

But here when *Yoivail* arrives

והא הכא דכי מטי יובל -

### Overview

<sup>1</sup> The משכנתא דסורא cited a ברייתא regarding a לווה who gave a tree to the מלוה as a משכנתא דסורא. If the tree dried up (no more פירות), the tree is sold and land is bought with the proceeds, which the מלוה continues to eat the פירות thereof. The גמרא asked (on רב), but when יובל comes, the land (which was bought) will return to its original owner, so the לווה will be left with nothing, it is מכילא קרנא. This contradicts the ruling of רב. Our תוספות explains why this ברייתא is not self-contradictory.<sup>2</sup>

ולברייתא גופא אתי שפיר<sup>3</sup> אף על גב דהשתא נמי דליקח הקרקע קרי כליא קרנא<sup>4</sup> -

However, according to the ברייתא itself (not according to רב) it is properly understood (why they are forbidden to use the tree for firewood, but are permitted to buy land), even though that also now when we buy land it is considered קרנא, so why is buying land permitted, and using the tree for firewood prohibited?

תוספות responds:

מכל מקום<sup>5</sup> נפקא מינה ללוה דלא ליצלח לציבי -

Nevertheless there is a difference (a benefit) for the לווה that the tree should not be chopped up for firewood, but rather it should be used to purchase land -

דזמנין דשלמי ימי משכנתא<sup>6</sup> מקמי דלימטיה יובל -

<sup>1</sup> A משכנתא דסורא is where the מלוה consumes the פירות of the tree (in this case) for an agreed upon number of years, at the end of which the tree returns to the לווה and the loan is forgiven (in lieu of the פירות which the מלוה consumed).

<sup>2</sup> The ברייתא stated that neither the מלוה nor the לווה are permitted to use this tree for firewood. The לווה may not because he is destroying the principal of the מלוה (he will not have from where to collect his loan); the מלוה may not because he is destroying the קרן of the לווה (he will lose his tree entirely). It seems evident that the ברייתא does not allow כליא קרנא; so how can it allow to sell the tree and buy קרקע, since the גמרא now assumes the buying קרקע is also קרנא. What is the difference between כליא קרנא of the קרקע or of the tree. Additionally why does the גמרא ask the question on רב, when the same question can be asked on the ברייתא itself?!

<sup>3</sup> See footnote # 2.

<sup>4</sup> The גמרא asks on רב; how can we buy a field it is מכילא קרנא when יובל comes.

<sup>5</sup> The ברייתא indeed maintains that כליא קרנא is permissible; however we want to limit the loss as much as possible. There will be a greater loss to the לווה if the tree is used for firewood than if it is used to purchase land.

<sup>6</sup> See footnote # 1. Let us assume the loan was for a thousand זוז and the tree was given as a משכנתא דסורא for ten years. Each year the loan is reduced by one hundred זוז, so at the end of the ten years the tree returns to the לווה. Let us assume that the tree died after seven years, so the לווה owes three hundred זוז to the מלוה. Let us further assume that the tree can be sold as firewood for three hundred זוז, or we can buy sufficient land that it will produce fruit worth three hundred זוז for the next three years. If יובל takes place in three years, there is no difference to the לווה whether we sell the tree for firewood or buy land, for at the end of three years the לווה will remain with nothing. However, if יובל will come in more than three years, then it is beneficial to the לווה that we buy land (rather than selling it for firewood), for he will be able to use the land (after the משכנתא period of three years are up). [It makes no difference to the מלוה, his loan will be paid up either way.]

**For occasionally the time of the משכנתא will conclude before יובל comes,** so he will be able to use the field for that amount of time<sup>7</sup> -

Another possible benefit for the לווה -

**או איתרמי ליה זוזי ופריק ואכיל תרתי או תלת שנין קמי יובל<sup>8</sup> -**

**Or if the לווה comes into money,** so he can redeem the field and eat the produce for two or three years before יובל. This explains the ברייתא, which maintains קרנא -

**אבל לרב דאמר לא מכליא ליה קרנא קשה ליה דמכל מקום כליא קרנא -**

**However, according to רב who maintains קרנא ליה מכליא (under all circumstances), there is a difficulty, for granted that the לווה may gain somewhat by buying land, but nevertheless it is still קרנא -**

**כיון שלבסוף לא תשאר הקרקע ביד הלווה:**

**Since eventually the land will not remain in the לווה's possession,** so the question stands how can we buy land since it is קרנא.

### **Summary**

Even if we maintain קרנא כליא is permissible, nevertheless we need to do the utmost to assure the לווה the greatest possible benefit (as long as it does not affect the מלוה adversely).

### **Thinking it over**

Why cannot we answer the question on רב, that רב maintains קרנא only in the case of the donkey, where if it will be used for a rental, the owner will remain with nothing at all. However here, when we buy land, so granted that eventually the לווה will remain with nothing, but nevertheless he may gain something (as the two examples of תוספות point out), and as long as he gains something רב does not prohibit it!<sup>9</sup>

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<sup>7</sup> Therefore even though we are permitted to be מכליא קרנא, nevertheless we should give the לווה whatever benefits him most (since it does not affect the מלוה).

<sup>8</sup> See footnote # 6. There are only three years left to יובל. If we use it for firewood the לווה remains with nothing. However if we buy land, and the לווה comes into three hundred זוז, he can redeem the land from the מלוה and eat the פירות for the remaining three years, and perhaps that will be worth more than three hundred זוז. [The lenders would use the משכנתא דסורא because they realized a profit from the פירות more than the actual loan.]

<sup>9</sup> See # 44. אוצר מפרשי התלמוד.