

כדתניא מחיצת הכרם שנפרצה –

As we learnt in a ברייתא; the wall of a vineyard that was breached.

OVERVIEW

¹ The word תנן (or דתנן) refers to a משנה. The word תניא (or דתניא) refers to a ברייתא. When there is an anonymous דין in a משנה (without a specific תנא mentioned), we (generally) assign that opinion to רבי מאיר. This is known as סתם משנה ר"מ. However a ברייתא סתם is not necessarily ר"מ at all.

יש ספרים דגרסי דתנן ואומר רבינו תם שאינה משנה בשום מקום –

There are text that read 'דתנן', we learnt in a משנה, instead of דתניא, we learnt in a ברייתא; however the ר"ת says there no such משנה anywhere. The correct reading is 'דתניא'.

תוספות asks:

– (ואם כן)² היכי פשיט מינה בהגוזל קמא (בבא קמא דף ק,א ושם) דרבי מאיר דאין דינא דגרמי³ –

Since it is not a משנה how does the גמרא in קמא conclude from this פרק הגוזל קמא that ר"מ executed the laws of גרמי⁴.

ואם היתה משנה הוה אתי שפיר דסתם משנה רבי מאיר היא –

And if this ברייתא of הכרם מחיצת הכרם would actually have been a משנה instead of a ברייתא it would have been properly understood how we can deduce from the law of מחיצת הכרם that ר"מ is דינא דגרמי. The case of מחיצת הכרם falls in the category of גרמי⁵. We can therefore deduce from (the משנה of) מחיצת הכרם that ר"מ is דינא דגרמי⁶ since an anonymous משנה is attributed to ר"מ.

¹ רבי יהודה הנשיא edited all the sayings of the תנאים that preceded him and incorporated those that he chose, in the משניות. The other teachings of the תנאים that were not incorporated in the משניות but remained outside the משניות are called ברייתות. The word ברייתא means 'outside'. A משנה is generally considered to have a preferred status over a ברייתא.

² Others emend this to read: 'ואם תאמר'.

³ גרמי refers to a damage inflicted on someone indirectly. The alleged perpetrator did not physically cause the damage. The גמרא there seeks to prove that ר"מ maintains that in case of גרמי the perpetrator is liable.

⁴ The גמרא there in ב"ק cites a case where an individual showed his friend a coin to ascertain if it is legal tender. Had he advised him incorrectly, thereby causing him a loss, it would be considered a case of גרמי. There is another type of indirect damage known as גרמא, where even ר"מ agrees that he is פטור. See ד"ה זאת as to the difference between גרמי and גרמא.

⁵ The בעל הכרם did not physically or directly damage the בעל השדה, nevertheless the דין is that the בעל הכרם חייב באחריותו.

⁶ Any משנה that is not stated in the name of a specific תנא, that משנה is attributed to be the opinion of ר"מ. There is no תנא whose name is mentioned in conjunction with the דין of מחיצת הכרם. Had it been a משנה, it would have been the opinion of ר"מ that he is חייב even though it is only גרמי. However since it is not a משנה, but rather a ברייתא, there is

answers: תוספות

ואומר רבינו תם דמשמע ליה דאתיא כרבי מאיר מכח מתניתין דכלאים דמייתי התם⁷ –

The ר"ת says that it is evident to the גמרא that this ברייתא is in accordance with the view of ר"מ based on the משנה of מסכת כלאים, that the גמרא cited there in ב"ק.

The משנה states:

המסכך [את] גפנו על גבי תבואתו של חבירו [הרי זה] קידש וחייב באחריותו –

One who spreads out his grapevines over his neighbor's (growing) grain; this act hallows the grain (and the vines) to be prohibited from use, and the owner of the vines is liable for his neighbor's loss. This concludes the quote from the משנה.

וההיא סתם משנה היא⁸ הילכך ההיא נמי דקתני קידש רבי מאיר היא –

And that ברייתא of סתם משנה is indeed a משנה in מסכת כלאים in משנה מחיצת הכרם, where it states that the תבואה is קידש, it becomes כלאים, must follow the view of ר"מ. The גמרא rightfully proves from this ברייתא that ר"מ is דאין דינא דגרמי.

concludes: תוספות

ואין להאריך כאן יותר:

And there is no need to elaborate here anymore!

SUMMARY

We can prove from our ברייתא of סתם מחיצת הכרם that ר"מ is דאין דינא דגרמי. There is a משנה, i.e. ר"מ, which maintains that the בעל הכרם is חייב if he spread his vines over someone else's grain. Our ברייתא maintains like the (ר"מ) סתם משנה that it does become כלאים. The case of the ברייתא is considered a דגמרי. We can therefore infer that ר"מ is דאין דינא דגרמי.

THINKING IT OVER

What would be the דין if someone pours milk into a friend's meat stew?⁹

no rule that a ברייתא is ר"מ. We cannot arbitrarily assign this ברייתא to ר"מ. How then does the גמרא infer from this ברייתא that ר"מ is דאין דינא דגרמי?!

⁷ The גמרא there quoted this משנה (before quoting our ברייתא) in an attempt to prove that ר"מ is דאין דינא דגרמי. The גמרא refuted the proof, maintaining that it is not גרמי, since he physically spread the vines over his neighbor's crops.

⁸ There is no תנא associated with the פסק of חייב באחריותו. This means that it is the opinion of ר"מ that the בעל הכרם is liable for the damage he caused by making the תבואה כלאים. There are other תנאים in that משנה who contend that the grain does not become כלאים, for one individual cannot effect a prohibition on something which does not belong to him [See 'Thinking it over']. תנאים become בהנאה אסור, according to these תנאים, only if the grapevines and the grain belong to the same person. ר"מ obviously disagrees. In our ברייתא of מחיצת הכרם, we are confronted with the same issue. The בעל הכרם and the בעל השדה are two individuals. According to the other תנאים it would not become כלאים. The ברייתא however disagrees and states 'הרי זה קידש'; that it becomes כלאים.

⁹ See תוספות יבמות פג,ב ד"ה אין.