

רבי יוחנן אמר לא גדול גדול ממש –

רבי יוחנן said that an adult does not mean an actual adult

OVERVIEW

The גמרא concluded that (even) according to יוסי ור' שמואל there is no זכיה of מציאה of the תקנת חכמים and the מדרבנן, but rather only לקטן מדאורייתא, belongs to his father because אצל אביו. This rule applies by all קטנים even if שולחן אביו. However ר' יוחנן disagrees and maintains that the term קטן in the משנה means אביו and even if he is a גדול his מציאה belongs to his father, and גדול means שולחן אביו and his מציאה, even if he is a קטן, belongs to him. תוספות extends this to the משנה in עירובין which also deals with גדול and קטן.

מפרש רבינו תם כי היכי דפליגי¹ הכא פליגי נמי גבי עירוב –

ר"ת explained that just as ר' יוחנן and שמואל argue here regarding מציאה, they also argue regarding עירוב –

דתנן בפרק חלון (עירובין דף עט, ב ושם דיבור המתחיל ומזכה) ומזכה להם על ידי בנו ובתו –

For we learnt in a משנה in פרק חלון that the one who is setting aside the עירוב to the other people in the חצר through his son and daughter³, but not if they are קטנים –

¹ שמואל maintains (according to the תנא of our משנה) that the מציאה of a קטן [whether he is שולחן אביו or not] belongs to his father, while the מציאה of a גדול [whether or not he is שולחן אביו] belongs to the father. However ר' יוחנן maintains that it depends whether he is שולחן אביו then the מציאה belongs to the father [regardless whether the son is a גדול or a קטן], and when he is שולחן אביו then the מציאה always belongs to the son [even if he is a קטן].

² The houses were set up in a manner that a group of houses opened into one courtyard (a חצר). These courtyards opened into a מבו (alley way or small street) while the מבו opened into a רה"ר. Each חצר, as well as each מבו, is a רה"ר for it is surrounded by proper מחיצות, and one is permitted to carry within the חצר as well as within the מבו. However the חכמים were מתקן that one should not carry from his private house into the more public חצר (or מבו) or within the חצר or מבו, unless the dwellers of the חצר and/or the מבו make an עירובי חצירות (to permit carrying within a חצר) or a עירובי מבואות (to permit carrying within the entire מבו). The עירובי מבואות was done by one person who was מזכה food in his house to all the dwellers of this מבו, so that they all have food in one house and this permits them to carry in the entire מבו. See later in this תוספות what the עירוב actually accomplishes.

³ One cannot simply grant his possessions to another by merely stating 'I am giving that item to you'. There must be some קנין to effect this transaction. One way is by giving the item to a third party and this third party acquires the item on behalf of the recipient and thus the ownership is transferred to the recipient. Similarly by a עירובי מבואות, the food in the house of the one making the 'עירוב' is acquired by all the dwellers of the מבו through this קנין, whereby the owner is מזכה some food to all of them through this third party. He cannot use however his בניו הקטנים as the third party for since ידן כידו there is no outside third party to make the קנין effective. See נח"מ in the first ד"ה of this תוספות.

ולשמואל דאמר הכא קטן ממש התם נמי גבי עירוב אינו זוכה דידו כיד אביו –
 So according to שמואל who maintains here in our משנה that קטן means קטן
 (even if he is not אביו אביו), **there too by עירוב**, a קטן who is
 not אביו אביו, **cannot be זוכה** the עירוב on behalf of the others, **since**
his 'hand' is like his father's 'hand', for -

כיון דמציאתו לאביו הוא הדין כל זכויותיו לאביו⁴ –
 Since his מציאה belongs to his father (as stated in our משנה), **the same**
applies to all his acquisitions that they belong **to his father**. Therefore the
 father cannot be מזכה the עירוב through his קטן, even if he is not אביו אביו.

The אמה העבריה in משנה mentions that he can be מזכה through his אמה העבריה:
 ואמה העבריה אף על פי שהיא קטנה⁵ זכיא בעירובה דמציאתה אינה לאדוניה –
 And regarding the אמה העבריה, **even though she is a קטנה**, **she can be זוכה**
in this עירוב for the others from her master, **since her מציאה does not**
belong to her master as stated in our משנה, that אלו שלוקן הרי אלו שלוקן.

anticipates a difficulty:
 אף על גב דשמואל אית ליה פרק התקבל (גיטין דף סד, ב ושם דיבור המתחיל אלא) –
Even though שמואל maintains in פרק התקבל that -
קטן זוכה לעצמו ואינו זוכה לאחרים –

A קטן can acquire for himself, but he cannot acquire for others; so how
 can the אמה who is a קטנה acquire the עירוב for the others?!

responds:
 הא משני התם שאני שתופי מבואות דרבנן⁶ –
For the גמרא there (in מסכת גיטין) answers that שיתופי מבואות is different
since it is only מדרבנן. Therefore even though ordinarily a קטן cannot be לאחרים
 however, since the קנין is merely required מדרבנן, the רבנן enacted that the קטן should be
 able to be מזכה the עירוב to others.⁷

anticipates a question:
 והא דאמר שמואל פרק מי שהוציאוהו (עירובין דף מט, א ושם: דיבור המתחיל וקטן) –
And that which שמואל ruled in פרק מי שהוציאוהו -
דעירוב⁸ משום קנין ורבא אמר משום דירה ואמר איכא בינייהו קטן –

⁴ See 'Thinking it over' # 1 (&3).

⁵ By definition an אמה העבריה is a קטנה; once she becomes a נערה she is set free.

⁶ מדרבנן one may carry in a מבו for it is a רה"י, the obligation of making an עירוב is only מדרבנן.

⁷ It appears that one may be מזכה the עירוב through a קטן, provided it is not his son.

⁸ This is regarding עירובי חצירות (and שיתופי מבואות) where all the neighbors of the חצר place bread in one house and are thereby permitted to carry in the חצר.

That the effectiveness of **עירוב** is **because** it is considered a **קנין**;⁹ **and רבא** rules that its effectiveness is **because it is considered a dwelling**;¹⁰ **and** the **גמרא** there **states that the difference** between the rulings of **שמואל** and **רבא** is regarding a **קטן**,¹¹ which would indicate that a **קטן** cannot be **זוכה**, and this would contradict what **תוספות** stated previously that a **קטן** can be **זוכה** by an **עירוב**!

תוספות responds:

הא פירש רבינו חננאל התם דאית ליה בית לקטן קאמר¹² –

But the ר"ה explained there that when the **גמרא** said **קטן** it meant in a case **where the קטן has a house** -

ולא כפירוש רש"י שפירש שאינו גובה העירוב לפי שאינו זוכה –

And not like רש"י's explanation that the קטן cannot collect the עירוב, since he cannot be זוכה. In fact the **קטן** can be **זוכה** **לאחרים** **מדרבנן**.

This concludes the view of **שמואל** regarding a **קטן** by **עירוב**. **תוספות** continues now to explain the view of **ר' יוחנן**.

ולרבי יוחנן דאמר לא גדול גדול ממש –

And according to ר' יוחנן who maintains by מציאה that a גדול does not merely mean **an actual adult**, but rather one who is not **אביו** **על שולחן** -

הוא הדין דגבי עירוב נמי דקטן ואינו סמוך על שולחן אביו זוכה כאמה העבריה¹³ –

The same rule also applies regarding עירוב, namely that a קטן who is not **אביו** **על שולחן** **can be זוכה** **an עירוב** ([even] from his father) for others **just as an אמה העבריה** can be **זוכה** for others from her master -

וגדול סמוך על שולחן אביו אינו זוכה –

But a גדול who is אביו על שולחן cannot be זוכה an עירוב for others.

הלכה **תוספות** derives a:

וצריך ליזהר שלא לזכות העירוב על ידי בנו הגדול הסמוך לשולחנו –

⁹ The owner of the house (where the bread is placed) consents to be **מקנה** (part of) his house to all the neighbors, in return for the bread, which they place there. Therefore it is considered as if all the neighbors live in one house and are therefore permitted to carry into [and in] the **חצר**.

¹⁰ It is considered as if all the neighbors live in this one house for their bread is there. A person considers that he lives where his food is. There is however no **קנין** transaction.

¹¹ **רש"י** explains there (בד"ה **איכא**, and see shortly in **תוספות** here) that one of the neighbors made a **קטן** for a **שליח** to collect the bread from the others; if we assume that **עירוב** **משום קנין** then it is ineffective since the **קטן** has no power to enact a **קנין**. However if it is **משום דירה** then it is an effective **עירוב**, for the food of all the dwellers is in the same house.

¹² The **עירוב** is placed in the **קטן's** house. If we assume **עירוב** **משום דירה** then it is an effective **עירוב**. However if we assume **עירוב** **משום קנין**, the **קטן** does not have the power to be **מקנה** (his house) on his own. He can be **זוכה** for others when the **מקנה** is an adult, but he cannot initiate a **קנין**.

¹³ The comparison to **אמה** is to indicate that even a **קטן** can be **זוכה** the **עירוב** for others.

And therefore it is necessary to be careful not to be **עירוב** the **מזכה** through one's adult son, if the son is **סמוך** on **אביו** -

דקיימא לן כרבי יוחנן לגבי שמואל כדאמר פרק מי שהוציאוהו (שם מז,ב) -

For we have established that the הלכה is like ר' יוחנן when he disputes **שמואל** as the גמרא states in **פרק מי שהוציאוהו**.

ועבדו ושפחתו העברים אף על גב דסמוכין על שולחנו מציאתם לעצמם¹⁴ -

However, one's Jewish slaves and maidservants even though they are **סמוכין** על שולחנו, their **מציאה** belongs to them (and not to the master) -

וכן זוכין בעירוב ולא הוי ידם כיד האדון -

And similarly they can be **עירוב** the **זוכה** for others, for their 'hand' is not like the master's 'hand', even though they are **סמוכין** על שולחנו; the reason their **מציאה** belongs to them even though they are **סמוכין** על שולחנו האדון -

דלא שייך איבה אלא בבנו שדרכו לזונו תמיד ואם לא יפרנסו אביו לא יפרנסו אחר -

For the concern of **enmity** is only applicable regarding one's son, where customarily the father continually feeds him and if the father will not support him no one else will support him; therefore since the sole responsibility of supporting the child is on the father, if the child will keep the **מציאה** there will certainly be enmity from the father to the child -

אבל אדם אחר מעלמא סמוך על שולחן חבירו חנם כגון יתום וכיוצא בו -

However another unrelated person who is supported by his friend for free, for instance one who supports an orphan, or someone similar -

אין סברא שתהא מציאתו לחבירו -

There is no reason that the **מציאה** of the dependent should belong to the supporter -

וכל שכן עבד ואמה שבשכר טרחם הם אוכלים -

And how much more so is this true in the case of an **עבד ואמה** (that their master does not receive their **מציאה**), for in their case they are eating the wages of their toil, and he is not supporting them for free.¹⁵

distinguishes between a son and a daughter:

ובתו אפילו נערה ואינה סמוכה על שולחן אביה מציאתה לאביה משום איבה¹⁶ -

¹⁴ Our משנה states this clearly. According to שמואל we understand why the **מציאה** of a שפחה (even though she is a קטנה) does not belong to her master, since when she picks it up she is not מריצה to her master. However משום איבה is explaining according to ר"י, why it does not belong to the master.

¹⁵ The concern of **איבה** regarding a son is that if the son keeps the **מציאה**, the father may stop supporting him; however by שפחתו ועבדו the master will not stop feeding them for he needs them to work for him. We are also not concerned about a זר (or יתום), for others will feed them (as opposed to a child who has a father). Alternately feeding a זר is not a common practice and so no תקנה was made regarding a יתום.

¹⁶ This would be true even according to שמואל. See תוספות on שמואל ד"ה עמוד א' ד"ה שמואל.

However regarding one's daughter even if she is a נערה and not סמוכה על איבה, nevertheless her מציאה belongs to her father because of איבה (according to ר"י) -

דאי בעי מסר לה למנוול ומוכה שחין כדאמר בפרק נערה (כתובות דף מו ושם) -

For if he wants he could deliver her to be married to a disgusting or leprous person as the גמרא states in פרק נערה.¹⁷

ודלא כרש"י שפירש¹⁸ משום דכתיב¹⁹ בנעוריה דהוא בהפרת נדרים הוא דכתיב²⁰ -

But not like רש"י who explained that the reason the מציאה of a נערה belongs to לאביה is because it is written בנעוריה; this is incorrect for that פסוק is written regarding נדרים only -

כדאיתא בפרק קמא דקדושין (דף ג,ב ושם) ופרק נערה (שם מו,ב) -

as is mentioned in the first פרק of קידושין and in פרק נערה.

anticipates a question: תוספות

ואשתו דזכיא בעירוב²¹ אף על גב דידה כיד בעלה -

And regarding one's wife who can be עירוב for others, even though that her 'hand' is like her husband's 'hand'; her מציאה belongs to him, so why is she different than a קטן? תוספות explains that the גמרא -

מוקי לה בסוף נדרים (דף פח,ב) דאית לה בית באותו מבוי -

In the end of נדרים מסכת establishes this ruling that an אשה can be מזכה an עירוב for her husband in a case where she has her own house in that מבוי, therefore we say -

דמגו דזכיא לנפשה זכיא נמי לאחרני:

That since she can acquire the עירוב herself she can also acquire it for others.²²

SUMMARY

The same מחלוקת between ר' יוחנן and שמואל regarding the rule of מציאת קטן (where שמואל maintains that קטן means ממש קטן even though he is not סמוך על ר' יוחנן maintains that קטן means only if he is [גדול], this same מחלוקת applies to the restriction of

¹⁷ If the מציאה of a נערה (even if she is not שולחן אביה) would belong to her, her father may take 'revenge' and marry her off to a מנוול ומוכה שחין.

¹⁸ See עמוד א' במשנה ד"ה מציאת בנו רש"י.

¹⁹ בנעוריה בית אביה. reads; פרשת נדרים at the end of במדבר (מטות) ל"ז.

²⁰ The father has the right to be מפיר the נדרים of his נערה, but we do not derive other laws from this פסוק.

²¹ The משנה in ע"ב, mentions that one can be מזכה the עירוב through his wife.

²² However otherwise she cannot be זוכה the עירוב for others as the ברייתא states there in נדרים.

not being able to be מזכה an עירוב though a בן קטן. According to שמואל one cannot be מזכה the עירוב through בנו קטן even if he is not אביו. An אמא העבריה however can be מזכה for her master since her מציאה is hers (להלכה) (whose ruling is accepted ר"י). According to ר"י (מדרבנן) (and עירוב is only) however, one cannot be מזכה the עירוב even through גדול בנו if he is סמוך על שולחן אביו. But he can be מזכה through his בן קטן if he is not שולחן אביו (since it is מדרבנן). The concern of איבה is (only) when it can lead to negative consequences (for instance by a child), but not by a slave or a maid (and also not by a stranger). The מציאה of a daughter belongs to her father even when she is a נערה (and אין סמוכה על שולחן אביה) since he can hurt her by marrying her to a מנוול וכו'. A woman can be מזכה the עירוב for her husband only if her own house is included in the עירוב because of זוכי לנפשה וכו'.

THINKING IT OVER

1. states that since the מציאה of a קטן is לאביו, similarly all his זכותים are also לאביו²³. Seemingly there is a difference; by מציאה it belongs to the father since מריצה אצל אביו [or משום איבה], however by עירוב the יד of the קטן should not be אביו, since the father wants that he should be מזכה the עירוב to others?²⁴

2. Can an אמא העבריה be מזכה the עירוב to others from her father?

3. If a father gives a מתנה to his son who is a קטן [or a שולחן אביו] is the son זוכה or not?²⁵

4. What would be a reason to disagree with תוספות and maintain that this מחלוקת between שמואל and ר' יוחנן (by מציאה) does not apply to עירוב?

²³ See footnote # 4.

²⁴ See בל"י אות תיג and פנ"י.

²⁵ See סכו"ד אות תיד.