

ונוטל דמי יינו מתוך דובשנו של חבירו –

**And he takes the value of his wine from his friend's honey**

### **Overview**

The **ר' ישמעאל בנו של ר' יוחנן בן ברוקה** teaches us in the name of **ר' יוחנן בן ברייתא** that if a person who is carrying a barrel of wine meets up with a person whose barrel of honey split open, he pours out the wine and gathers the honey into his wine barrel, and is entitled to be paid for his loss of wine from the honey which he saved.<sup>1</sup> **תוספות** clarifies the details of this case.

על כרחך מיירי כשעקל בית הבד<sup>2</sup> כרוך עליה -

**Perforce we are discussing a case where the עקל בית הבד is wound around the barrel of honey -**

**דאם לא כן לימא ליה מהפקירא קזכינא<sup>3</sup> כדאמר לקמן בפרק בתרא (דף קטו,ב) -**

**For if it were not so, the wine owner could say to the honey owner, 'I have acquired your honey from הפקר', as the גמרא states later in the last פרק (ב"ק) –**

**asks:**

**ואם תאמר ואמאי נוטל דמי יינו הא אמר לקמן בפרק בתרא (שם) דאין לו אלא שכרו<sup>4</sup> -**

**And if you will say; but why can the wine owner take from the honey, the entire value of his wine, which he spilled, since the משנה states later in the last פרק that the wine owner only receives his wages –**

**presents a possible resolution:**

**ומצינו למימר דהך דרבי ישמעאל בנו של רבי יוחנן בן ברוקה פליג -**

**And we could say that this ruling of ר"י בנו של ריב"ב argues with the later משנה -**

**כדאמר בסמוך ביחידאה לא קאמר<sup>5</sup> וכן משמע בתוספתא<sup>6</sup> דבתר הך דלא יקוץ קתני הך -**

<sup>1</sup> The value of honey is more than the value of the wine.

<sup>2</sup> Here this would mean that the honey barrel had hoops around it (to reinforce it), so that even after it split or cracked, the honey does not run out quickly but rather it merely drips out (very) slowly (see **ב"ב קטו,ב ד"ה בעקל**).

<sup>3</sup> If the barrel was not reinforced by the עקל, the honey will quickly spill out and be lost to the owner, it is considered הפקר, and anyone can acquire it (since the owner gives up any hope of saving his honey). However now that the עקל is wound around the barrel the owner can (temporarily) clasp the barrel tightly, in order to prevent the honey from leaking out, so he is not מייאש, and therefore it is not הפקר.

<sup>4</sup> See **ר"י ד"ה אין** there **רש"י** that he gets paid שכר כלי ושכר פעולה (the rental value of his barrel, and his wage for his work), which is considerably less than the value of his spilled wine.

<sup>5</sup> The **גמרא** explains why this ruling of **ר"י בנו של ריב"ב** (and of **ר"י**) was not included in the **תקנות**, it is because they are the opinion of single individuals. This indicates that others argue with **ר"י בנו של ריב"ב**.

<sup>6</sup> **ת"ק** this means that first the **תוספתא** cites a dispute between the **ת"ק** and **הירושלמי**. According to this **גירסא** in **תוספות** (see **מהרש"א**).

As our גמרא states shortly, 'he is not mentioning the view of an individual', and so it seems in the תוספתא that after this case regarding, 'one should not cut down' he taught this case of the wine and honey.

תוספות rejects this explanation:

אבל אין נראה דלמה יטול דמי יינו הלא יכול לומר אני הייתי דוחק ומציל –

However it does not appear to be correct, for why should he receive the full value of his wine, since the honey owner can claim, 'I would have exerted myself and saved the honey' –

כיון דאוקמה כשעקל בית הבד כרוך עליה<sup>7</sup> שיכול להציל על ידי הדחק –

Since we have established that the hoops were around the barrel so he could have, with difficulty, saved the honey –

תוספות offers his interpretation:

ונראה לרבינו יצחק דההיא דלקמן שבעל היין שפך את יינו מדעתו –

And it seems to the ר"י that the גמרא later on is where the wine owner spilled out his wine of his own accord –

שיכול לומר בעל הדבש למה שפכת אני הייתי דוחק ומציל –

So that the honey owner can tell him, 'why did you spill out your wine, I could have exerted myself and saved the honey' –

אבל הכא מיירי שבא בעל הדבש לשפוך את היין –

However here we are discussing a case where the honey owner is coming to pour out the wine in order to save his honey –

שתנאי בית דין הוא שאין בעל היין יכול לעכב –

Where the courts stipulate that the wine owner cannot prevent him from doing so –

אלא שופך יינו של חבירו בעל כרחו של חבירו אלא שנותן לו דמי יינו מתוך דובשנו –

Rather the honey owner can spill out his friend's wine against his will, however he must pay him the value of his wine from the honey –

והשתא הוי כעין ההיא דנחיל של דבורים שקצצו בעל כרחו<sup>8</sup> להציל נחילו –

So now this case of wine and honey is similar to the case of a bee swarm where

---

and ר"י בנו של ריב"ב whether one may chop down a branch to retrieve his bee swarm, and afterwards he states the ruling of ר"י בנו של ריב"ב regarding the wine and honey. Presumably just like the ת"ק argues about the bee swarm, he also argues regarding the wine and honey.[However in our תוספתא it states clearly the dispute regarding the wine and the honey between the ת"ק (that he only receives שכרו) and ר"י בנו של ריב"ב (that he receives דמי יינו).]

<sup>7</sup> See footnote # 2. It is understood why he receives שכרו, for the wine owner saved him the exertion and toil, but he does not deserve to receive the full value of his wine. No one asked him to do it.

<sup>8</sup> In both cases the one who is in danger of suffering a loss, can impose on his friend to help him (even against his will), provided that he will compensate his friend for his loss.

the bee owner **chops down** the branch **against** the tree owner's **will in order to save** his bee swarm -

וכעין זה נמי ההיא דפשתני -

**And the case of the flax is also similar** to the two cases of bees and honey -

ר"י בנו של ר"י explains that there is not necessarily a dispute between the ruling of ר"י בנו של ר"י (that he receives פרוק) and the ruling of the משנה later (that he receives שכרו):<sup>10</sup> **והאי דמשני כיחידא לא קאמר<sup>11</sup> משום דמסתמא כי היכי דפליגי בההיא דנחיל -**

**And this which the גמרא answers** (the question why we do not include the rulings of ר"י בנו של ר"י) **'because he does not mention** the view of a lone opinion', that is **because we assume that just as the חכמים argue regarding the bee swarm -** **כדתנן לקמן בפרק בתרא (דף קיד,א) פליגי נמי באחריני דחד טעמא<sup>12</sup> הוא:**

**As the משנה states later in the last פרק, so presumably they are also arguing regarding the other two rulings of ר"י בנו של ר"י, since they all have the same reason.**

### **Summary**

ר"י בנו של ר"י maintains that one may impose a temporary loss to his friend in order to save himself from a greater loss. According to the חכמים one may not impose on his friend, and whoever helps only receives the wage the job demands (but not his full loss).

### **Thinking it over**

1. According to the conclusion of תוספות there is a dispute between ר"י בנו של ר"י and the חכמים regarding imposing a temporary loss. However is there a dispute in a case where the בעל היין spilled out his wine voluntarily, how much compensation he receives?

2. Is it possible to distinguish between the case of נחיל where the חכמים explicitly argue with ר"י בנו של ר"י, and the other cases (of פשתן and יין), where perhaps the חכמים agree with ר"י בנו של ר"י (not as תוספות maintains)?<sup>13</sup>

<sup>9</sup> The third case of ר"י בנו של ר"י that if one needs to transport his linen (flax) he can force the one who is carrying wood to unload his shipment, and transport the flax instead, provided that he pay for his loss.

<sup>10</sup> There may be no dispute for ר"י בנו של ר"י is discussing where the honey owner is imposing on the wine owner, while the חכמים are discussing where the wine owner spilled his wine voluntarily.

<sup>11</sup> Seemingly it is not a lone opinion, for the חכמים do not necessarily argue with ר"י בנו של ר"י (see footnote #10).

<sup>12</sup> See footnote # 8 & 9. See 'Thinking it over' # 2.

<sup>13</sup> See # 175. אוצר מפרשי התלמוד.