כי היכי דלא ליטרדן - In order that he should not bother us

Overview

אביי ורבא maintain that a person may pay תוך זמנו, in order that he should not be bothered later when the monies are due, when he may not have the money to pay. תוספות will be citing other גמרות namely concerning פדיון הבן and tenants, where the גמרא explicitly states that in those cases אין אדם פורע תוך זמנו. This seems to contradict the view of אביי ורבא. Our תוספות will reconcile these differences.

תוספות anticipates the following difficulty:

אף על גב דבפרק יש בכור (בכורות דף מט,א ושם) תנן בכור בתוך שלשים יום בחזקת שלא נפדה –

Even though that we have learnt in a משנה in יש בכור פרק that **a firstborn** son **during the** first **thirty days** after his birth **it is assumed that he was not redeemed.**[1] This seems to contradict the views of אביי ורבא who maintain that a person pays his debt even תוך זמנו in order that דלא לטרדן.

תוספות responds:

ואומר רבינו יצחק דהתם לא שייך האי טעמא דלא ליטרדן דהוי ממון שאין לו תובעין[2] –

And the ר"י **says that there** in the case of a בכור **the reason of דלא ליטרדן is not applicable;** we cannot assume that the father redeemed his son in order that he should not be bothered by the כהן for the five שקלים, **for** the money owed for the פדיון הבן **is considered** as **monies for which there is no creditor.** No כהן can demand payment for these five שקלים from the father. The father has the option of giving the פדיון הבן money to whichever כהן he chooses. There is no one who will ever bother the father for the money. In this case even אביי ורבא agree that אין אדם פורע תוך זמנו.

תוספות questions this (previous) premise:

מיהו קשיא לרבי מפרק השואל (בבא מציעא דף קב,ב ושם) דאמר בעו מיניה מרבי ינאי –

However my רבי has a difficulty from the גמרא in **פרק השואל for** the גמרא **relates; רבי ינאי was asked what** would be the ruling, where a tenant rented a house from a landlord -

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[1] If for instance the father of the newborn died before the newborn was thirty days old, it is assumed that the בכור was not redeemed, and he (still) needs to be redeemed. The reason is that since the father is not required to redeem his בכור until thirty days after his birth, it is assumed that he did not redeem him.

[2] In the question, תוספות perhaps assumed that the idea of דלא לטרדן is that a person does not want to be bothered by the fact that he owes money and cannot pay up. Therefore there seems to be no difference between פדה"ב and a loan. In the answer תוספות assumes that דלא לטרדן means a person does not like to be bothered by the person to whom he owes money. This is not applicable by פדה"ב; only by a loan.

שוכר אומר נתתי ומשכיר אומר לא נטלתי על מי להביא ראיה[3] –

The tenant claims I paid the rent **and the landlord states I did not receive** the rent; the question is **on whom lies** the responsibility **to bring proof** to his claim. The גמרא there continues to explore this query -

אימת אי בתוך זמנו תנינא מת[4] בתוך שלשים יום בחזקת שלא נפדה –

When did this dispute take place; **if** the dispute took place **during the time,** i.e. before the rent was due, and the tenant claimed that he had already paid the rent; this cannot be since **we have learnt in a** משנה that if the father **died within thirty days** of the birth of the בכור **it is assumed that he was not redeemed;** because אאפת"ז, the same ruling should apply by a משכיר ושוכר. The שוכר is presumed not to have paid since it is בתוך זמנו. Therefore we cannot be discussing such a case of ת"ז, for the שוכר will definitely not be believed. This concludes the quote from the גמרא that is relevant to our discussion. תוספות will now proceed with his question -

והשתא היכי מדמי לה לבכור דהתם לא שייך למימר לא ליטרדן –

But now that תוספות just explained that by the case of בכור everyone agrees that אאפת"ז since the reason of דלא לטרדן does not apply, **how can** the גמרא **compare** the case of משכיר ושוכר **to** the case **of** בכור, **for there** by בכור the reason of **לא לטרדן is not applicable**, for it is ממון שאין לו תובעין**;** therefore he is assumed not to have paid תוך זמנו.[5]

תוספות continues that on account of this גמרא we must rethink the status of כי היכא דלא ליטרדן in regards to בכור.

ולכך צריך לומר דבכור נמי איכא טירדא דמצוה שצריך מיד ליתן דזריזין[6] מקדימין[7] –

And therefore, since we see that the גמרא compares בכור to משכיר ושוכר, **we are required to say that by a** בכור **there is also** the pressure **of a טירדה דמצוה.** The father wants this pressure of fulfilling the מצוה to be removed from him. The טרדה דמצוה is **that one is obligated to give** the money of פדיון הבן **immediately** when the child is thirty days old**.** The reason that there is a requirement to give it

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[3] Is the tenant obligated to prove that he paid, otherwise he still owes the rent, or does the landlord need to prove that he did not receive the rent; otherwise the tenant is deemed to have paid the rent.

[4] The הגהות הב"ח amends this to read בתוך **<u>האב</u>** מת

[5] By a משכיר ושוכר, however the סברא of לא לטרדן is very much applicable. The משכיר will certainly bother the שוכר for his rent. Therefore (according to אביי ורבא) it is likely that he may pay תוך זמנו. How then can the גמרא infer from the case of בכור that we cannot be discussing a case of תוך זמנו by משכיר ושוכר?!

[6] If he will not pay for the פדיון הבן before the thirtieth day, the father may be concerned that on the thirtieth day, he may not have the funds to pay for the פדיון הבן (or some other unforeseen situation may arise) and he will not be a זריז. This pressure encourages him to pay before the due date.

[7] Therefore we can compare בכור to משכיר ושוכר because in both cases there is a טרדה. By the שוכר there is the טרדה of the משכיר and by the בכור there is the טרדה דמצוה.

immediately on the thirtieth day without delay is because **for those who are eager** to perform a מצוה **do it** at the **earliest** opportunity.

תוספות has resolved that by משכיר ושוכר as well as by בכור there is a certain טרדה. Nonetheless in both cases we assume that it was not paid תוך זמנו. The original question therefore remains. How can אביי ורבא maintain that on account of טרדה a person is פורע תוך זמנו, when we see that by בכור and משכיר ושוכר they do not pay תוך זמנו?

תוספות presently addresses this issue.

ומפרש רבינו יצחק טעם אחר –

And the ר"י **explains** the difference between our case of הלואה and the cases of פדיון הבן and משכיר ושוכר with **a different reason;** not because that פדיון הבן is a ממון שאין לו תובעין -

דהכא כיון דחייב לו ואיתרמי ליה זוזי פורע לו תוך הזמן דלא ליטרדן –

for here by a loan **since** the לוה definitely **owes** the מלוה **and** the לוה **happens to have money**, therefore the לוה will **pay** the מלוה, even **before the** due **date,** in order **that** the מלוה **should not bother** the לוה from the due date onwards; for he may still not have the money then -

אבל גבי בכור דאכתי לא איחייב כלל עד לאחר ל׳ יום ושמא ימות בתוך ל׳ ויפטר –

However by a בכור**,** the father will not redeem the בכור before the thirty days are up, **for** the father **is not yet obligated at all** to be פודה his son **until after thirty days have passed and**[8] **perhaps** the child **will die within the thirty days and** the father will be entirely **exempt** from פדיון הבן. Therefore by פדה"ב the father does not pay before the due date.

וכן שוכר[9] **שמא יפול ביתו של משכיר**[10] **ויצטרך שוכר לצאת דלא עדיף מיניה –**

And similarly by a renter; for **perhaps the landlord's** own **house will collapse and the tenant will be required to leave** his rented house so that the landlord will have where to live, **for** the tenant **is not preferred over** the landlord.[11]

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[8] The word 'and' emphasizes that there are two differences between a loan and פדה"ב. By פדה"ב there is no obligation at all to be פודה before the thirty days. However by a loan, the לוה owes the money immediately, it is just that the מלוה agrees that he will not collect the debt until the due date. In addition, תוספות adds another distinction between a הלואה and פדה"ב; that by פדה"ב it is possible that he will never owe the money. There is therefore no concern that he may wish to pay in advance (on account of זריזים מקדימין), since there is the possibility that he will owe nothing. [See however בית לחם יהודה]. שכירות is similar to פדה"ב and not to a loan; since he did not live the full term in the house, he does not owe the rent.

[9] The שוכר is not obligated at all to pay his rent before the due date. He will not pay his rent in advance in order to avoid the future bother, for it is possible that he will never owe the (entire) rent.

[10] See 'Thinking it over # 3.

[11] If there is now only one house to live in, the landlord has the right to evict the tenant from his rented home. There

תוספות has a different question:

ומיהו קשיא הא דפריך לריש לקיש מכותל חצר שנפל –

However there is another **difficulty, that** which the גמרא **challenges** the opinion of ר"ל, who maintains that אפת"ז, **from** the case in our משנה concerning **a** dividing **wall that collapsed in a חצר.** The משנה rules that it is בחזקת שנתן even תוך זמנו (according to the מקשה) -

ודייק מיניה דעביד איניש דפרע בגו זימניה –

And the מקשה **infers** from this ruling **that it is plausible that a person pays before the due date.** This seemingly contradicts the view of ר"ל. This concludes תוספות citation of the גמרא. תוספות continues with his question. Why is the גמרא asking this question only on ר"ל?

לאביי ורבא נמי תיקשי דמודו התם דלא עביד דפרע דשמא לא יבנה זה את הכותל[12] –

It is difficult for אביי ורבא as well; for even though that generally they maintain that אדם פורע תוך זמנו, however **they will admit in that** case of a כותל **that it is not usual that he would pay** before the due date. For (according to the הו"א) the case of כותל is similar to פדיון הבן and משכיר ושוכר, **for perhaps the other** party **will not build the wall.**

תוספות answers:

ומיהו בכמה מקומות יכול לומר וליטעמיך[13] ולא קאמר:

However it is not such a difficulty; **for in many instances** the גמרא **could have challenged** the questioner by saying '**and according to your opinion'** does not the same difficulty apply; **however,** the גמרא **does not pose** this counter challenge.[14]

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is the possibility that the tenant will not owe the landlord the rent, therefore we assume that he will not pay in advance; similar to פדיון הבן. By a loan however the לוה, until he pays up, always owes the מלוה the amount of the loan.

[12] Just as by פדה"ב and שוכר even אביי ורבא agree that אפת"ז since there is the possibility that he will never owe the money; here too by כותל שנפל there is the possibility that the neighbor will never build the wall, therefore the נתבע will not pay תו"ז.

[13] The thrust of the challenge 'וליטעמיך' is as follows. A difficulty is presented on opinion 'A' that it seemingly contradicts a particular source or concept; thus supporting the opposing opinion 'B'. The challenge of וליטעמיך is that the same (or another) difficulty remains even if we maintain opinion 'B'. The fact that neither opinion A nor B can be reconciled with the original source (concept) indicates that there is no difficulty with opinion A, but rather that we are misinterpreting that source (concept). Once we understand the source properly, then the same resolution will apply to both opinions A and B.

[14] The same holds true here. The questioner challenged the opinion of ר"ל from the משנה, which seems to say that עביד איניש דפרע בגו זימניה. The גמרא could have challenged this מקשה, who seems to be supporting the view of אביי ורבא, and asked that even אביי ורבא agree that in the case of a כותל there is no reason to assume that פרע בגו זימניה. The גמרא instead gives the actual and relevant explanation that here, by a כותל שנפל it is not תוך זמנו.

Summary

אביי ורבא maintain that (by a loan) אדם פת"ז. By פדיון הבן as well as by a משכיר ושוכר the גמרא states explicitly that they do not pay תו"ז. Originally תוספות sought to differentiate between פדה"ב and a הלואה that by פדה"ב it is ממון שאין לו תובעין therefore there is no טרדה.

תוספות had to rescind this opinion since the גמרא compares פדה"ב to שוכר; proving that by פדה"ב there is also טרדה דמצוה. The difference between מלוה and פדה"ב is that by a מלוה the לוה definitely owes the money (even תו"ז); however by שוכר and פדה"ב (there is nothing owed תוך זמנו and) there is a possibility that it will never be owed. Therefore it will not be paid תו"ז. According to this, by כותל חצר if it is considered שנפל then אביי ורבא would also agree with ר"ל that he will not pay תו"ז.

Thinking it over

1. What is the original difficulty from בכור? אביי ורבא maintain that it is possible for a person to pay תוך זמנו, therefore if he claims so, he is believed, By בכור, however, no one is claiming that the בכור was redeemed, therefore we assume that he was not redeemed!

2. What is the דין if the father was פודה his בכור before the child was thirty days old?

3. תוספות explains that by a שוכר it is possible that he will not have to pay, because שמא יפול ביתו של משכיר. Why does not תוספות say that שמא יפול של ביתו שוכר?[15]

4. In the second ת"ש the גמרא cites the משנה of בחזקת שלא נתן. The גמרא assumes that he claims פרעתיך בתוך זמני and therefore he is not believed. This contradicts אביי ורבא. However according to תוספות who maintains that אביי ורבא agree that where there is a ספק if he will be חייב then אאפת"ז, in this case also there is a ספק if he himself will build this wall. Therefore he will not pay תו"ז, until he builds the wall![16]

[15] See footnote #10. See סוכ"ד אות ס בד"ה והנה.

[16] See מהרש"א. See also סוכ"ד סי' סא ואילך ובל"י אות קיז.