

## The improvement that reaches the shoulders - **שבח המגיע לכתפים**

### Overview

The גמרא concluded that when שמואל stated that a שותף is דמי כיוורד ברשות דמי he meant to say that he receives the שבח המגיע לכתפים in a field which is not intended for planting trees, just as he would receive it in a field that is intended for planting trees.<sup>1</sup> There are two interpretations as to the meaning of שבח המגיע לכתפים.

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מפרש רש"י בכמה מקומות וכן רבינו שמואל דמגיע לכתפים כגון ענבים הראויין ליבצר<sup>2</sup> - שבח המגיע לכתפים explains in many places and similarly the רשב"ם here that שבח המגיע לכתפים is for instance grapes which are fit to be harvested -

תוספות asks:

וקשה דאמרין בפרק קמא דבבא מציעא (דף טו,ב) -

And there is a difficulty with the aforementioned explanation, for the גמרא states in the first פרק of מסכת ב"מ -

והא מעשים בכל יום וקא מגבי שמואל לבעל חוב בשבח המגיע לכתפים<sup>3</sup> -

But it happens every day where שמואל allows a creditor to collect from the שבח המגיע לכתפים -

ואי סלקא דעתך היינו ענבים הראויים<sup>4</sup> ליבצר אם כן בעל חוב לא גבי מינייהו<sup>5</sup> -

And if we are to assume that שבח המגיע לכתפים means grapes which are ready to be harvested (like רש"י), if indeed it is so, the lender cannot collect from them -

כדאמר בכתובות פרק נערה (דף נב,ג) אמר<sup>6</sup> ליה זיל הב ליה מתמרי דעל בודיא -

As the גמרא relates in מסכת כתובות פרק נערה; רב יוסף said to the sons, give her from the dates which are on the mats -

<sup>1</sup> See רשב"ם ד"ה לומר for an explanation.

<sup>2</sup> They are referred to as מגיע לכתפים, because they are ready to be harvested and carried away on one's 'shoulders'.

<sup>3</sup> This is in a case where the לוח sold his property and the מלוה is collecting his debt from the mortgaged property which the buyer bought from the borrower; שמואל would allow the lender to collect even from the שבח המגיע לכתפים, which according to רש"י ורשב"ם means the ripe produce. [Let assume that the loan was for \$150, and the field (barren) is worth \$100, and the fruit on the trees are worth an additional \$50, the מלוה may take the field and the fruit.]

<sup>4</sup> The הגהות the amends this to read ענבים העומדים ליבצר (not ענבים הראויים ליבצר). [This הגהה should seemingly also apply to the previous time it states הראויין ליבצר (by footnote # 2).]

<sup>5</sup> A lender can collect from the property of the buyer (which is קרקע), but not from the ripe produce of the property (which is considered מטלטלין), for this belongs to the buyer and is not mortgaged to the loan, as תוספות goes on to prove.

<sup>6</sup> In our text in מסכת כתובות it reads אמר להו הבו לה וכו'. The case there is where the father died and it is obligatory on the male heirs to support the daughters of the deceased. The issue there is whether the daughters can claim their support from מטלטלין (of the estate) or only from קרקע.

אמר ליה<sup>7</sup> לא יהא אלא בעל חוב דחזו לבודיא קאמינא -

[אביי] said to רב יוסף, 'let them even be considered as a creditor'; could he collect from the מטלטלין of יתומים, so how can the daughter (who is weaker than a מלוה)<sup>8</sup> collect from the מטלטלין of the יתומים? רב יוסף replied, 'I meant from the dates which are ready to be harvested and fit to be placed on the mat'. However, אביי persisted -

סוף סוף כל העומד ליגדר כגדור דמי דצריכי לדקלא קאמינא -

'Nonetheless since they are ripe and ready to be harvested we have the rule, whatever is ready to be harvested is like it was already harvested', so it is still considered מטלטלין; to which רב יוסף replied, 'I meant only those dates which still need to be on the tree'; they are not ripe yet, so they are considered as קרקע -

אלמא לא גבי מאותם העומדים ליגדר<sup>9</sup> -

It is evident that even a מלוה cannot collect from those fruits which are ready to be harvested. How can we understand פרש"י?!

רב"ש"י dismisses this question on תוספות

ולאו פירכא היא דהא רש"י נמי לא בעי למימר מאותן העומדים ליבצר מיד<sup>10</sup> -

And this is no refutation of פרש"י, for even רש"י did not mean to say that המגיע (only) those fruits which are ready to be harvested immediately, for they are certainly not considered קרקע -

אלא כלומר כל דבר שסופו ליתלש כגון פגין או בוסר -

Rather רש"י meant anything which will eventually be harvested, for instance unripe figs or grapes is (also) called לכתפים שבח המגיע. It is self-understood that in our גמרא the שבת המגיע לכתפים which the שותף takes are the ripe foods. שבת המגיע לכתפים therefore generally means all produce that grows; ripe or unripe.

שבח המגיע לכתפים offers an alternate explanation of תוספות

ורבינו תם מפרש מגיע לכתפים היינו דבר שבא על ידי טורח<sup>11</sup> -

And the ר"ת explains that מגיע לכתפים means an improvement that comes about through toil, but not an improvement where it improved on its own without toil -

<sup>7</sup> The הגהות הב"ה amends this to read ליה אביי לא (instead of לא ליה).

<sup>8</sup> A מלוה can collect even from משועבדים, נכסים משועבדים, however regarding והבנות, the rule is that they cannot collect from משועבדים, only from the estate of the husband/father

<sup>9</sup> The question on רש"י is if שבת המגיע לכתפים means ripe produce, how can the גמרא in ב"מ state that שמואל would be מגבה even from מלוה, when from the גמרא in כתובות it is clear that a מלוה cannot collect from ripe fruit, for they are considered מטלטלין which belong to the buyer and are not part of the mortgaged קרקע!

<sup>10</sup> See (also) פרש"י רש"י there המגיע בד"ה who writes, קרוב ליקצר אלא שעדיין צריכין לקרקע,

<sup>11</sup> It is called מגיע לכתפים because (as we say in the vernacular) you need to put your 'shoulder' to it.

ומייתי ראיה מהא דתנן בסוף יש נוהלין (לקמן דף קלד,א) האומר זה אחי אינו נאמן -

And the ר"ת brings proof to his explanation from the משנה in the end of פרק יש נוהלין; one (ראובן) who says, 'this (לוי) is my brother', he is not believed<sup>12</sup> so that the newcomer (לוי) should inherit equally with his other brothers -

ויטול עמו בחלקו<sup>13</sup> מת יחזירו נכסים למקומם<sup>14</sup> נפלו לו נכסים ממקום אחר יירשו אחיו עמו<sup>15</sup> -  
But rather לוי takes a partial share with ראובן. If לוי dies his property is returned to its place (to ראובן). If לוי inherited property from elsewhere (not from his father), and he died, all his brothers inherit from him. This concludes the משנה -

ובעי רבא (שם קלה,ב) שבח ששבחו נכסים מאליהם מהו<sup>16</sup> -

And רבא queried; what is the ruling regarding an improvement that the properties (which לוי initially received from his father) improved on their own.

The גמרא clarifies the query -

בשבח המגיע לכתפים לא תבעי לך דכי נפלו ממקום אחר דמי<sup>17</sup> -

If it was שבח המגיע לכתפים there is no query, for it is like the case where he received assets from elsewhere, where the rule is that all the brothers inherit him -

כי תיבעי לך בשבח שאינו מגיע לכתפים כגון דקלא ואלים ארעא ומסקא שרטון<sup>18</sup> -

When should you query, in a case of שבח שאינו מגיע לכתפים, for instance, the tree in the field became thicker, or a land on which a river deposited soil making it more fertile. In any event -

משמע שבח שאינו מגיע לכתפים היינו בא מאליו<sup>19</sup> -

<sup>12</sup> Let us assume that ראובן and שמעון are the known sons of יעקב. Then ראובן claims that לוי is also a son, and שמעון is skeptical. If יעקב left over six (equal) fields, לוי is not entitled to inherit two fields because שמעון can say to לוי, 'prove it that you are a brother'. Rather שמעון inherits three fields as if there are only two brothers ראובן ושמעון.

<sup>13</sup> ראובן claims that לוי is a brother, so that each brother is entitled to two fields, therefore ראובן takes two fields and לוי takes one field (that would have gone to ראובן had לוי not appeared on the scene). לוי cannot take one field away from שמעון, unless he can prove that he is a brother.

<sup>14</sup> שמעון has no claim on לוי's field since he already received his three fields. However the field that לוי received goes back to ראובן, since ראובן received only two fields.

<sup>15</sup> לוי maintained all along that he is a brother to שמעון וראובן, therefore both ראובן and שמעון inherit him.

<sup>16</sup> Let us assume that the field which לוי received (from ראובן; see footnote # 13) was initially worth \$100. Now it is worth \$200; this improvement happened by itself as the גמרא there continues to explain. The question is if לוי dies what happens with the extra \$100. The first hundred certainly goes to ראובן, as the משנה stated (footnote # 14); the question is regarding the \$100 improvement; is it considered part of the original field and therefore it reverts back to ראובן, or is it considered like אחר נכסים ממקום אחר, so it is inherited both by ראובן and שמעון.

<sup>17</sup> This is well understood according to פר"ת that שבח המגיע לכתפים means the improvement that לוי made in the field. This added value is not included in the initial value of the field; it is something that לוי added on his own, and since לוי claims that he is their brother they all share in his created wealth.

<sup>18</sup> The query then would be since no one did anything to improve the field, this improvement can be considered as part of the initial field, so it should all belong to ראובן, or perhaps since its value increased it should be shared by all the brothers, ראובן and שמעון.

<sup>19</sup> The query of רבא was regarding שבח מאליו. The גמרא says that the query is by שבח שאינו מגיע לכתפים, which means that שבח מאליו and שבח שאינו מגיע לכתפים are one and the same.

**It seems that שבה שאינו מגיע לכתפים means that it came by itself, and by implication שבה המגיע לכתפים would mean that it came through one's toil, as the ר"ת explained.**

negates this proof and argues that on the contrary it disproves the ר"ת:

**ולרבינו אלחנן נראה דאדרבה משם קשה לרבינו תם דלמה שינה בלשון -**

**However it appears to ר"א the opposite; that there poses a difficulty for the ר"ת; for why did the גמרא change its language, meaning -**

**דמעיקרא קאמר נכסים ששבחו מאליהם מהו -**

**That initially רבא stated, 'what is the rule regarding מאליהם**

**ובתר הכי קאמר כי תיבעי לך בשבח שאין מגיע לכתפים -**

**And afterwards the גמרא changes and says, 'you should query regarding שבה**

**דמעיקרא נמי הוה ליה למימר שבה שאין מגיע לכתפים -**

**Initially רבא should have asked regarding שבה שאין מגיע לכתפים, the fact that he did not use the same language as the גמרא uses later, indicates that they are not the same –**

**אלא משמע דשבח המגיע לכתפים נמי הוי נכסים ששבחו מאליהם<sup>20</sup> -**

**Rather it seems that שבה המגיע לכתפים is also considered מאליהם –**

has an additional difficulty with ר"ת:

**ועוד קשה לרבינו תם אמאי קאמר כגון דקלא ואלים הוי ליה למימר כגון פירות הבאות מאליהם**

**And there is an additional difficulty with the explanation of the ר"ת (who maintains that שבה שאינו מגיע לכתפים means profit from work and שבה המגיע לכתפים means שבה which comes by itself without work); why does the גמרא state (in פרק שבה שאינו מגיע לכתפים) that a שבה שאינו מגיע לכתפים is for instance a tree which became larger, the גמרא should have said, for instance fruits which grow on their own<sup>22</sup> without additional work –**

<sup>20</sup> queried regarding מאליהם. The גמרא clarified that there are two types of מאליהם, either ששבחו מאליהם (where there is no query) and שבה שאין מגיע לכתפים (where there is a query.) It therefore turns out (according to ר"א) that שבה המגיע לכתפים is also a type of מאליהם, and therefore we cannot accept the ר"ת who maintains that שבה המגיע לכתפים means that he toiled to make this שבה. [However, according to ר"ש it is understood. There are two types of מאליהם, one where the fruits grow by themselves, but that belongs to all the brothers since it is like שגפלו ממקום אחר (see shortly in this תוספות), but then there is another type of ששבחו מאליהם like דקלא ואלים which is a שבה שאינו מגיע לכתפים; we do not harvest it on our shoulders, and that is where the query of רבא was asked.]

<sup>21</sup> See text by footnote # 18.

<sup>22</sup> However according to ר"ש that שבה המגיע לכתפים means that you can remove it on your shoulders, it is understood that דקלא ואלים are certainly a שבה שאין מגיע לכתפים, however שבה המגיע לכתפים

<sup>23</sup>פרש"י clarifies תוספות

ואומר רבינו שמשון בן אברהם דאין תימה לפירוש רש"י דשבה המגיע לכתפים היינו פירות -  
**And the פרש"י says that one cannot wonder and ask according to רשב"א that**  
**לכתפים שבה המגיע לכתפים; if so -**

אמאי חשיב להו כנכסים שנפלו לו ממקום אחר ויטלו אחיו עמו<sup>24</sup> -

**Why does the גמרא in ב"ב consider them like assets which he received from elsewhere, and so therefore all the brothers can share in it –**

הלא גם להם יש פירות בארצם שהיתה כנגד זו<sup>25</sup> -

**Is it not so that they also have fruits in their land corresponding to the fruits which grew on לו's land –**

לפרש"י explains, why there is no difficulty רשב"א:

דהא מבעי ליה בדקלא ואלים ארעא ומסקא שרטון אי חשיב כנפלו לו נכסים ממקום אחר -

**For we see that רבא there in ב"ב queried regarding a tree which became larger, and land upon which a river placed new topsoil, whether they are considered as נכסים (and the brothers should share), so if (even) by דקלא ואלים וכו' there is a סברא that it should be considered like ממקום אחר, then -**

כל שכן פירות דאית לן לאחשובינהו טפי כנפלו לו ממקום אחר -

**Surely regarding פירות which grew on the property that we should consider it even more like נכסים שנפלו לו ממקום אחר –**

תוספות proves this point that פירות are considered more ממקום אחר than דקלא ואלים:

כדמוכח גבי בכור (לקמן דף קכד,א) דפליגי רבי ורבנן בחפירה והווי שיבלי (שלחופי<sup>26</sup>) והווי תמרי -

**As is evident later regarding a firstborn, where רבי and the רבנן argue in a case where fodder became sheaves of grain, or date trees which produced dates,<sup>27</sup> the issue there is -**

<sup>23</sup> See footnote # 20 [in the bracketed area].

<sup>24</sup> See footnote # 15-17.

<sup>25</sup> Let us review (see footnote # 12); there are six fields each worth \$100 (without פירות). שמעון took three fields (he does not acknowledge לוי as a brother), ראובן took two fields and לוי took one. At the time of לו's death his field had \$10 worth of fruit. According to רש"י this is שבה המגיע לכתפים and the גמרא there states that it is shared equally by שמעון, ראובן and לוי. The question is why! Presumably just as לו' field produced \$10 worth of פירות, so too did לו' field produce \$10 worth of פירות. The reason שמעון has a claim on the \$10 of לו' field is because לו' claims that he is a brother, if לו' is a brother then לו' third field belongs to לו', so he already received the \$10 of fruit from his third field, and ראובן alone should receive the \$10 from לו' field. If לו' did not exist this field would be לו', so he is taking back what he gave לו'. However according to the פר"ת it is understood. See footnote # 17.

<sup>26</sup> A marginal note amends this to read שלפופי (instead of שלחופי).

<sup>27</sup> When the father died the grain was not ripe; it was still fodder. Later it grew into sheaves of grain. The same with the dates; the issue here is whether the בכור receives his double portion as the estate was worth at the time of death, or does he receive his פי שנים for the produce which grew later.

**אי בכור נוטל פי שנים<sup>28</sup> אי לא ואפילו הכי מודו בדקלא ואלים וארעא ומסקא שרטון דשקיל -**  
**Whether the בכור takes a double portion of the grown produce or not, but nevertheless all agree regarding דקלא ואלים וארעא ומסקא שרטון that he takes a double portion in the improved assets -**

**אלמא חשבינן פירות טפי בנפלו<sup>29</sup> לאחר מכן מדקלא ואלים<sup>30</sup> -**  
**It is evident from that גמרא that we consider fruits to be more in the category of לוי - דיקלא ואלים than נפלו לאחר מכן**

**ומצינן למימר שפיר שיטלו אחיו בפירות<sup>31</sup> -**  
**And so therefore we can properly assume that the brothers (ראובן ושמעון) should share equally in the פירות of לוי -**

ואף על פי שגם לקחו נגדם בחלקם דהם טרחו והם אכלו<sup>34</sup> -  
now resolves logically<sup>32</sup> the ואין תימה mentioned previously:<sup>33</sup>

**ואף על פי שגם לקחו נגדם בחלקם דהם טרחו והם אכלו<sup>34</sup> -**  
**And even though that they (the brothers - שמעון) also took a corresponding share of פירות in their portion, nevertheless they all share in לוי's fruits, since regarding their פירות, they toiled and they ate the work of their toil -**

**אבל מה שהמת טרח למה לא יקחו בטורח המת כמותו<sup>35</sup> וכתלושים חשיבי -**  
**However regarding what the deceased brother לוי toiled, why should they not receive the toil of the deceased like him (ראובן). And the פירות should be considered as if they were detached<sup>36</sup> (harvested) -**

<sup>28</sup> A בכור takes a double portion in all the assets which the father owned at the time of his death. However he shares equally with his brothers any assets which came later to the father's estate (the children improved the property).

<sup>29</sup> Others amend this to read כנפלו (instead of בנפלו).

<sup>30</sup> The more the improvement is considered part of the initial estate, the more reason for the בכור to receive פי שנים. Since we see that all agree that he receives פי שנים from דקלא ואלים that proves that we do not consider this as something which came later, but rather it is part of the initial estate. However by פירות רבנן maintain that the בכור does not receive פי שנים, because it is considered like something new which was added to the estate, meaning it is considered like שנפלו לאחר מכאן.

<sup>31</sup> From the גמרא regarding בכור we understand that פירות is considered more מקום אחר than מקום ואלים, so since by דיקלא ואלים there is consideration that all the brothers share in it, so certainly by פירות (which are more מקום אחר than דיקלא ואלים), that all the brothers share in the פירות.

<sup>32</sup> Previously תוספות (merely) proved that פירות are more ממ"א כנפלו than דיקלא. Now תוספות will explain why indeed נפלו ממ"א are considered פירות.

<sup>33</sup> See footnote # 25.

<sup>34</sup> Even though we are discussing מאליהם פירות הבאים, nevertheless there needs to be some effort in maintaining the tree, such as pruning, weeding, etc. They therefore 'deserve' to eat the פירות (even though it may belong to לוי), since they worked for it.

<sup>35</sup> If the פירות would grow without any טרחה whatsoever, it is understood that שמעון has no claim on לוי, since he received a corresponding share of לוי's produce (see footnote # 25). However there is some טרחה even by פירות, so לוי did not totally consume לוי's produce, for it was שמעון who was טורח, not לוי. Therefore the fruit for which לוי is also something additional beyond the original ירושה, therefore שמעון has a claim to it as well.

<sup>36</sup> See following footnote # 37.

ואי תלשם ואחר כך מת זה דבר פשוט שיטלו עמו<sup>37</sup> -

And it is obvious that if **harvested** the פירות and died afterwards that **would share with** ראוּבֵן.

פרש"י asks on תוספות

ומיהו קשה לפירוש הקונטרס למה הוצרך כאן להאריך ולומר<sup>38</sup> בשבח המגיע לכתפים -  
However, there is a difficulty with פרש"י, why was it necessary here to elaborate and say that **בשבח המגיע** שותף כיווד ברשות דמי means that he takes **לכתפים** -

דהיינו פירות שבכל שנה ושנה כדין אריס<sup>39</sup> -

Which means that the שותף receives the fruits of each year, like the rule by a sharecropper; why mention שבח המגיע לכתפים -

לא היה לו לומר אלא שנוטל בשדה שאינה עשויה ליטע כשדה העשויה ליטע -

Rather he should have only said that he takes his share in a field which is not intended for planting trees just as he takes his share in a field which is intended for planting trees -

דהיינו כדין אריס<sup>40</sup> -

Which (the amount he receives in a שדה העשויה ליטע) is the rule concerning an אריס, therefore in our case by a שותף it makes no difference whether it is a שדה העשויה ליטע or not, he takes his allocated share like an אריס in both cases. תוספות proves that one who plants without permission, a field that is עשויה ליטע, he receives payment like an אריס -

דיווד שלא ברשות שקיל בשדה העשויה ליטע כדין אריס -

For a שותף שלא ברשות takes payment in a שדה העשויה ליטע like an אריס -

כדאמר בהשואל (בבא מציעא דף קא,א) היווד לתוך שדה חבירו שלא ברשות כולי -

As the השואל states in פרק השואל, one who is שותף חבירו שלא ברשות, etc. -

<sup>37</sup> The reason for this is that even if we consider the growing פירות as part of the original inheritance, once however they were harvested something new came in here, namely the work of harvesting (which increases the value of the פירות (they cost more when harvested than on the tree). This makes the פירות תלושים separate from the original ירושה and they are considered מ"א שנוטל לו מ"א. The same applies even before they were harvested, since לוי was טורח (see footnote # 34), this טורח is considered as something new; it is just like תלושים.

<sup>38</sup> The הגהות הב"ח amends this to read שנוטל בשבח ולומר (instead of בשבח).

<sup>39</sup> The point of saying עשויה ליטע is that he receives payment like an אריס for his work. [Presumably this means that when there are two partners who own a field, and presently neither of them is working the field (so there is no profit). If one of the partners on his own (without consulting his partner) decided to improve the field and he planted it, etc.; this partner will first receive the percentage which any אריס receives for his work (למחצה לשליש), and the remaining profits are divided among them since they are partners. If for instance the net profit was \$100 and an אריס receives half; \$50 will go to the working partner and the remaining \$50 will be divided equally among both partners. The working partner receives a total of \$75 and the other partner receives \$25, ופשוט.]

<sup>40</sup> If the intention is that he receives payment like an אריס even if it is a שדה שאין עשויה ליטע, why mention שבח המגיע (which means like an אריס)?! just say that he will always receive payment like a שדה העשויה ליטע (which means like an אריס)?!

ומסיק דבשדה העשויה ליטע אומדים כמה אדם רוצה ליתן בשדה זו ולנוטעה -

And the גמרא concludes regarding ברשות שלא היוורד that by a שדה העשויה ליטע we assess how much a person is willing to pay in order to plant trees in this field -

ופרש"י דהיינו כדין אריסי העיר<sup>41</sup> -

And רש"י explained there that this means that he is paid like the rate of the sharecroppers of that city<sup>42</sup> -

אבל לפירוש רבינו תם אתי שפיר דהכי פירושו שנוטל דוקא בשבח המגיע לכתפים -

However according to the פר"ח it is properly understood why he mentions שבח שבה המגיע, for this is the explanation in the גמרא that it is only by שבח המגיע that he receives עשוי ליטע כשדה העשויה ליטע -

דהיינו בא על ידי טורח בשדה שאין עשויה ליטע כשדה העשויה ליטע כדין אריס -

Meaning the improvement that come through his toil, only then does he receive שדה שאין עשויה ליטע כשדה העשויה ליטע, by אריס like an שבה -

אבל באין מגיע לכתפים לא יטול כדין אריס -

However if it is a שבח which is not מגיע לכתפים (but it comes by itself), so then he will not take like an אריס -

פר"ח anticipates a difficulty on תוספות:

ואף על גב (דאדם)<sup>43</sup> נוטל בשבח דאתי מעלמא ממילא כדמשמע בפרק מי שאחזו (גיטין דף ע"ד,ב) -

And even though that an אריס receives his share from improvements that come on their own from elsewhere, as is indicated in שאחזו<sup>44</sup>, פרק מי שאחזו, so since here we treat the שותף like an אריס, why should he not receive from דאתא ממילא?

responds that nevertheless -

הכא שיוורד שלא ברשות סבר גמרא דאין לו ליטול בשבח הבא מאליו כדין אריס -

Here where he was ברשות גמרא, יורד שלא ברשות, assumes that he should not take from the שבה like an אריס, for an אריס is ברשות.

asks (on פר"ח):

<sup>41</sup> See ד"ה גלית there רש"י who writes, ועשיתה שדה העשויה ליטע וידו על העליונה הוא כשאר שתלי העיר כמנהג המדינה, See later in this תוספות footnote # 49.

<sup>42</sup> We therefore know that even by ברשות שלא היוורד in a שדה העשויה ליטע he is paid like an אריס, so the question remains why mention שבח המגיע לכתפים, he should have said that he is paid like an אריס (where he is paid like an אריס). See 'Thinking it over'.

<sup>43</sup> A marginal note amends this to read דאריס (instead of דאדם).

<sup>44</sup> The גמרא there relates that the owner said to the אריס, 'all other אריסים water the plants three times and receive a fourth of the produce, you water it four times and you will receive a third'. It so happened that it rained (so much) that it was not necessary to water it a fourth time, and nevertheless (even though it was a מעלמא ממילא) the אריס receives a third.



ומכל מקום קשה דבכל מקום גרס ובשדה (שאינו שלו)<sup>45</sup> בוי"ו<sup>46</sup> -

**But nonetheless<sup>47</sup> there is a difficulty** (according to פר"ת), **for everywhere the text reads** שדה **with a וי"ו** preceding the word **עשוי ליטע** -

**ולפירוש זה הוה ליה למימר בשדה בלא וי"ו כיון דחדא מילתא היא -**

**However according to פר"ת** **פי' ר"ת** **it should read בשדה without a וי"ו** preceding, **since it is one matter**; he collects the שבה המגיע לכתפים by a וכו' -

<sup>48</sup>פרש"י resolves a previous difficulty on תוספות

**ויש ליישב פירוש הקונטרס ונפרש ההיא דהשואל כמה אדם רוצה ליתן בשדה זו ולנוטעה -**  
**And we can justify** פרש"י **and explain why the גמרא** states שבה המגיע לכתפים **by** **explaining that** גמרא **in** השואל **פרק**, which states regarding בשדה הירוד שלא ברשות בשדה, **that we assess how much is a person willing to give for this field in order to plant trees in it; that this assessment -**

**דלאו היינו כדין אריס דלאריס נותנין יותר למחצה ולשליש כי עוסק בה לתקנה כמה צרכים -**  
**Is not like the rule of an אריס<sup>49</sup>, for an אריס we give even more; we pay him half or a third of the produce, since he works there continually to improve many things which are necessary,** and that is not what is meant by רוצה ליתן בשדה זו - ולנוטעה

**אלא הכי פירושו כמה אדם רוצה ליתן לקבלן ליטע שדה זו ולא ירד בה לאריסות -**

**But rather this is the explanation** of כמה אדם וכו', **that is how much will a person be willing to give to a contractor to plant trees in this field, but will not enter into it as an אריס,** who remains continually in the field כמה צרכים and who receives his payment after the field produces -

**אלא מיד נוטל שכרו ונוטל יותר משכיר יום כי שכיר יום אין עליו לתקן אם יתקלקל -**

**But rather the קבלן receives his payment immediately,** but does not remain in the field like an אריס. **However he receives more than a day laborer, for a שכיר has no obligation to repair if it is ruined,** but the קבלן must stand behind his work and is responsible to repair any problems -

<sup>45</sup> A marginal note amends this to read שאינה עשויה ליטע (instead of שלו).

<sup>46</sup> The text according to תוספות reads שבה המגיע לכתפים ובשדה העשויה ליטע כשדה שאין עשויה ליטע. This is not our גירסא, rather the וי"ו is omitted as תוספות suggests it should be according to פר"ת.

<sup>47</sup> Even though we explained how according to פר"ת it is understood why the גמרא mentions לכתפים (as opposed to פרש"י), nonetheless there still is a difficulty with the text.

<sup>48</sup> See footnote # 42. The difficulty was based on the assumption that a ירוד שלא ברשות in a שדה העשויה ליטע, where the גמרא states that we assess לנוטעה בשדה זו ולנוטעה, means that he receives payment like אריסי העיר. This following answer will also justify the גירסא according to פרש"י ובשדה גירסא.

<sup>49</sup> This is seemingly not how תוספות understood פרש"י previously that it is אריסי העיר. See however footnote # 41, that אריסים writes שתלי העיר which may mean קבלנים but not אריסים.

והכי קאמר שנוטל בשבח המגיע לכתפים כאריס שלא יסתלקו<sup>50</sup> אותו כמו קבלן -

And this is what the גמרא means here, the שותף takes in the שבח המגיע לכתפים (meaning the fruits) like an אריס (למחצה ולשליש), who receives his payment when the fruit is grown (מגיע לכתפים), for they cannot remove him and pay him like a קבלן -

כמו שעושין לנוטע שלא ברשות שמסלקין אותו בכך אפילו משדה העשויה ליטע<sup>51</sup> -

As we do to one who is ברשות שלא נוטע that we remove him from the field with this payment as a קבלן, even if it is a שדה העשויה ליטע; however this שותף remains as an אריס. This is the explanation of שבח המגיע לכתפים, שנוטל שבה המגיע לכתפים, where we are discussing a שדה העשויה ליטע. The גמרא then continues, additionally -

ובשדה שאין עשויה ליטע כולי פירוש ועוד שגם בשדה שאין עשויה ליטע -

And by a שותף עשוי ליטע, etc., meaning that additionally that even by a שדה שאין עשויה ליטע -

נוטל כמו בעשויה ליטע<sup>52</sup> מה שאין כן בנוטע שלא<sup>53</sup> ברשות:

The שותף takes like by a שדה העשויה ליטע, which is not the case by a יורד שלא ברשות. The second ruling is that the first ruling by a שדה העשויה ליטע that he is treated like an אריס applies even to a שדה שאין עשויה ליטע.

## Summary

According to רש"י the meaning of שבח המגיע לכתפים are fruits that ripen (which can be carried away on the shoulder), however according to the ר"ת it refers to any improvement that came through toil.

## Thinking it over

asked on פרש"י why does it need to say שבח המגיע לכתפים; it should have only said (כאריס).<sup>54</sup> Why did not simply ask, it should have said נוטל בשדה שאין עשויה ליטע כשדה העשוי ליטע, without mentioning שדה העשויה ליטע?!

<sup>50</sup> The הגהות הב"ה amends this to read שלא יסתלקו אותו (instead of שלא יסתלקו אותו).

<sup>51</sup> This case of שדה העשויה ליטע is referring to a שדה that the שותף is treated like an אריס, not like a קבלן. The term שבח המגיע לכתפים indicates that he is treated like an אריס (who receives his payment when the fruit is harvested - שבח המגיע לכתפים), but not like a קבלן (who receives payment as soon as the planting is done).

<sup>52</sup> Seemingly this means that he collects like an אריס (more than a קבלן).

<sup>53</sup> By שדה שאין עשויה ליטע in נוטע שלא ברשות the rule is that he receives the lesser of either the הוצאה (expense) or the שבח (improvement), whichever is less.

<sup>54</sup> See footnote # 42.