

**A** בס"ד

Intro

Today we will learn בע"ה of דף קכ"ו בבא בתרא. Some of the topics we will learn about include.

The Machlokes regarding

יש לו לבכור קודם חלוקה

Whether a בכור acquires his additional portion from when he wants to acquire it, even before the assets were actually divided;

OR

אין לו לבכור קודם חלוקה

A acquires his portions only after the assets were actually divided.

And this Machlokes pertains to the following two Halachos

1.

בכור שמיחה

מיחה

Regarding שבח, improvements;

If the בכור initially objected and requested that they split up the estate before making these improvements, he does receive a double portion in the שבח, according to the opinion of

יש לו לבכור קודם חלוקה

And his objection indicates that he wanted to acquire his additional portion, and

נכסין דידיה אשבה

The profits from HIS additional portion belong to him.

The distinction in whether these improvements cause a שינוי, physical change in the בכור's portion or not.

2.

Regarding the Halachah of

בכור שנטל חלק כפשוט

ויתר

If the בכור took only a single portion in one of his father's fields, he surrendered his rights to the additional portion, and he cannot later claim פי שנים.

However, whether the בכור surrendered his portion באותה שדה, in that field only, OR בכל הנכסים כולן, in all the fields, also depends on the above Machlokes.

**B** The Mishnah's Halachah of

האומר

איש פלוני בני בכור לא יטול פי שנים

איש פלוני בני לא יירש עם אחיו

If a person stipulated that his firstborn son should not inherit a double portion in his assets, OR that one son should not inherit any portion in his assets,

לא אמר כלום

שהתנה על מה שכתוב בתורה

His stipulation is void, because a תנאי which contradicts a Torah obligation is NOT effective.

**A**

אין לו לבכור  
קודם חלוקה

יש לו לבכור  
קודם חלוקה

1

בכור שמיחה  
מיחה

2

בכור שנטל חלק כפשוט  
ויתר

**B**

איש פלוני בני בכור  
לא יטול פי שנים

איש פלוני בני  
לא יירש עם אחיו

לא אמר כלום  
שהתנה על מה שכתוב בתורה

1 So let's review ...

The Braisa in Daf ד"ק mentioned, that all agree regarding שבח שהשיבו יתומים

לאחר מיתת אביהן

אין בכור נוטל פי שנים

If there were profits from the father's assets that accrued after his death through the improvements of the brothers, the בכור does not get a double portion in these profits, because they are ראוי, they were not in the father's possession when he died, and

אין הבכור נוטל בראוי כבמוחזק

A בכור is entitled to שנים פי only in the assets that were מוחזק, that were in the father's possession when he died, but not in those assets that were ראוי, that were not in the father's possession when he died.

However, רב הונא אמר רב אסי says:

בכור שמיחה

מיחה

If the בכור initially objected and requested that they split up the estate before making these improvements, he does get פי שנים in the שבח, because as the Rashbam explains, רב אסי holds

יש לו לבכור קודם חלוקה

A בכור acquires his additional portion from when he wants to acquire it, even before the assets were actually divided.

Therefore, in this case, his objection indicates that he wanted to acquire his additional portion, and

נכסין דידיה אשבח

The profits from HIS additional portion belong to him.

1

*The Braisa in Daf ד"ק mentioned,  
all agree regarding*

**שבח שהשיבו יתומים  
לאחר מיתת אביהן  
אין בכור נוטל פי שנים**

*If there were profits from the father's assets  
that accrued after his death*

*through the improvements of the brothers,  
the בכור does not get a double portion in these profits,  
because they are ראוי,*

*they were not in the father's possession when he died, and*

**אין הבכור נוטל בראוי כבמוחזק**

*A בכור is entitled to שנים פי only in assets that were מוחזק,  
that were in the father's possession when he died,*

*but not in those assets that were ראוי.*

*רב הונא אמר רב אסי*

**בכור שמיחה**

**מיחה**

*If the בכור initially objected  
and requested that they split up the estate  
before making these improvements,  
he does get פי שנים in the שבח.*

*Because רב אסי holds*

**יש לו לבכור קודם חלוקה**

*A בכור acquires his additional portion from when he wants  
to acquire it, even before the assets were actually divided.*

*Therefore, in this case,  
his objection indicates that he wanted to acquire his  
additional portion, and*

**נכסין דידיה אשבח**

*the profits from his additional portion belong to him.*

2 רבה makes the following distinction:

מסתבר טעמיה דרב אסי  
בענבים ובצדום  
זיתים ומסקום

The above holds true, only if the improvements did not make a physical change in the בכור's portion, such as if the grapes or olives were fully grown and the brothers merely cut them down. The בכור gets a double portion in the שבה, because as explained earlier, his portion improved.

And as the Rashbam adds;  
והרי זה דומה לגוזל פרה והוקירה  
דמשלם אותה כמות שהיא  
הואיל ולא נשתנית

This is similar to one who stole an item and it improved, he must return the item as is, because it did not undergo a physical change.

However,  
אבל דרכום  
לא

If the improvements did make a physical change in the בכור's portion, such as the brothers pressed the grapes into wine, the בכור does not get a double portion in the שבה. He only gets פי שנים as per the former lower value of the grapes, but not in the שבה of the current higher value of the wine, because as the Rashbam explains

קניניה יתמי להני ענבים בשינוי

The other brothers acquired the grapes through the change, and the שבה of the wine belongs to them. And this is similar to

הגוזל עצים ועשאן כלים  
משלם כשעת הגזילה  
דקנייה בשינוי

The thief pays the lower value of the raw wood, not the higher value of the utensils he fashioned.

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2

*רבא makes the following distinction:*

**מסתבר טעמיה דרב אסי  
בענבים ובצדום  
זיתים ומסקום**

*The above holds true, only if the improvements did not make a physical change in the בכור's portion, such as if the grapes or olives were fully grown and the brothers merely cut them down.*

*The בכור gets a double portion in the שבה, because his portion improved.*

*And as the Rashbam adds;*

**והרי זה דומה לגוזל פרה והוקירה  
דמשלם אותה כמות שהיא  
הואיל ולא נשתנית**

*This is similar to one who stole an item and it improved, he must return the item as is, because it did not undergo a physical change.*

However,

**אבל דרכום  
לא**

*If the improvements did make a physical change, such as the brothers pressed the grapes into wine, the בכור does not get a double portion in the שבה.*

*He only gets פי שנים as per the former lower value of the grapes, because...*

**קניניה יתמי להני ענבים בשינוי**

*The other brothers acquired the grapes through the change, and the שבה of the wine belongs to them.*

*And this is similar to*

**הגוזל עצים ועשאן כלים  
משלם כשעת הגזילה  
דקנייה בשינוי**

*The thief pays the lower value of the raw wood, not the higher value of the utensils he fashioned.*

- 3 רב יוסף addresses a similar, but different, situation and says:  
 אפילו דרכום  
 נותן לו דמי היזק ענביו  
 If the brothers pressed the grapes into wine and their value decreased, such as the wine spoiled;  
 The בכור receives פי שנים as per the former higher value of grapes, but not as per the current lower value of the spoiled wine, because ®  
 משלמים לו כשעת הגזילה  
 The brothers must reimburse the בכור as per the value of the grapes from when they stole them from him.  
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- 3
- רב יוסף
- אפילו דרכום  
 נותן לו דמי היזק ענביו**
- If the brothers pressed the grapes into wine and their value decreased, as the wine spoiled;  
 The בכור receives פי שנים  
 as per the former higher value of grapes,  
 but not the current lower value of the spoiled wine,  
 because*
- משלמים לו כשעת הגזילה**
- The brothers must reimburse the בכור  
 as per the value of the grapes  
 from when they stole them from him.*

4 The Gemara continues with a related Halachah:

אמר רב אסי  
בכור שנטל חלק כפשוט  
ויתר

If the בכור took only a single portion in one of his father's fields, he surrendered his rights to the additional portion, and he cannot later claim פ'י שנים.

The Gemara cites a Machlokes in the understanding of this ruling:

אמר רב פפא משמיה דרבא  
ויתר באותה שדה

The בכור surrendered his rights to פ'י שנים only in that specific field, but he is still entitled to פ'י שנים in all other fields, because he holds

אין לו לבכור קודם חלוקה

A בכור acquires his additional portion only after the assets are actually divided, because the Pasuk states לתת לו פ'י שנים

מתנה קרייה רחמנא

The בכור's additional portion is compared to a gift, and עד דאתיא לידיה דמקבל מתנה

A recipient acquires a gift only after he actually receives it.

Therefore,

ומה דאתא לידיה אחיל

איך לא אחיל

דאין אדם מקנה דבר שלא בא לעולם

He surrendered פ'י שנים only in this field that he already acquired through the חלוקה, but not in the other fields that he did not acquire yet.

While רב פפי משמיה דרבא says

ויתר בכל הנכסים כולן

The בכור surrendered his rights to פ'י שנים in all the fields, because he holds

יש לו לבכור קודם חלוקה

A בכור acquires the additional portion as soon as he wants it, even before the assets are divided, because the Pasuk states לתת לו

משעת שמת האב ראוי ליתן לו

From the time the father died it is fit to be given to him.

ומדאחיל בהא אחיל בכלהו

Since he surrendered his portion in one field, it extends to all the fields that he already acquired.

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4

אמר רב אסי  
**בכור שנטל חלק כפשוט  
ויתר**

If the בכור took only a single portion in one of his father's fields, he surrendered his rights to the additional portion, and he cannot later claim פ'י שנים.

רב פפא משמיה דרבא

**ויתר באותה שדה**

The בכור surrendered his rights to פ'י שנים only in that specific field,

but he is still entitled to פ'י שנים in all other fields, because he holds

**אין לו לבכור קודם חלוקה**

A בכור acquires his additional portion only after the assets are actually divided,

because the Pasuk states

**לתת לו פ'י שנים**

מתנה קרייה רחמנא

The בכור's additional portion is compared to a gift, and

עד דאתיא לידיה דמקבל מתנה

A recipient acquires a gift only after he receives it.

Therefore,

**ומה דאתא לידיה אחיל**

איך לא אחיל

**דאין אדם מקנה דבר שלא בא לעולם**

He surrendered פ'י שנים only in this field that he already acquired through the חלוקה, but not in fields he did not yet acquire.

רב פפי משמיה דרבא

**ויתר בכל הנכסים כולן**

The בכור surrendered his rights to פ'י שנים in all the fields, because he holds

**יש לו לבכור קודם חלוקה**

A בכור acquires the additional portion as soon as he wants it, even before the assets are divided,

because the Pasuk states

**לתת לו פ'י שנים**

משעת שמת האב ראוי ליתן לו

From the time the father died it is fit to be given to him.

**ומדאחיל בהא אחיל בכלהו**

Since he surrendered his portion in one field, it extends to all the fields that he already acquired.

- 5 The Gemara concludes  
והלכתא יש לבכור קודם חלוקה  
And therefore  
ויתר בכל הנכסים כולן  
And for the same reason regarding שבח  
בכור שמיחה מיחה  
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5

**והלכתא**  
**יש לבכור קודם חלוקה**  
*And therefore*  
**ויתר בכל הנכסים כולן**  
*And for the same reason regarding שבח*  
**בכור שמיחה מיחה**

- 6 Zugt Di Mishnah:  
האומר  
איש פלוני בני בכור לא יטול פי שנים  
איש פלוני בני לא יירש עם אחיו  
If a person stipulated that his firstborn son should not get  
a double portion, OR that one son should not inherit any  
portion;  
לא אמר כלום  
שהתנה על מה שכתוב בתורה  
His stipulation is void, because a תנאי which contradicts a  
Torah obligation is NOT effective.

6

**האומר**  
**איש פלוני בני בכור לא יטול פי שנים**  
**איש פלוני בני לא יירש עם אחיו**  
*If a person stipulated that his firstborn son*  
*should not get a double portion,*  
*or - that one son should not inherit any portion;*  
**לא אמר כלום**  
**שהתנה על מה שכתוב בתורה**  
*His stipulation is void,*  
*because a תנאי which contradicts a Torah obligation*  
*is not effective.*

**7** The Gemara asks  
 לימא מתניתין דלא כרבי יהודה  
 Perhaps our Mishnah does not concur with רבי יהודה's  
 opinion that the תנאי IS effective regarding monetary  
 obligations, as in the case of  
 האומר לאשה הרי את מקודשת לי  
 על מנת שאין לך עלי שאר כסות ועונה  
 הרי זו מקודשת  
 ותנאו בטל  
 דברי רבי מאיר  
 If a man gave a woman Kidushin בתנאי, on condition, that  
 he is absolved from his obligations of food, clothing, and  
 marital relations;  
 רבי מאיר says that the Kiddushin is effective and the תנאי is  
 not effective, because  
 כל המתנה על מה שכתוב בתורה  
 תנאו בטל

רבי יהודה אומר  
 בדבר של ממוון  
 תנאו קיים  
 רבי יהודה says that the Kiddushin is effective, and the תנאי  
 is effective regarding the monetary obligations of food  
 and clothing.

According to Reb Yehudah, in our Mishnah's case, the  
 father's תנאי should be effective regarding the monetary  
 obligations of פירות and פי שנים?

The Gemara answers that perhaps the Mishnah does  
 concur with רבי יהודה, because there is a difference  
 between these two cases:  
 התם ידעה וקא מחלה  
 הכא לא קא מחיל  
 The תנאי is effective only regarding שאר וכסות, because the  
 wife's acceptance of the Kiddushin indicates that she did  
 absolve her husband of his obligations.  
 However, the תנאי is not effective regarding ירושה, because  
 there is no indication that the son absolved his father of  
 his obligation.  
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**7** לימא מתניתין דלא כרבי יהודה

**האומר לאשה  
 הרי את מקודשת לי  
 על מנת שאין לך עלי שאר כסות ועונה  
 הרי זו מקודשת  
 ותנאו בטל**

דברי רבי מאיר

If a man gave a woman Kidushin בתנאי, on condition, that  
 he is absolved from his obligations of food, clothing, and  
 marital relations;

רבי יהודה אומר	רבי מאיר says
<b>בדבר של ממוון תנאו קיים</b>	<b>The Kiddushin is effective and the תנאי is not effective, because</b>
<b>The Kiddushin is effective, and the תנאי is effective regarding the obligations of food and clothing.</b>	<b>כל המתנה על מה שכתוב בתורה תנאו בטל</b>

**?**

According to Reb Yehudah, in our Mishnah's case,  
 the father's תנאי should be effective  
 regarding the monetary obligations of פירות and פי שנים?

Perhaps the Mishnah does concur with רבי יהודה,  
 because there is a difference between these two cases:

<b>התם ידעה וקא מחלה</b>	<b>הכא לא קא מחיל</b>
<b>The תנאי is effective only regarding שאר וכסות, because the wife's acceptance of the Kiddushin indicates that she did absolve her husband of his obligations.</b>	<b>However, the תנאי is not effective regarding ירושה, because there is no indication that the son absolved his father of his obligation.</b>

8 The Gemara continues with related Halachos:

אמר רב יוסף

אמר איש פלוני בני בכורי הוא

נוטל פי שנים

If a person said that so and so my son, is MY firstborn, he gets a double portion. However, if he said

איש פלוני בכור הוא

אינו נוטל פי שנים

If he said that so and so my son, is A firstborn, he does not get a double portion, because

דלמא בוכרא דאמא קאמר

Perhaps he meant that the son is a firstborn from only his mother, but not from his father.

8

אמר רב יוסף

אמר איש פלוני בני בכורי הוא  
נוטל פי שנים

If a person said that so and so my son, is MY firstborn,  
he gets a double portion.

However, if he said

איש פלוני בכור הוא  
אינו נוטל פי שנים

If he said that so and so my son is A firstborn,  
he does not get a double portion,  
because

דלמא בוכרא דאמא קאמר

Perhaps he meant the son is a firstborn from his mother,  
but not from his father.