

Prohibition from money

איסורא מממונא –

Overview

attempted to resolve the issue, whether we are concerned for שני שוירי or not, regarding a found גט, from the משנה which states that if one found הרי"ז כל מעשה בי"ד הרי"ז asked רב עמרם. שני שוירי proving that we are not concerned for יחזיר, how can you derive a ruling regarding איסור (אשת איש) by גט, from a rule of יחזיר by monetary issues. The implication of this question is that we need to be stricter by איסור than by ממון. Our תוספות discusses this issue.

asks: תוספות

ואם תאמר טפי אנן מחמירין בממונא דהא אין אנו הולכים בממון אחר הרוב¹ -

And if you will say; but we are more strict by money than by איסור, for regarding money matters we do not follow the majority (rather we follow the ממון חזקת) -

ובאיסורא אזלינן בתר רובא אפילו היכא דאיכא חזקה דאיסורא כנגד² הרוב -

However by איסור we follow the רוב even when there is a presumption of איסור which contradicts the רוב, for instance -

ולא חיישינן שמא במקום נקב קא שחיט³ -

That we are not concerned perhaps he slaughtered the animal in a place where there was a hole, for the majority tells us there is no hole, even though this animal before the הולכין אחר איסור is שחיטה. The question is why cannot we derive איסור which is lenient (since חזקת איסור is שחיטה) from ממון which is חמור (since הרוב בממון אחר הרוב) להחמיר⁴.

answers: תוספות

ויש לומר דמכל מקום באשת איש החמירו -

And one can say; that (even though in some איסור cases we follow the רוב)

¹ In a case for instance when a person bought an ox, and he realized that it is too wild to use for plowing, and wants his money back. The seller can tell him, 'I assumed you wanted this ox for slaughtering' (where it does not matter that it is wild), so even though the majority buy oxen to plow, nevertheless the seller need not return him the money for the money, and the money remains by the seller who is the מוחזק in the money.

² mentions תוספות to clarify that by ממון we follow the חזקה, but not the רוב; however by איסור we follow the רוב but not the חזקה (proving that חזקת ממון is stronger than חזקת איסור).

³ The rule is that if there is a hole in the רשט (the esophagus) the animal is a טריפה. By every שחיטה there is seemingly the concern that perhaps he was שוחט the רשט (one of the two סימנים that needs to be severed) in a place where there was a hole, so the animal may be a טריפה and we have no way to determine this. The answer is that we follow the רוב; a majority of animals do not have a hole in their רשט. This רוב is opposed by a חזקה, for the animal before it is slaughtered cannot be eaten; it has a חזקת איסור (either because it is מן החי or there is the איסור of זבוח), and nevertheless we follow the רוב להחמיר even if it contradicts a חזקת איסור.

⁴ We see that חזקת ממון is stronger than חזקת איסור (for מוציא איסור is רוב but not from ממון). Therefore if by ממון we return the שטר to be מוחזקת ממון, מוציא מחזקת ממון, we should certainly return the גט to be איסור.

nevertheless by issues of **אשת איש** (which is what we are discussing here) **they were stringent**, not to follow the רוב. תוספות offers an example -

דמים שאין להם סוף⁵ לא תנשא לכתחילה⁶ אף על פי שרובם מתים -

For by 'water without an end', she cannot marry initially, even though a majority of people die if they are in סוף להם. We see from this that we do not go **אחר** **איסור א"א** by הרוב.

תוספות offers an alternate solution:

ועוד יש לומר דמדאורייתא לא חיישינן לשני יוסף בן שמעון -

And additionally one may say; that מן התורה we are not concerned for two יב"ש - אבל מדרבנן חיישינן משום לעז⁷ -

However we are concerned מדרבנן on account of slanderous rumors -

ובממונא לא שייך לעז לכך פריך שפיר היכי פשיט מר איסורא מממונא:

However regarding monetary issues, slander is inapplicable; therefore עמרם **correctly aske רבא, 'how can the master resolve איסור (לעז) from ממון (לעז) (where there is no ממון).**

Summary

We follow the רוב by איסורים in general (but never by ממון) even against a חזקה, but not by איסור א"א. We cannot derive איסור (לעז) from ממון (where there is the concern of לעז) from מדרבנן (where such a concern does not exist). The חשש of יב"ש is only מדרבנן.

Thinking it over

איסור א"א was based on the fact that by ר' עמרם the question of תוספות answers that the question of עמרם ר' was based on the fact that by איסור א"א we do not follow the רוב.⁸ If that was the question what did רבה answer that שטרי?⁹ איסור א"א of חשש? by those cases there is (seemingly) no חשש; חליצה ומיאונין תנן

⁵ מים שאין להם סוף (literally waters which have no end) refers to a body of water where one cannot see the shore on all sides.

⁶ If witnesses testified that a person was seen drowning in מים שאין להם סוף we do not assume that he died, because it is possible that he swam underwater a great distance, until he reappeared so far away that we cannot see him. The person's wife may not remarry based on this testimony. See 'Thinking it over'.

⁷ When this woman (whose גט was lost and found) remarries, people may say; it was not her גט which was found, she was never divorced properly and her children from the second husband are ממזרים.

⁸ See footnote # 6.

⁹ See נחלת משה.