Bechoros – Simanim
פרק ח – יש בכור

Daf 48 – דף מח

1. If the true *bechor* is unknown and the father dies

The next Mishnah states that if one's wife had never given birth, and then gave birth to two boys (and it is unknown which was born first), the father gives five סלעים to the Kohen. If one son dies within thirty days, the father is exempt (since it is possible the *bechor* died). If the father died and the sons are alive, Rebbe Meir says: אם נתנו עד שלא חלקו נתנו – *if they gave* a Kohen five סלעים *before they divided* the estate, *they have given* in accordance with their obligation. But if they divided the estate before giving the five סלעים, they are exempt from paying. Rebbe Yehudah says that even if they already divided the estate, נתחייבו נכסים – *the assets have become liable*, and a Kohen may collect from them. If she initially gave birth to a boy and a girl, the Kohen receives nothing, since the girl may have been born first.

2. Collecting a debt from property jointly owned by two Yosef Ben Shimons

The Gemara struggles to explain Rebbe Meir's ruling. During its lengthy discussion, Rebbe Yirmiyah asserts that שני יוסף בן שמעון שהיו בעיר אחת ולקחו שדה בשותפות – if *two* [people named] *Yosef ben Shimon, who lived in the same city, bought a field in partnership,* בעל חוב גובה אותה מהם – *a creditor* with a document stating that "Yosef ben Shimon" owes him money *may collect from* [the jointly owned property], even though he could not practically collect from either one individually. This is because he can say he is collecting his debt from the share of whoever actually owes him money. However, Rava objects: a בעל חוב's ability to collect from a debtor's property is because נכסי דבר איניש אינון ערבין ביה – *a person's assets are his guarantor*. Now, a Mishnah states that "one may not collect from the ערב," meaning דלא יתבע מן הערב תחלה – *that he may not demand* payment *from the guarantor first*. Rather, he must first demand payment from the debtor, and only then collect from the ערב. Since here, the בעל חוב could not practically collect from either party (who can deny being the debtor), how can he collect from the property, his ערב?!

3. חמש ולא חצי חמש

The Gemara had proved that the Mishnah's case is where the father died within thirty days, and asked: since each son can deny being the *bechor*, then even <u>before</u> the estate is divided, the Kohen should not be able to collect? Rava answers that the case is where the entire estate totals only five סלעים. All Tannaim agree that brothers who divide an estate are treated as מחצה יורשין ומחצה לקוחות – *half-heirs and half-purchasers* (i.e., because it is unclear if they are receiving their own portions or "purchasing" their brothers'). Furthermore, all agree that a debt imposed by the Torah, such as פדיון הבן, is considered מלוה על פה – *an undocumented debt*, which Rav Pappa said can only be collected from יורשים of a debtor's property, but not from purchasers. Hence, the Kohen in this case could only collect two and a half סלעים (the "יורשים half" of the estate). The Tannaim disagree whether חמש ולא בחצי חמש – the *five* סלעים obligated for פדיון הבן implies *"but not half of five* סלעים." If it does, then wherever the Kohen cannot collect the full five סלעים, he collects nothing. The Gemara ultimately proves that all Tannaim agree that חמש ולא חצי חמש and explains the *machlokes* differently.

Siman – Brainiac

The **brainiac** accountants working with **two brothers who were ספק בכורות whose father died before redeeming them** told them the good news is **if they split the inheritance before redeeming they would be פטור from doing so**, but the bad news is since they were **both named יוסף בן שמעון a debtor can collect from a field they share, while the senior partner got his client a break by using the חמש ולא חצי חמש loophole.**

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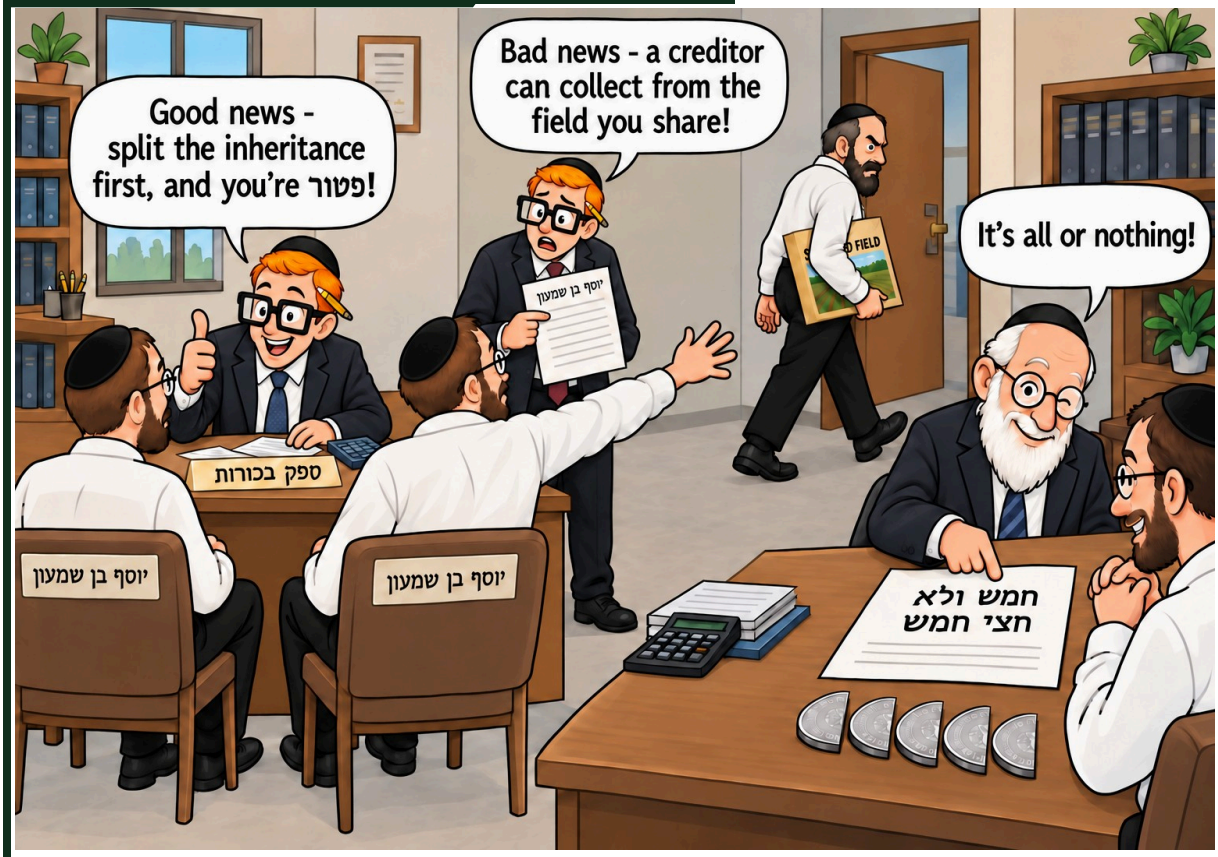
Brainiac



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3 things to remember

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2. **Collecting a debt from property jointly owned by two Yosef Ben Shimons**
3. **חמש ולא חצי חמש**

