

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

Overview

The word תנן (or דתנן) refers to a משנה. The word תניא (or דתניא) refers to a ברייתא¹. 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 'ר"מ'. However a ברייתא is not necessarily ר"מ at all.

There are text that read 'דתנן' we learnt in a משנה, instead of ברייתא we learnt in a

however the ר"ת says there no such משנה anywhere. The correct reading is 'דתניא'.

תוספות asks:

how does it is not a משנה - (ואם כן)² היכי פשיט מינה בהגזול קמא (בבא קמא דף ק,א ושם) ברייתא **conclude from this פרק הגזול קמא in** גמרא

גרמי executed the laws of ר"מ - דרבי מאיר דאין דינא דגרמי refers to a damage inflicted on someone indirectly. The alleged perpetrator did not physically cause the damage³. The גמרא there seeks to prove that ר"מ maintains that in case of גרמי⁴ the perpetrator is liable.

and if this ברייתא of 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 הכרם that ר"מ is דאין דינא דגרמי. The case of מחיצת הכרם falls in the category of גרמי. The בעל השדה did not physically or directly damage the בעל הכרם, nevertheless the דין is that the מחיצת הכרם is (the משנה of) that ר"מ is דאין דינא דגרמי. We can therefore deduce from (the משנה of) מחיצת הכרם that ר"מ is דאין דינא דגרמי - דינא דגרמי

since an anonymous משנה is attributed to ר"מ 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 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?

¹ 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 ברייתא. 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 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.

⁴ There is another type of indirect damage known as גרמא, where even ר"מ agrees that he is פטור. See תוספות דף כב,ב. as to the difference between גרמי and גרמא.

answers: תוספות

The ר"ת says that it is evident to the ר"מ that this ברייתא is in accordance with the view of גמרא

based on the משנה of מסכת כלאים that the גמרא מכה מתניתין דכלאים דמייתי התם cited there⁵ in ב"ק. The משנה states:

one who spreads out his grapevines over his neighbors (growing) grain – [את] גפנו על גבי תבואתו של חבירו

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.

and that **is indeed a משנה סתם**. There is no בעל associated with the פסק of פסוק. 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 him⁶. **אסור בהנאה** become כלאים, according to these תנאים, only if it 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 –

therefore this ברייתא of מחיצת הכרם where it states that the תבואה is קידש; it becomes כלאים,

it must follow the view of ר"מ. The גמרא rightfully proves from this ברייתא that דאין דינא דגרמי is ר"מ.

concludes: תוספות

there is no need to elaborate here any more! – ואין להאריך כאן יותר

Summary

We can prove from our ברייתא of מחיצת הכרם that ר"מ is דאין דינא דגרמי. There is a סתם משנה, i.e. ר"מ, which maintains that the בעל הכרם is חייב if he spread his vines over someone else's grain. Others maintain that there is no חייב since no one can make another person's field כלאים. 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?

⁵ 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.

⁶ See 'Thinking it over'.