

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

Partnerships Shiur Eighteen

Mareh Makomos for this Shiur

Bava Basra 144b

Rambam (Laws of Inheritances, 9:6)

RabbeinuYonah (144b)

Rosh (Bava Basra Perek Mi Shemeis, Siman 12)

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*Partners, one of
whom was taken into
the service of the
King or fell ill*



Siman 177 Seif One

1 (1) One of the brothers, whom the king appointed a gabbai or scribe, and he does transactions with the king's money, and all similar cases involving the money of the king, if he was appointed because of their father, such as if their father was known for this and he [the king] said 'let's appoint his son in his place 1 to do Chessed with the orphans,' whatever earnings or benefits he gets from this work goes to all of the brothers. And even if he was exceptionally bright and was worthy of being appointed in his own right. And if he was appointed on his own, this [his earnings] is his alone. The same is true for loss — if the king took [money] away from him because of the brothers' money and wealth, the loss is shared by all of them. If this stems from him alone, the loss is his alone.

Rama: (Tur in the name of Rabbeinu Yonah). And there are those that say that the same applies to other partners, if one takes for all of them, the profit or loss is split (Tur). And there are those that say that this applies only to the employ of the king 2, but for another trade, he takes all for himself (ibid. in the name of Harav Yosef Halevi and the Beis Yosef in the name of the Ramban). And there are those that say that even the service of the king he first takes [payment for] his labor as would a day worker (ibid. in the name of Rabbeinu Yonah).

Siman 177 Seif Two

2 3(2) One of them falls ill, if through negligence, 4 such as he went out in the snow in winter or in the heat during the summer and the like, if there is a kitzba (i.e., if recovering his health can be quantified in terms of money and time), he gets well with his own money, and if it has no kitzba, he gets well from the emtza (the funds of the partnership). But if he fell ill through no fault of his own, even if there is a kitzba, he gets well from the emtza, and before he does so, they can say to him, "split with us."

Rana: (3) And there are those that say the opposite, that by negligence, one never gets well from the entza, and only if he fell ill through no fault of his own and there is no kitzba to his medical recovery is it [paid] from the entza (Tur).

Division of earnings from work for the King

SIMAN 177: 1

The source of this *Halacha* is *Maseches Bava Basra* 144b. The *Mishna* states: Brothers who are partners (in the estate of their deceased father, before they divide the estate and the like) and one of them “fell” into the service of the king (to be explained below), he “falls” for half, and if he becomes ill and later gets well, he gets well for himself.

What is the explanation of this Mishna?

The *Gemara* explains that this is a case of brothers, one of whom was taken into the service of the king. Specifically, the king placed him in charge of his financial affairs.

- a) If the king appointed the brother because of the family (i.e., the king would take from each family one tax collector each month, and so he would take from each family of the city), this brother’s profits are split between all of the brothers.
- b) This split is because it was the merit of the family that got him this position and not his own. If he was appointed on his own merit, however (i.e., the king valued his skills, astuteness, etc.), his earnings belong to him alone.

The *Gemara* asks: If the brother was appointed because of the family, it is obvious that the others deserve a share of the earnings. What is the *chiddush* of this law?

The Gemara answers,

- a) This is a case of an exceptionally bright brother.
- b) It would seem as though it was his astuteness that got him his appointment (and the earnings would be his alone). *Kamashma LAN* (the *Mishna* informs us).
- c) that even if he is intelligent, if the appointment is because of the brothers, the earnings are split among them

The **Rambam** (Laws of Inheritances, 9:6) explains this *Halacha*:

- a) If the king appointed this brother because of the father of the orphans, meaning their father was known for this.
- b) He [the king] said ‘let’s appoint his son in his place to do *Chessed* with the orphans,’
- c) Whatever earnings or benefits he gets from this work goes to all of the brothers.
- d) This applies even if this brother is talented on his own and would be worthy of this position without the fact that his father also did this work (but he was ultimately hired because of his father).

He was appointed to a different trade

The **Tur** brings here the *Shitah* of **Harav Yosef Halevi**, writing,

- a) The above law applies only to a son that was taken into the employ of the king (in which case the appointment was surely due to the family, as was said above).
- b) When a son is appointed to a different position (and not to work for the king), even if his appointment is due to his family, his earnings are his alone (since the labor invested was his alone — based on the **Prisha seif katan 2**).

The **Bedek Habayis** explains that **Rav Yosef Halevi** inferred this from the *Gemara*’s statement: “what is meant by *umanus*? The *umanus* of the king.”

The Brother who is Appointed takes the Basic wage for Himself

The **Tur** brings the **Rabbeinu Yonah** (144b), writing

- a) Even when a brother is taken into the service of the king (in which case his earnings are split among all the brothers),
- b) The brother who actually does the work for the king first takes the normal wages of a worker for each day's work, and the remainder is divided among the brothers.

Rabbeinu Yonah adds,

- a) The brother's obligation to divide earnings from work for the king with his brothers applies only if the brothers are still partners (in their father's estate, and have not yet divided it).
- b) If the estate has already been divided, we say that the king did not intend to give profit to all of the brothers, but rather to the brother, he selected alone.
- c) In such case, the brother brought into the king's service does not have to split his earnings with his brothers.

The **Shulchan Aruch** brings the beginning of the above and the **Rama** continues.

The **Shulchan Aruch** rules,

- 1) Brothers, one of whom the king appointed as *gabbai* or scribe who does transactions with the king's money, and all similar cases involving the money of the king,
- 2) If he was appointed because of their father, such as if their father was known for this and the king said 'let's appoint his son in his place to do *Chessed* with the orphans,'
- 3) Whatever earnings or benefits he gets from this work goes to all of the brothers.
- 4) This is the case even if he was exceptionally bright and was worthy of being appointed on his own.

What is the reason why the brother taken into the service of the king must split his earnings with his brothers?

1. The **Sma** (*seif katan* 1) first emphasizes the reason of the **Rambam** (brought by the **Shulchan Aruch**), that the king took him into his service “to do *Chessed* with the orphans,” which are the words of the **Rambam**. Because they are orphaned by their father, they split profits equally, as their father was shared by all of them.
2. The **Sma** brings another reason, brought by the **Ramban**: As long as the brothers have not divided their father’s estate, they are like one entity (as if they are one brother), and therefore split any profit.

The **Shulchan Aruch** adds (a law brought above in the name of the **Rosh**),

- a) The same applies concerning losses.
- b) Meaning, if the king took away from the brother money based on the wealth of the brothers, all of them must split this loss.
- c) However, if this brother was already wealthy irrespective of the family, the loss is his alone.

The **Rama** first brings the above ruling of the **Rabbeinu Yonah**,

ALL OF THIS APPLIES ONLY TO BROTHERS THAT ARE STILL PARTNERS IN THEIR ESTATE, BUT NOT IF THEY DIVIDED THIS.

The **Rama** also brings the ruling of the **Tur**,

THE SAME APPLIES TO OTHER PARTNERS, THAT IF ONE OF THE PARTNERS EARNS MONEY DUE TO THE OTHERS, THE PROFIT OR LOSS IS SPLIT

Concerning this, the **Sma** (*seif katan* 1) brings the *Shitah* of the **Beis Yosef** in the name of the **Ran**,

- a) This law pertains only to brothers and not other sorts of partners.
- b) Likewise, the **Sma** notes that according to the **Rambam** (that the brothers divide because “the king wanted to do *Chessed* with the orphans”).
- c) This law applies only to the brothers and not other sorts of partners.

The **Rama** adds the ruling of **Harav Yosef Halevi** (brought above),

- 1) This law applies only to the service of the king, but if the brother works in a different position, his earnings are his alone.

The **Rama** concludes with the beginning of the ruling of the **Rabbeinu Yonah** above,

- a) Even when a brother is taken into the service of the king, the brother first takes the normal wages of a worker for each day's work.
- b) Only the remainder is divided among the brothers.

Medical Treatment for a partner that falls ill

SIMAN 177:2

The source of this *Halacha* is in the *Mishna* of *Bava Basra* 144b and *Genara*.

The *Mishna* states:

IF THE BROTHER GOT SICK AND WAS TREATED AND HEALED, THE MEDICAL EXPENSES ARE HIS ALONE (AND NOT SPLIT AMONG THE BROTHERS).
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The *Genara* brings a difference in opinion:

- a. If one of the brothers fell ill through no fault of his own, the medical expenses are shared by all the brothers equally.
- b. If he got sick due to his own negligence such as traveling in the snow during the winter (even if he is in a carriage — **Prisha**), or he went out in extremely hot weather (the example brought in the *Genara*).
- c. In these cases he, and not the partnership, pays for his own medical expenses.

The **Rosh** (*Bava Basra Perek Mi Shemeis*, Siman 12) writes in the name of the **Tosefta** that there are two separate types of illnesses and medical treatments (whether this relates to sickness through negligence or not will be dealt with shortly).

The **Rosh** states:

- a) If there is a fixed sum needed for his medical treatment (meaning he has a mild illness that can be cured by taking a certain medicine),
- b) The brother pays for his own treatment (and not from the partnership).
- c) If there is no fixed sum for his treatment (it is impossible to ascertain the amount of time needed for the brother to get well), the brother is healed from the *entza* (i.e., he pays for his medical treatment from the funds of the partnership).

The reason for the distinction between illnesses with known cures or not (based on **Tosafos**, *ibid*, *dibur hamas'chil L'achim*) is based on the concept of *mezonos*:

- a) An illness with no fixed time for its cure falls under the category of *mezonos* (because it has no specific time-frame), and,
- b) *Mezonos* are paid from the funds of the partnership.

Illness Due to chance or Negligence?

Did the **Tosefta** and the *Rishonim* (**Rosh** and **Tosafos**) make the above distinction for a partner who falls ill through no fault of his own?

Alternatively, perhaps even when his illness is caused by his own negligence?

The Tur writes,

IF THE PARTNER GOT SICK BECAUSE OF HIS OWN NEGLIGENCE, SUCH AS BY GOING OUT IN THE SNOW IN THE WINTER, OR IN EXTREME HEAT IN THE SUMMER AND THE LIKE, HE PAYS HIS OWN MEDICAL EXPENSES — EVEN IF THE ILLNESS HAS NO *KITZBA*, DEFINED LIMIT IN COST OR TIME-FRAME.

According to this, the differentiation of the **Tosefta**

- a) Between illnesses that do or do not have a *kitzba*
- b) Pertains only to illnesses caused through no fault of the partner,
- c) However, if his injuries were caused by negligence, the partner pays on his own in all cases.

The **Beis Yosef** disagrees, writing,

- a) It seems from the **Tosefta** that the above differentiation applies only in cases of negligence,
- b) However, if a partner falls ill through no fault of his own, even if his illness has a *kitzba*, his medical expenses are paid by the partnership. The **Tosafos** (ibid.) and **Rabbeinu Yerucham** (Nesiv 27) state the same.

Therefore, the **Beis Yosef** expressed his surprise that the **Tur** wrote concerning illness through negligence that this differentiation is inapplicable, as this goes against the *Rishonim* and the apparent meaning of the **Tosefta**.

THE BEIS YOSEF ADDS THAT PERHAPS THE TUR HAD A DIFFERENT VERSION OF THE TOSEFTA.

“Split with us”

The **Beis Yosef** brings the **Ramban**, who writes concerning the above ruling that a brother’s or partner’s medical expenses are covered by the partnership funds applies only when they are still interested in being partners. However, if the brother or partner did not become well and the others are not interested in his getting better, they can tell him: “Split (i.e., the partnership) with us,” after which

they have no obligation to cover his medical expenses, which he can pay for with his share.

The **Shulchan Aruch** brings the above ruling,

If one of them falls ill,

- a) If he fell ill through negligence, such as he went out in the snow in winter or in the heat during the summer and the like,
- b) If there is a *Kitzba* (i.e., if recovering his health can be quantified in terms of money and time), he pays his medical expenses with his own money.
- c) If it has no *Kitzba*, he gets well from the *entza* (based on the **Beis Yosef**, that only when he fell ill through negligence is this differentiation made, and not like the **Tur** brought above).
- d) Nevertheless, if he fell ill through no fault of his own, even if there is a *Kitzba*, his medical expenses are paid from the *entza*.

The **Shulchan Aruch** adds the statement of the **Ramban**, that before paying the medical expenses, they can say to him,

“SPLIT WITH US”

The **Rama** rules according to the *Shitah* of the **Tur**, writing,

- a) There are those that say the opposite,
- b) That by negligence, one never pays medical expenses from the *entza*.
- c) Only if he fell ill through no fault of his own and there is no *kitzba* to his medical recovery is it [paid] from the *entza*.

The **Sma** (*seif katan* 3) writes concerning this *machlokes* (difference of opinion) between the **Beis Yosef** and the **Tur** (and the **Shulchan Aruch** and the **Rama**) that he already explained in the **Drisha** the statements of the **Tosafos** and the **Rosh**, and proved that they hold like the **Tur**, explaining this at length. Therefore, the **Sma** concludes like the **Tur**.

The **Shach** (*seif katan* 3), however, differs with the **Sma**, writing,

- 1) The *Halacha* is like the **Shulchan Aruch** (as per the **Beis Yosef**, and not like the **Rama** and the **Tur**).
- 2) The **Shach** rejects the **Sma's** attempt to prove that there is no *nachlokes*, expressing this forcefully, saying:
- 3) "Whoever interprets this way, in my opinion he has turned the words of the living G-d upside down." (!)

The **Shach** concludes:

MY HEART TELLS ME THAT THERE IS A *TA'US SOFER* IN THE **TUR**
(MEANING THE TEXT OF THE **TUR** IS INACCURATE DUE TO AN ERROR IN
THE MANUSCRIPT OF A *SOFER* WHO COPIED THE TEXT OVER BEFORE THE
ERA OF THE PRINTING PRESS).

Summary of the Shitos (Based on the Pischei Teshuva)

The **Pischei Teshuva** (Seif *katan* 1) discusses the opinions of the *Rishonim* and *Acharonim* brought above, then summarizing them, based on the Responsa of the **Chacham Tzvi**:

There are three *nachlokes* (differences of opinion) about covering medical expenses, concerning negligence or *oness*

1. The **Tosafos**, **Rosh**, **Ramban**, **Rabbeinu Yerucham**, **Beis Yosef** and **Shach** hold that in *oness*, there is no differentiation: The partner always covers medical expenses with partnership funds. Only concerning sickness by negligence is there a distinction between *kitzba* and no *kitzba*.
2. The **Tur**, the **Sma** and the **Bach** hold that concerning illness caused by negligence, the partner always pays his own medical expenses, and only by *oness* is there a distinction between *kitzba* or not.
3. The **Rif**, the **Rambam**, and all those who did not mention the **Tosefta** in their rulings hold that concerning brothers, there is no distinction between *kitzba* or not, therefore this matter was not mentioned. The differentiation is simply between negligence and *oness*. By negligence, a partner always paid his own medical expenses, and by *oness*, these costs are paid by the partnership funds.

Questions and Answers

1. A brother who is appointed to the service of the king, does he share his profits with his other brothers?

If the king appointed the brother because of the family (i.e., the king would take from each family one tax collector each month, and so he would take from each family of the city), this brother's profits are split between all of the brothers because it was the merit of the family that got him this position and not his own. If he was appointed on his own merit, however (i.e., the king valued his skills, astuteness, etc.), his earnings belong to him alone.

2. What would be the case concerning loss?

The same is true for loss — if the king took [money] away from him because of the brothers' money and wealth, the loss is shared by all of them. If this stems from him alone, the loss is his alone.

3. How did the Rambam present this ruling?

The **Rambam** writes that if the king appointed this brother because of the father of the orphans, meaning their father was known for this and he [the king] said 'let's appoint his son in his place to do *Chessed* with the orphans,' whatever earnings or benefits he gets from this work goes to all of the brothers. This applies even if this brother is talented on his own and would be worthy of this position without the fact that his father also did this work (but he was ultimately hired because of his father).

4. A brother who is taken for other service (not for the king), must he split his earnings with his brothers as well?

No. When a son is appointed to a different position (and not to work for the king), even if his appointment is due to his family, his earnings are his alone, since the labor invested was his alone.

5. Does the brother taken into the service of the king split all of his earnings with his brothers?

No. When one of the brothers is taken into the service of the king, the brother who actually does the work for the king first takes the normal wages of a worker for each day's work, and the remainder is divided among the brothers.

6. If the brothers divided their inheritance, must the brother taken into the service of the king still split his earnings with the others?

No. The brother's obligation to share his earnings from work for the king with his brothers applies only if the brothers are still partners (in their father's estate, and have not yet divided it). If the estate has already been divided, we say that the king did not intend to give profit to all of the brothers, but rather to the brother, he selected alone.

7. Based on the *Gemara*, who finances a sick partner's medical expenses?

The *Gemara* states that if one of the brothers fell ill through no fault of his own the medical expenses are shared by all the brothers equally. If he got sick due to his own negligence such as setting out in the snow during the winter or he went out in extremely hot weather (the example brought in the *Gemara*). In these cases he, and not the partnership, pays for his own medical expenses.

8. What does the Rosh add to this ruling?

The Rosh writes that there are two separate types of illnesses and medical treatments. If there is a *kitzba*, meaning a fixed time and sum needed for his medical treatment, the brother pays for his own treatment (and not from the partnership). If there is no fixed sum for his treatment (it is impossible to ascertain the amount of time needed for the brother to get well), the brother is healed from the *entza* (i.e., he pays for his medical treatment from the funds of the partnership)."

9. Why is a distinction made between illnesses that have a *kitzba* and those that don't?

The reason for this distinction is based on *mezonos*. An illness with no fixed time frame for its cure falls under the category of *mezonos*, and *mezonos* are paid from the funds of the partnership.

10. Concerning a partner falling through his own negligence is a distinction made between the illness' having a *kitzba* or not?

This is the subject of a major *nachlokes Rishonim*, as well as between the *Shulchan Aruch* and the *Rama* and among the *Acharonim*. See the body of the *shiur* for all of the *shitos*, as well as the summary of the *shitos* as brought by the *Pischei Teshuva*.