורשין הן. This contradicts the תוספות which maintains that לקוחות הן.

replies: תוספות

לאו משום דיורשין הוּא אלא משום דהוּא כלקוחות¹³ באחריות -

The reason of רב why מחלוקת is not because they are יורשין, but rather because they are considered as buying with a guarantee -

ויורשין דקאמר רב לאו יורשין ממש אלא כלומר כיורשין¹⁴ -

And this which רב says that they are יורשין, it does not mean actual יורשין, but rather it means like יורשין -

וברוב ספרים גרסינן הכי בפרק קמא דבבא קמא (דף ט, א) -

And in most text in the first פרק of ב"ק it reads this way; (but not יורשין).

addresses a related contradiction: תוספות

ומיהו רב אסי דאמר יחלוקו¹⁵ ומספקא ליה אי יורשין הוּא היינו יורשין ממש -

However רב אסי who maintains that they divide the loss, for he is unsure whether they are יורשין or whether they are כלקוחות, there it means actual יורשין (not כלקוחות באחריות) -

כדמוכח בפרק יש בכור¹⁶ (בכורות דף מח, א) גבי¹⁷ חמש ולא חצי חמש -

As is evident in פרק יש בכור regarding, 'five but not five halves'. On the other hand -

ורבי אסי אמר רבי יוחנן האחין שחלקו לקוחות הן לאו היינו רב אסי¹⁸ -

האחין שחלקו לקוחות הן maintains ר"א אמר ר"י which would seem to contradict this which רב אסי said הוּא אי יורשין. We must answer that רבי אסי is not the same as רב אסי -

¹³ Let us assume הן לקוחות. The field of ראובן was taken away from him. This field belongs to ראובן because שמעון sold it to him (in exchange for his field which ראובן sold to him). ראובן comes now to שמעון saying the field you sold me was taken away from me. In a regular case if a בע"ח takes away a field from a לוקח and there is no אחריות (the seller did not guarantee the sale), the לוקח loses. Here too if we consider האחרים שחלקו as באחריות, then ראובן has no recourse; he bought a field and it was taken away from him. However if there was אחריות, so ראובן can go back to the seller and make him pay for this field which was taken from him. In our case also we assume (according to רב) that they are כלקוחות באחריות, so if the מלוה took away ראובן's field, שמעון has to make good (by redividing all the assets anew).

¹⁴ The reason רב says יורשין and not לקוחות באחריות, for if it was (merely) like לקוחות באחריות then שמעון would be able to pay off ראובן for the value of the field taken away by the מלוה. However רב maintains that here they are like יורשין so they need to divide anew (see תוס' ב"ק ט, א ד"ה כיורשים).

¹⁵ This is in this same case where the בע"ח collected the field from one of the brothers.

¹⁶ The case there in the משנה is when a woman gave birth to her firstborn twins and the father died before he performed a הבן. There is a dispute between ר"מ (who maintains that the sons are not obligated in פדה"ב), and ר"י (who maintains that they are obligated).

¹⁷ The גמרא there establishes the מחלוקת in a case where the entire inheritance was exactly five סלעים. We assume that both ר"מ and ר"י agree with רב אסי that the inheritance is considered half ירושה and half a purchase. We also agree that an oral loan (like the obligation of a פדה"ב) can be collected from the יורשין but not the לקוחות. Since their inheritance is חמש (חצי חמש סלעים) or חמש סלעים (חצי חמש סלעים) is collectible. ר"מ maintains חמש (חייב) (therefore they are חמש ואפילו חצי חמש) (therefore they are חמש ואפילו חצי חמש), while ר"י maintains חמש (פטור) (therefore they are חמש ואפילו חצי חמש). See there for more details. It is obvious (from the underlined) that יורשין there must mean יורשין ממש.

¹⁸ לקוחות הן maintain רבי אסי however האחין שחלקו ספק יורשין הוּא maintains רב אסי.

אי נמי הא דידיה הא דרביה -

Or you may also say; one is his ruling (מספקא ליה אי יורשין הו), **and the other** (מספקא ליה אי יורשין הו), **is his teacher's view** (ר"א אמר ר' יוחנן), so there is no contradiction.

discusses an additional contradiction:

והא דפסקינן בנדרים בפרק השותפין (דף מו, ב) כרבי אליעזר בן יעקב -

And regarding this that we rule like ר"א in מסכת נדרים

בשותפין שנדרו הנאה זה מזה דמותר ליכנס לחצר¹⁹ -

In connection to the case of partners who vowed not to derive benefit from each other, the view of ר"א is that they may enter into a courtyard which belongs to both of them –

responds; the הלכה indeed is like ר"א; however -

לאו מטעמיה דטעמיה משום ברירה כדמוכח²⁰ בפרק הפרה (בבא קמא דף נא, ב) -

It is not because of his reason, for his reason for permitting them to enter into the חצר **is on account of ברירה** as is evident in **פרק הפרה**; that however is not the reason we rule like ר"א -

אלא משום דויתור²¹ הוא כרבינא בחזקת הבתים (בבא בתרא דף נז, ב) ומותר במודר הנאה -

However the reason we rule like ר"א that they may enter the חצר השותפין is because of דויתור as **רבינא states in פרק ח"ה**, and **ויתור is permissible even by מודר הנאה**.

In summation; האחין שחלקו לקוחות הן, and האחין שחלקו לקוחות הן, we maintains the we maintains קנין פירות לאו כקנין, and האחין שחלקו לקוחות הן, and האחין שחלקו לקוחות הן, so how can we reconcile this with the bringing of ביכורים.

answers:

ויש לומר דדוקא בההיא לחודה בהכותב לבנו מהיום ולאחר מיתה קיימא לן כריש לקיש²² -

And one can say; that it is specifically in that case alone, where he wrote over his assets to his son מיתה ולאחר מיתה, that we rule like ר"ל -

דלאו כקנין הגוף דמי משום דאבא לגבי ברא אחולי מחיל -

¹⁹ The issue there is when one partner enters the חצר, is he entering his part or his partner's part. This will depend whether ברירה (so we can say that he is entering his part) or אין ברירה (in which case he is not necessarily entering his part). ר"א maintains that each one may enter; indicating that he maintains ברירה. However if we maintains יש ברירה, the rule should be הן האחין שחלקו יורשין הן (not לקוחות הן as תוספות maintains). How can we reconcile that the הלכה is like ר"א that ברירה יש and still maintains הן לקוחות הן?!

²⁰ The גמרא there compares another מחלוקת between ר"א and ר' יוחנן to the מחלוקת of השותפין, that in both cases the reason of ר"א is because he maintains ברירה.

²¹ דויתור here means forgoing or overlooking one receiving a minor benefit (even though you vowed that he should not benefit from you). The benefit received by walking on my ground is insignificant and people generally do not include this when they are מודר הנאה.

²² See footnote # 3.

That is not like קנין הגוף, because a father in regards to his son²³ gives up his rights that he has in the גוף on account of his פירות –

proves that this is a valid reason why here there is this exception:

דהכי מצריך להו בפרק יש נוחלין²⁴ (שם דף קל"ב) לתרי מילי דריש לקיש דהכא²⁵ ודהתם²⁶ –

For this is how the גמרא in נוחלין explains the necessity²⁷ for ר"ל stating his two rules here and there –

אבל בעלמא קיימא לן דכקנין הגוף דמי²⁸ –

But generally we establish the rule that קנין פירות כקנין הגוף דמי –

responds to an anticipated difficulty:

ואף על גב דקאמר הכא²⁹ רבא קרא ומתניתא מסייעי ליה לריש לקיש לרבא לא סבירא ליה הכי –
ר"ל support ברייתא and פסוק רבא states here that the rule is קנין פירות (that by קנין הגוף דמי, since it is מביא ואינו קורא the rule is קנין פירות), nevertheless רבא does not agree to ר"ל that קנין כגוף דמי –

דאם לא כן לא מצא ידיו ורגליו דרבא סבר לקוחות הן³⁰ בפרק ב' דקדושין (דף מב, ב) –
For if you will not say so (but rather that he agrees with ר"ל that קנין הגוף דמי), since רבא maintains in the second פרק of קדושין that ידיו ורגליו רבא will not find מסכת קדושין of פרק, that האחין שחלקו לקוחות הן –

nevertheless רבא does not necessarily agree with ר"ל: רבא states לר"ל that even though רבא will prove that even though

ובפרק הזהב (בבא מציעא דף מח, א) קאמר רבא נמי גבי משיכה מפורשת מן התורה –

²³ Really it should not be a sale, since the father has a קנין פירות in this field, and generally קנין פירות is קנין הגוף, however in this case the father out of caring for his son will be מוחל his right to void the sale and agrees that the sale should be effective.

²⁴ There the גמרא cites the above mention מחלוקת between ר"ל and ר"י regarding the son selling it while his father is alive. The גמרא asked but ר"ל and ר"י argue elsewhere regarding whether קנין פירות כקנין הגוף דמי, in a case where a field was sold only לפירות, where ר"י maintains וקורא (since קנין הגוף is פירות) and ר"ל maintains קורא since מביא ואינו קורא. We take it a step further and use the case of מכר הבן בחיי האב that the rule could be that it is a valid מכירה. We see that even ר"י concedes that by the case of מכר הבן that the rule could be that it is a valid מכירה, but not because קנין פירות לאו כקנין הגוף דמי, but only since the father is מוחל even though that קנין פירות כקנין הגוף דמי.

²⁵ The case of ביכורים (see footnote # 24).

²⁶ The case of מכר הבן בחיי האב (see footnote # 3).

²⁷ ר"ל explains that even though generally קנין פירות כקנין הגוף דמי, nevertheless it was necessary to state the case of מכר הבן, since I may have thought that in that case the sale is valid (as ר"ל rules) since the father is מוחל for his son. We see that even ר"י concedes that by the case of מכר הבן that the rule could be that it is a valid מכירה. We take it a step further and use the case of מכר הבן that the rule could be that it is a valid מכירה, but not because קנין פירות לאו כקנין הגוף דמי, but only since the father is מוחל even though that קנין פירות כקנין הגוף דמי.

²⁸ Therefore even though we maintain that האחין שחלקו לקוחות הן (they only have a קנין פירות), nevertheless since קנין פירות כקנין הגוף דמי, they are וקורא דמי.

²⁹ On the very bottom of this עמוד.

³⁰ רבא was qualifying the ruling of ר' נחמן that ר' נחמן was qualifying the ruling of ר' נחמן regarding האחין שחלקו לקוחות הן (of a שתות). רבא stated that this ruling is only if he did not make the assessor a שליח. It is apparent that he agrees in principle with ר"ל that they are לקוחות.

And in פרק הזהב, where רבא also states regarding the view of ר"ל that משיכה is explicit³¹ in the תורה -

קרא ומתניתא מסייעי ליה לריש לקיש -

The ר"ל support ברייתא and the פסוק - קונה מה"ת is משיכה that ר"ל support ברייתא and the פסוק

אף על גב דרבא קאי כרבי יוחנן בר מתלת³² (יבמות דף לו, א) -

Even though that רבא always agrees with ר"י except for three cases where we rule like ר"ל, we see that even though he say קרא ומתניתא מסייע ליה לר"ל nevertheless he disagrees with ר"ל and maintains מעות קונה מה"ת like ר"י. We can say the same regarding קנין פירות.

This is תוספות first answer that we maintain לקוחות הן; however we also maintain קנין פירות כקנין מביא וקורא therefore the הגוף דמי יורשין may be.

תוספות now offers an alternate solution:

ועוד יש לומר דדוקא רבי יוחנן אית ליה דמחזירין זה לזה ביוכל -

An additionally one can say; it is specifically only ר"י who maintains that the brothers must return the properties to each other on יובל and redive them since לאו
- כקנין הגורף דמי

אבל שאר אמוראים סברי אף על גב דלקוחות הן אין מחזירין -

However the rest of the אמוראים maintain that even though לקוחות הן (since אין מחזירין זל"ז ביוכל (מה"ת אין ברירה), nevertheless

דמכר הוא דאמר רחמנא דליהדר ירושה ומתנה לא והשתא אתי שפיר³³ -

For only by a sale did the תורה state that it must be returned, but not by ירושה ומתנה so therefore it works out –

תוספות asks:

ואם תאמר לרבי יוחנן דמחזירין זה לזה ביובל תו לא משכחת שדה אחוזה³⁴ -

And if you will say; according to ר"י that the heirs return the properties to each other on יובל, you will never find a case of a שדה אחוזה -

דכולהו הוו שדה מקנה ולא תתחלק לכהנים³⁵ -

³¹ קונה מה"ת is משיכה ריש לקיש maintains that קונה מה"ת maintains that ר' יוחנן

³² This statement was made by רבא there that תלת בהני תלת, הלכתא כוותיה דר"ל, but not in any other מחלוקת.

³³ Even though קנין פירות כקנין (אין מחזירין) they have a קנין הגוף so whether we maintain that הגוף or not it makes no difference they are always מביא וקורא (for קנין הגוף). This answer removes the slight difficulty that רבא stated קרא ומתניתא מסייע ליה לר"ל.

³⁴ There are different laws prescribed in the תורה, whether one is שדה אחוזה מקדיש (a field which is inherited for generations) or a שדה מקנה a field which one bought (to keep until יובל).

³⁵ If no one redeems a שדה אחרוה from הקדש, the rule is that when יובל comes the field is given to the כהנים of that משמר (the owner has the right to be מקדיש it for posterity since it is his completely). However if no one redeems a שדה מקנה from הקדש, when יובל arrives it goes back to the original owner (for the buyer of the שדה מקנה only has a קנין פירות in the field until יובל: he cannot be מקדיש it forever).

For all fields are considered as a שדה מקנה and it will not be divided amongst the כהנים - וגם יפדוה בשויה ולא בית זרע חומר שעורים³⁶ בחמשים שקל כסף³⁷ -
And also it will be redeemed from הקדש for its worth, but not according to the assessment of שקלים בית זרע חומר שעורים for fifty silver –

answers: תוספות

ויש לומר כיון דתחת זו תחזור לו אחרת לא קנינן בה שדה מקנה אלא שדה אחוזה:
And one can say; since that instead of this field which he received from his father's estate, another field from his father's estate will be returned to him; it is not considered a שדה מקנה, but rather a שדה אחוזה!

Summary

Generally מוחל is (קנין פירות the father (who has קנין פירות כקנין הגוף except where the father (who has קנין הגוף the son (who has קנין הגוף). Alternately, although we maintain הן לקוחות, nevertheless אין מחזירין זל"ז ביובל.

Thinking it over

Why according to יוחנן ר' that since one may bring קנין פירות כקנין הגוף even, ביכורים, though קנין הגוף דמי as well that since שדה אחוזה it is considered a שדה אחוזה?!³⁸

הדרן עלך השולח

We shall return to you

פרק השולח

יתחזקנו שוכן שחקים

שגמרנו לפרש ארבעה פרקים

מהמביא עד השולח

בעזרת מוחל וסולח

³⁶ בית זרע חומר שעורים is the area needed to seed a כור (סאה thirty) of barley. One who is מקדיש a שדה אחוזה can redeem it for this amount proportionately; if he has a field that is half a בית חומר שעורים, he redeems it for twenty five שקלים, if his field is two בית חומר שעורים he redeems it for a hundred שקלים. This is a price fixed in the תורה (in [בחקותי] ויקרא), for one who redeems his field immediately after יובל, regardless of the actual value of the field. However when one is מקדיש a שדה מקנה, it is redeemed for its market value.

³⁷ תוספות is asking that the whole rule of שדה אחוזה will (almost) never happen according to ר"י, since זל"ז ביובל, it is considered a שדה מקנה.

³⁸ See מהרש"א.