Rather, actually; anything that was picked - אלא לעולם כל הנלקט

Overview

The גמרא now retracts and says that since ר' יוחנן maintains אין בדיעבד, we must say that the צנועים declared 'anything which was picked, will be redeemed with these monies'. תוספות reconciles the views of ר' יוחנן.

תוספות asks:

הקשה רבינו טוביה תקשה דרבי יוחנן אדרבי יוחנן דלית ליה לרבי יוחנן בדיעבד -

ר"ט asked there is a contradiction from ר"י on ר"י, for ר"י generally **does not maintain בדיעבד,** as is evident from his ruling regarding האחין שחלקו לקוחות הן and מחזירין זל"ז ביובל -

והאמר רבי יוחנן הלכה כסתם משנה וסתם מתניתין בהלוקח[1] כרבי מאיר דאית ליה בדיעבד -

However ר"י maintains universally that the **ruling is like an anonymous משנה, and the סתם משנה regarding** the case of יין מן הכותים **like הלוקח** rules **ר"מ who maintains** יש **בדיעבד** –

תוספות anticipates a possible resolution to this question:

ואף על גב דבסתמא דצנועים[2] לית ליה בדיעבד -

And even though that the סתם משנה **of צנועים disagrees with בדיעבד,** so we can say that ר"י follows that סתם משנה –

תוספות rejects this solution:

מכל מקום תקשה מאי אולמיה דהאי סתמא מהאי סתמא -

Nevertheless the difficulty remains, **why is this סתם** משנה of צנועים **stronger** than **this סתם** משנה of יין הלוקח?! The question remains, why does ר"י maintain אין בדיעבד despite the fact that the סתם משנה of יין הלוקח indicates that יש בדיעבד!

תוספות offers a possible answer:

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[1] Our גמרא cites the ברייתא of יין מן הכותים הלוקח in which there is a dispute between ר"מ and ר"י ור"ש ור"י. However the משנה in מס' דמאי פ"ז מ"ד just cites anonymously the view of ר"מ that יש בדיעבד. According to ר"י, who maintains universally that הלכה כסתם משנה, the הלכה should be that יש בדיעבד as indicated in this משנה.

[2] See previously on the עמוד א' that the צנועים (who did not want people to transgress the prohibition of eating כרם רבעי outside ירושלים) would redeem the כרם רבעי. This could have been done by them proclaiming in the morning that whatever will be picked today by the passersby shall be exchanged (מחולל) on these monies. The advantage of doing it in this manner is that the פירות are still in the רשות of the owner. The disadvantage is that for the חילול to be effective we need to rely on בדיעבד. It could also be done by saying at the end of the day whatever was picked today shall be מחולל on these monies. The advantage is that we do not require בדיעבד (since they we already picked). The disadvantage is that the owner is מחלל the פירות, which are no longer in his רשות. The משנה chose the latter option of כל הנלקט (whatever was gathered), since the משנה maintains אין בדיעבד, so the former option is untenable.

ושמא רבי יוחנן היכא שמתנה בפירוש[3] לא קאמר ר' יוחנן דאין ברירה[4] -

And perhaps we can say on behalf of **ר"י** that in a case **where he stipulates explicitly, ר"י does not maintain אין ברירה** –

תוספות anticipates an additional difficulty:

ובריש כל הגט (שם[5]) **דקאמר רבי יוחנן אף אחרון אינו פוסל משום דאין ברירה -**

And in the beginning of כל הגט פרק**, where ר"י ruled even the last case does not invalidate** her from כהונה, **because** the ruling is **אין ברירה,** even though there was a specific stipulation made initially (just like by יין הלוקח [where we say יש ברירה]) –

תוספות responds:

שאני התם דכתיב וכתב לה דמשמע שיהיה צריך שיהיה מבורר בשעת כתיבה -

There (by a גט) **it is different, for it is written <u>לה</u> <u>וכתב</u> (and he shall <u>write</u> for <u>her</u>), which indicates that there is a necessity that it should be defined at the time of the writing,** therefore by גט we do not say יש ברירה, even if it was explicitly stipulated **-**

כמו שמפורש ברישׁ[6] כל הגט:

As it is stated **explicitly in the beginning of כל הגט** פרק**.**

Summary

ר' יוחנן maintains אין ברירה where initially there was no explicit stipulation; where he was מתנה בפירוש, there seems to be a dispute in the משניות, except for a גט where we say אין ברירה.

Thinking it over

The גמרא here asked how can ר' יוחנן say כל המתלקט (in the future) which means יש ברירה, when ר"י maintains אין ברירה (by האחין שחלקו). However according to תוספות what is the question since by כל המתלקט he was מתנה בפירוש but not by האחין שחלקו?![7]

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[3] The משנה of יין הלוקח which maintains יש ברירה is in a case where the person initially stated explicitly, 'the wine which I will draw out later should be תרו"מ'; in that case, ר"י (possibly [see footnote # 4]) agrees that יש ברירה, since there was an explicit stipulation. It is only in a case of האחין שחלקו, where no stipulation was made initially that he should acquire whichever part he will eventually receive, does ר"י maintains אין ברירה.

[4] ר"י maintains אין ברירה when there was no initial stipulation (like האחין שחלקו). However where there was an initial stipulation, the משניות argue. יין הלוקח maintains יש ברירה, and the משנה of צנועים maintains אין ברירה (therefore it cannot be in a case where he says, 'whatever they will pick').

[5] כה,א. The משנה (on כד,א-ב) mentions various cases where the divorce is invalid. The last case is where a person (who had two wives with the same names), told a scribe, 'write a גט to whichever wife I will decide later to divorce', it is invalid. There is a dispute there whether a woman who received one of these invalid divorces is prohibited to a כהן, since she received a bill of divorce. ר' יוחנן maintains that even in the last case she is not נפסלת מן הכהונה, for since the rule is אין ברירה, it is no גט at all.

[6] כד,ב תוד"ה לאיזו or כה,א in the גמרא which states בהא קאמר ר"י וכו' דבעינן לה לשמה..

[7] See מהרש"א.