אי אמרת בשלמא דאורייתא –

It is satisfactory if we assume it is דאורייתא

Overview

ר' יוסי rules that a קטן may glean after his father even if his father is a sharecropper. The גמרא presumes (twice) that we can infer from this ruling that ר"י maintains that [מדאורייתא] a קטן can acquire objects from הפקר for himself.[1] For otherwise (meaning that if he cannot acquire for himself but rather it goes directly to his father) then how can we explain the ruling of ר"י that the קטן can glean; it is as if the father is gleaning and that is certainly prohibited. תוספות explains why we must assume that ר"י maintains that a קטן has זכיה מדאורייתא and we cannot explain his ruling otherwise.

תוספות asks:

תימה מנא ליה דלרבי יוסי קטן זוכה מן התורה –

It is astounding! From where does the גמרא **derive that according to ר"י a קטן** can **'acquire'** objects from הפקר (even) **according to תורה** law?!

וכן בסמוך דפריך וסבר רבי יוסי מציאת קטן דאורייתא –

And similarly shortly where the גמרא **asks; 'and does ר"י presume that the findings of a minor** belong to the minor **מדאורייתא';** תוספות concludes his question on both these גמרות mentioned -

ומנא ליה ודלמא אינה אלא מדרבנן ואביו לא זכה מיניה כלל ולהכי מלקט אחריו –

And why does the גמרא **presume this; for perhaps** the קטן acquires the מציאה or the לקט **only מדרבנן and his father does not acquire anything at all from** the קטן, **and that is why** the קטן **may glean after the** father; but not because the קטן has זכיה מן התורה!

תוספות answers:

ויש לומר דמסתמא לא פליג ר' יוסי אכמה משניות –

And one can say; that presumably ר"י does not argue with the various משניות (which state that whatever a קטן is זוכה belongs to the father)**,** including these משניות -

דפרקין[2] ודפרק חלון[3] (עירובין דף עט,ב ושם) ודמסכת מעשר שני (פרק ד' משנה ד') –

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[1] The קטן may glean for he is קונה the לקט מדאורייתא. The חכמים were then מתקן that this לקט which the קטן acquired for himself should belong to the father. The original זכיה of the לקט however was for the קטן, therefore it is permitted since the father is not זוכה the לקט initially.

[2] Our משנה here states that the מציאה of a קטן belongs to the father.

[3] The משנה there teaches that one can be מזכה an עירוב to all the בני המבוי through his adult children;

Of our פרק חלון and of פרק, and the משנה **of מסכת מעשר שני[4] -**

דמייתי בפרק התקבל (גיטין דף סה,א ושם) **דלכולהו משניות יד בן כיד אביו –**

Which is brought in פרק התקבל; where according to all these משניות, the hand of the son is like the hand of the father, and so therefore we cannot say that the קטן is זוכה מדרבנן, and the father is not זוכה from the קטן, for this will contradict all the משניות mentioned above.[5]

תוספות continues to ask:

ואם תאמר ונימא לעולם זכי לנפשיה מדרבנן[6] –

And if you will say; granted that the father is זוכה from his son, **but let us assume that** the קטן **is זוכה לנפשיה** only **מדרבנן** and not מדאורייתא -

ובתר הכי זכי אבוה מיניה משום איבה[7] ומשום הכי מלקט[8] –

And after the קטן is זוכה for himself מדרבנן, **his father is זוכה from him because of 'enmity'[9], and therefore** the קטן **is** permitted **to glean,** since he is first זוכה for himself (and not for his father), and the father is זוכה from the קטן later.

תוספות answers:

ויש לומר דמדרבנן אין סברא שיתקנו שתי זכיות –

And we can say that there is no logic that the רבנן should institute two enactments; the first enactment **-**

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however, he may not do so through his minor children since ידן כידו; there can be no זכיה to others.

[4] The משנה there teaches that one can (be sly and) avoid paying the חומש when he redeems his מעשר שני by giving the money to his older children and telling them to redeem the מע"ש (there is no חומש if someone else [not the owner] redeems the מע"ש). However he cannot say this to his minor children since ידן כידו; indicating that whatever they possess belongs to the father.

[5] We therefore assume that the father is זוכה (through the קטן); so if a קטן has no זכיה for himself מדאורייתא, he is זוכה the לקט for his father who is an עשיר. See continuation of תוספות. See 'Thinking it over' # 1.

[6] The קטן is זוכה for himself because of דרכי שלום as the גמרא shortly states.

[7] The father will be angry if the son keeps the מציאה, despite that the father is supporting him.

[8] When we assumed that the קטן has זכיה לנפשיה מדאורייתא we understood why the father may keep the לקט, for it is a twofold process; first the קטן is זוכה for himself מדאורייתא (which is certainly permitted) and then the father is זוכה from the קטן (when it is no longer לקט, which is also permitted). Similarly we can say that first the קטן is זוכה the לקט for himself מדרבנן (which is permitted) and then the father is זוכה from the קטן. What difference is there if the initial זכיה of the קטן is מדאורייתא or מדרבנן?!

[9] The reasoning that מציאת קטן belongs to his father because of איבה is according to ר' יוחנן (on the עמוד ב'), however שמואל maintains that מציאת קטן לאביו because the קטן is מריצה אצל אביו. Nevertheless תוספות chose the reason of איבה (for this question). If the reason that מציאת קטן לאביו is because שבשעה שמוצאה מריצה אצל אביו, then it is obvious that there is no twofold process (that first the קטן is זוכה and then the father), but rather when a קטן finds something it immediately belongs to the father since מריצה אצל אביו (we cannot compare it to a קנין קטן מדאורייתא; see previous footnote # 8). However were we to assume the reason of איבה, then we can say that מציאת קטן לאביו is a twofold process מדרבנן; first the קטן is זוכה מדרבנן and then in order to prevent איבה, the father is קונה from the קטן. So תוספות asks why must we say that ר' יוסי maintains קטן אית ליה זכיה לנפשיה מדאורייתא, we can say it is מדרבנן and the father is זוכה ממנו in a twofold process.

שיזכה הבן קודם ואחר כך יזכה האב ממנו –

That the son should first acquire the מציאה, **and afterwards** a second enactment that **the father should acquire it from the** son; this is not logical, for why make two [10]תקנות -

אלא אי מדרבנן הוא בשעת זכיית הבן בא לו זכיית האב –

But rather if the זכיה of the קטן (and then its transference to the father) is **מדרבנן** it is logical to assume **that at the moment of the זכיית הבן that is when the זכיית האב** takes place -

משום דבשעת הגבהה לוקחה להריצה לאביו[11] –

Because when the קטן **picks it up, he takes** the מציאה **to rush** and bring it **to his father.** Therefore the קטן should not be permitted to be מלקט אחר אביו since his לקט goes directly to the father if we assume that זכיית קטן is only מדרבנן. Therefore since ר"י rules that a קטן can be מלקט אחר אביו, we must -

אלא ודאי זכה לנפשיה מדאורייתא ואבוה זכה מיניה משום איבה[12] שסמוך על שלחנו:

Rather assume **that** the קטן is **certainly זוכה for himself מדאורייתא and his father is** מדרבנן **זוכה from the** קטן **because of איבה since the** קטן **is dependent on his father's support.**

SUMMARY

The various משניות prove that יד בן כיד אביו. It is logical to assume that if a קטן is קונה only מדרבנן, then included in that תקנת חכמים is that it belongs immediately to the father since מריצה אצל אביו.

THINKING IT OVER

1. תוספות maintains that we cannot assume that ר' יוסי argues on the various משניות who agree that יד בן כיד אביו.[13] How will then תוספות explain what the גמרא states that שמואל טעמא דתנא דידן קאמר וליה לא סבירא ליה (which רש"י interprets that he does not hold that מציאת קטן לאביו)?![14]

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[10] See 'Thinking it over' # 2.

[11] תוספות is now assuming that a קטן has a זכיה מדרבנן and that we must assume that יד כבן כיד אביו. Therefore since there is no סברא that the רבנן made two תקנות that the father should be זוכה from the son, but rather only one תקנה that the father acquires it immediately. It is therefore obvious that the framework of this תקנה assumed that the father is קונה right away (only) because that בשעה שמוציאה מריצה אצל אביו. We may have to assume then that the סברא of איבה is only if we maintain that קטן זכי לנפשיה מדאורייתא. (See מהר"ם שי"ף.)

[12] תוספות again mentions איבה (see footnote # 8); now that the גמרא is compelled to assume that a קטן is זכי לנפשיה מדאורייתא, the reason that the חכמים should be מתקן that it belongs to the father is only because of איבה, however the reason of מריצה אצל אביו would be insufficient to uproot the קנין קטן לנפשיה מדאורייתא.

[13] See footnote # 5.

[14] See מהרש"א, רש"ש and אמ"ה # 64-66.

2. תוספות maintains that there is no סברא that the רבנן should make two תקנות (one that the קטן is זוכה and another that the father is זוכה from the קטן).[15] How will תוספות explain the final answer of עשו שאינו זוכה כזוכה; it cannot mean that the קטן is immediately זוכה for the father, for that would be prohibited (since אבוה עשיר הוא). It must seemingly mean that there is a twofold process מדרבנן, which contradicts תוספות assumption here![16]

3. Similarly (as in # 2) we see that according to ר' יוחנן (if we assume that גזל גמור מדבריהם) there is no זכיה לקטן מדאורייתא and there is a second תקנה משום איבה that the מציאה of a קטן הסמוך על שולחן אביו belongs to the father![17]

[15] See footnote # 10.
[16] See נח"מ and בל"י אות תג.
[17] See אמ"ה # 67-71.