

## Bava Basra – Simanim

### דף קכו – Daf 126

### פרק ח – יש נוחלין

#### 1. A *bechor* who protests receives a double portion of improvements of fruit harvesting

Rav Assi said: בכור שמיחה מיחה – *a bechor who protested* his brothers' improving the estate before dividing it, *he has effectively protested and* is entitled to a double portion in the improvements. Rabbah says this ruling is reasonable בענבים ובצרום זיתים ומסקום – *regarding grapes which they cut, or olives which they harvested*. Here, his protest entitles him to a double portion in the harvested fruit, which is worth more after being harvested. However, דרכום – *if they pressed them* into wine or oil, he would not receive a double portion of the improvement. Pressing the fruit despite his protest constitutes robbery, and since the fruit changed physical status, it is acquired by the robbers (the brothers), and they must compensate him according to the value of the unpressed fruit. Rav Yosef said אפילו דרכום – *even if they pressed the fruit*, but the Gemara asks, מעיקרא עינבי השתא חמרא – *originally, they were grapes, and now it is wine*, so the brothers should acquire it!? It explains that Rav Yosef meant if the wine was lost or ruined, נותן לו דמי היזק ענביו – [they] *must compensate him for the damage to his grapes*.

#### 2. בכור שנטל חלק כפשוטו ויתר (*machlokes if the bechor's extra portion is his before the division*)

Rav Assi said: בכור שנטל חלק כפשוטו ויתר – *a bechor who took a share in a field like an ordinary son, he has foregone* his double portion. Amoraim debate the extent of this ruling. Rav Pappa quoted Rava saying: ויתר באותה שדה – *he has foregone* his double portion *in that field* only but receives it in the rest of the estate. Rav Pappi quoted Rava saying: ויתר בכל הנכסים כולן – *he has foregone* his double portion *in all the properties*. The first opinion holds: אין לו לבכור קודם חלוקה – *a bechor does not have* any rights to his extra portion *before the division and* cannot waive his right in what he does not yet own. The second opinion holds: יש לו לבכור קודם חלוקה – *a bechor does* have rights in his extra portion *before the division*, ומדאחיל – *and since he waived* his extra portion *in this field, he waived it in all the properties*. This dispute revolves around an incident in which a *bechor* sold the estate, and Rava ruled the sale was ineffective. These Amoraim dispute if it was effective for his extra portion. The Gemara rules like the second opinion.

#### 3. A father who stipulates to divide the inheritance differently than the Torah's laws

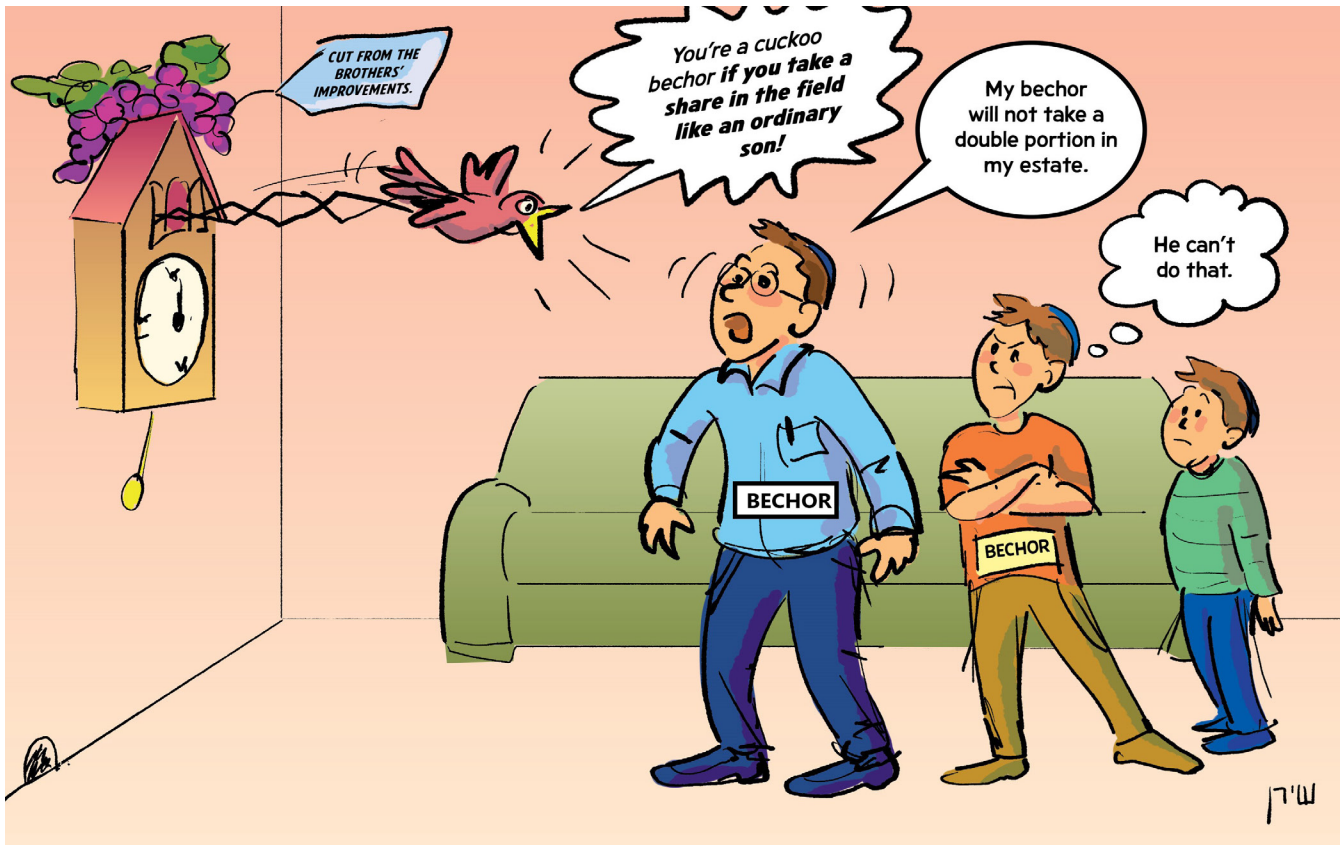
The next Mishnah states that if one says: איש פלוני בני בכור לא יטול פי שנים – *"Ploni, my bechor, will not take a double portion in my estate,"* or איש פלוני בני לא יירש עם אחיו, or – *"Ploni, my son, will not inherit with his brothers,"* לא אמר כלום – *he said nothing*, and his instructions are ignored, שכתוב בתורה – *because he has stipulated against what is written in the Torah*, which is ineffective. However, if he redistributes his property to his sons as gifts, increasing one's share relative to another, or equating the *bechor* with the others, the gift is effective. The Gemara asks if the Mishnah disagrees with Rebbe Yehudah, who holds: בדבר של ממון תנאו קיים – *regarding a monetary matter, his stipulation* contrary to the Torah's laws *stands*. The case is where one marries a woman on condition she has no claim of שאר – *food, clothing, or marital relations*. Rebbe Meir says the condition is invalid, but Rebbe Yehudah says it is effective. The Gemara answers that in that case, ידעה וקא מחלה – *she knows of the condition and waives her marital rights*; in our Mishnah, the disadvantaged one does not agree to waive his legal rights.

#### Siman – Cuckoo Bird Clock

The *bechor* who had protested his brothers' improving the estate before dividing it, took the double portion in the improvements, and decorated his cuckoo bird clock with the grapes they had cut, was so startled when the little bird called out, "You're a cuckoo *bechor* if you take a share in the field like an ordinary son," that he declared that his *bechor* would not take a double portion in his estate.

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### 3 things to remember

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2. בבור שנטל חלק כפשוט ויתר
3. A father who stipulates to divide the inheritance differently than the Torah's laws

