

In order that he should not bother us – כי היכי דלא לטורדן

Overview

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.

will be citing other גמרות namely concerning פדיון הבן and tenants, where the גמרא explicitly states that in those cases זמנו תוך פורע אדם. This seems to contradict the view of אב"י ורבא. תוספות will reconcile these differences.

asks:

Even though that we have learnt that - אף על גב דפרק יש בכור (בכורות דף מט,א ושם) תנן in a משנה in פרק יש בכור that -

a firstborn son during the first thirty days after his birth - בכור בתוך שלשים יום

it is assumed that he was not redeemed. - בחזקת שלא נפדה. If for instance the father of the newborn died before the newborn was thirty days old, it is assumed that the father 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. This seems to contradict the views of אב"י ורבא who maintain that a person pays his debt even תוך זמנו in order that לטורדן.

answers:

And the ר"י says that there in the case of a בכור - ואומר רבינו יצחק דהתם
is not applicable; - לא שייך האי טעמא דלא לטורדן
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 הבן is considered as monies for which there is no creditor. - דהוי ממון שאין לו תובעין
No כהן can demand payment for these five שקלים from the father. The father has the option of giving the הבן money to whichever כהן he chooses. There is no one who will ever bother the father for the money. In this case even אב"י ורבא agree that תוך זמנו אדם פורע תוך זמנו.¹

questions this (previous) premise:

However my רבי has a difficulty - מיהו קשיא לרבי מפרק השואל (ב"מ דף קב,ב ושם)
from the השואל in גמרא -

¹ In the question תוספות perhaps assumed that the idea of לטורדן 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 לטורדן 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.

for the relates; רבי ינאי was asked what would be the ruling in the following situation, where a tenant rented a house from a landlord -

the tenant claims I paid the rent - שוכר אומר נתתי

and the landlord states I did not receive the rent; the - ומשכיר אומר לא נטלתי
question is -

on whom lies the responsibility to bring proof to his claim. 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. The גמרא there continues to explore this query.

When did this dispute take place - אימת

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, then -

We have learnt in a משנה that the שוכר is presumed not to have paid since it is בתוך זמנו. The גמרא cites the (aforementioned) משנה, which states that if the father -

died within thirty days of the birth of the בכור - מת בתוך שלשים יום

it is assumed that he was not redeemed; because אאפת"ז, the same ruling should apply by a משכיר ושוכר. Therefore we cannot be discussing such a case of תו"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 explain his question -

But now that תוספות has just explained that by the case of בכור everyone agrees that אאפת"ז since the reason of לטרדן does not apply -

to compare the case of שוכר and משכיר - how can the גמרא **compare** the case of שוכר to the case of בכור -

is לא לטרדן the reason of בכור **for there** by בכור **is לא לטרדן** as mentioned, for it is ממון שאין לו תובעין; therefore he is assumed not to have paid זמנו. 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 אב"י ור"ב) it is likely that he may pay זמנו. How then can the גמרא infer from the case of בכור that we cannot be discussing a case of שוכר by תוך זמנו?!

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

and therefore, since we see that the גמרא compares בכור to שוכר **we are required to say** -

that by a בכור there is also the pressure of a מצוה the father wants this pressure of fulfilling the מצוה to be removed from him. What מצוה דמצוה is there? -

for one is obligated to give the money of הבן **immediately** when the child is thirty days old. The reason that there is a requirement to give it immediately on the thirtieth day without delay is because -

for those who are eager to perform a מצוה do it at the earliest opportunity. Therefore in order that he should be included amongst the זריזים,

the father may have wanted to pay for his בכור before the thirty days passed, so that when the thirtieth day arrives he will have fulfilled his obligation at the earliest opportunity, thereby being considered a זריז². Therefore we can compare משכיר ושוכר to בכור 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.

טרדה 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 זמנו תוך. The original question therefore remains. How can טרדה אביי ורבא maintain that on account of טרדה a person is פורע תוך, when we see that by בכור and שוכר they do not pay זמנו תוך? טרדה presently addresses this issue.

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

- מלוה definitely **owes** the לווה **for here** by a loan **since** the לווה **definitely owes** the לווה -

- **and the לווה happens to have money**, therefore the לווה will -

- **pay** the מלוה **even before the due date**, in order -

that the מלוה **should not bother** the לווה from the due date onwards; **for** he may not still have the money then;

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

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.

and similarly by a renter; he 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, for -

perhaps the landlord's own house will collapse⁴

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

² 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.

³ 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 לווה owes the money immediately, it is just that מלוה agrees that he will not collect the debt until the due date. In addition, טרדה 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 מקדימין), since there is the possibility that he will owe nothing. [See however בל"י 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.

⁴ See 'Thinking it over # 3.

home. There 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 לווה, until he pays up, will always owe the מלווה the amount of the loan.

תוספות has a different question:

However there is another difficulty - ומיהו קשיא

that which the גמרא questions the opinion of ר"ל who maintains that אאפת"ז. This position is challenged

from the case in our משנה concerning a dividing wall **that collapsed in a חצר**. The משנה rules that it is בחזקת שנתן even זמנו (according to the מקשה).

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?

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 חותל that it is not usual that he would pay before the due date. For (according to the הו"א) the case of חותל is similar to פדיון הבן and משכיר ושוכר -

for perhaps the other party **will not build the wall**. Just as by פדה"ב and שוכר even אביי ורבא agree that אאפת"ז since there is the possibility that he will never owe the money; here too by חותל שנפל there is the possibility that the neighbor will never build the wall, therefore the נתבע will not pay תו"ז.

תוספות answers:

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 apply⁵ -

however the גמרא **does not pose** this counter challenge. The same holds true here. The questioner challenged the opinion of ר"ל from the משנה that seems to say that אביי 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 חותל there is no reason to assume that אביי איניש דפרע בגו זימניה. The גמרא instead gives the actual and relevant explanation that here, by חותל שנפל it is not זמנו.

⁵ The thrust of the challenge 'ולטעמך' 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 ולטעמך 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.

Summary

משכיר maintain that (by a loan) אדם פת"ז. By פדיון הבן as well as by a משכיר תו"ז the גמרא states explicitly that they do not pay ושוכר.

Originally תוספות sought to differentiate between פדה"ב and a הלואה that by טרדה it is תובעין לו therefore there is no טרדה.

שוכר compares גמרא to פדה"ב since the גמרא had to rescind this opinion since the טרדה דמצוה proving that by פדה"ב there is also טרדה.

The difference between מלוה and שוכר is that by a מלוה the לווה definitely owes the money (even תוך זמנו); however by שוכר (there is nothing owed זמנו and) תוך זמנו there is a possibility that it will never be owed. Therefore it will not be paid תו"ז.

According to this, by חצר שנפל if it is considered תו"ז 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 זמנו, 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 שמה יפול ביתו של משכיר. Why does not תוספות say that שמה יפול ביתו של שוכר?⁶

4. In the second ת"ש the גמרא cites the משנה בחזקת שלא נתן וכו'. The גמרא assumes that he claims פרעתיו 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!⁷

⁶ See footnote # 4.

⁷ See סוכ"ד סי' סא ואילך ובל"י. See also מהרש"א.