

**אילימא ביין סתם וספינה זו אם נתן אמאי לא יטול לימא ליה הב לי ספינתך ואנא
If you will say by unspecified wine and this ship; if he -
gave, why should he not take, let him say to him, bring me your
ship and I will bring wine**

Overview

The ר' נתן cites a ברייתא, which states if one rents a ship and it sunk midway, rules that if the renter paid the rental fee he cannot receive it back, but if he did not pay the rental, he is not obligated to pay. The גמרא asked the following; if the owner said, 'I am renting you this (specific) boat', and the שוכר said, 'I need the boat to transport (unspecified) wine', so why is the ruling that if he paid, he cannot take back his money, let the שוכר say to the משכיר, 'provide me with the (specified) boat and I will bring (other) wine and have it delivered to my destination'. תוספות clarifies the גמרא's question.

לא מיבעיא¹ אם לא נתן שלא יתן כדקתני אלא אפילו אם נתן כבר יחזור ויטול -

There is no doubt (in this case) that if the שוכר did not pay, that he need not pay, as it states in the ברייתא, rather the גמרא is asking, even if he paid already, he should be able to go and take his money back from the משכיר. The reason is -

כיון שזה יכול להביא יין² והמשכיר אינו יכול להביא ספינה זו³ שהתנה -

Since this שוכר can bring (other) wine, but the משכיר cannot bring this specified boat which was stipulated, therefore he is not entitled to any payment.

anticipates a difficulty:

ולא דמי להא דאמר לעיל⁴ אילו עד הכא בעית למיתי כולי -

And this case (with the boat) is not similar to what the גמרא said previously (regarding the donkey) that the משכיר can claim, 'if you would have needed to come until here, etc. would you not have to pay', therefore he is obligated to pay for half the trip, so seemingly here too he should be required to pay for half the trip –

¹ See 'Thinking it over'.

² The שוכר said he wants to transport סתם, so even though the wine on this ship sunk and is not available, nevertheless he can claim. 'I will bring other wine (since he said סתם)'.

³ The משכיר on the other hand cannot fulfill his commitment to provide ספינה זו (which sunk), therefore he should suffer the loss.

⁴ The case there is where he hired a donkey and it died midway (like here by the boat); there רב ruled that he must pay for half the way (because of the משכיר's claim if you needed to come halfway you would have to pay), so here too (by the ספינה) he should have to pay for half the way (because of the same claim כולי למיתי כולי).

תוספות responds that the two cases are entirely different:

דהתם מהני ליה שיכול בקל⁵ להשכיר מכאן עד מקום שירצה -

For there (by the donkey), the שוכר **benefitted** the משכיר, **for** the שוכר **can easily rent** another donkey, **from here** (where the first donkey died) **to the place where he wants** to go and sell his merchandise -

או למכור שם סחורה כדפרישית לעיל⁶ -

Or the שוכר **benefitted**, for now **he can sell his merchandise there** (where the donkey died) **as I explained previously -**

אבל הכא לא שייך למימר הכי שהיין נטבע ומה ימכור⁷ -

However here it is not applicable to say this (that I brought you [at least] to this place), **for the wine sunk, so what can he sell.** Therefore it is understood that the שוכר is not obligated to pay the ship-owner anything.

תוספות presents (and rejects) an alternate explanation:

אבל אין לפרש דהכי פריך אמאי לא יטול שכר חצי הדרך שלא הלך עדיין -

However one can cannot explain that this is what the גמרא **is asking** (when it asked **יטול לא אמאי לא יטול** (אם נתן אמאי לא יטול), **‘why should he not take back the rent for the halfway which the boat did not yet go there’ -**

אבל שכר חצי הדרך שכבר הלך ניחא ליה שלא יטול⁸ -

However the rent for the half way which they already went, it is understood that he cannot take it back –

תוספות rejects this explanation:⁹

דאם כן הא דקתני אם לא נתן לא יתן דמשמע שלא יתן כלל אפילו שכר חצי הדרך -

For if indeed this is so, this which the ברייתא **stated, ‘if the שוכר did not yet give**

⁵ The גמרא actually said that it is לא שכיחי לאגורי, it is not feasible to rent (another donkey), however see ד"ה תוס' there that this means he cannot rent a donkey for the same rate, however for a small increase he can find another rental.

⁶ On this אילו בד"ה אילו [TIE see text there by footnote # 2 & 5].

⁷ תוספות distinguishes between the case of the חמור, where the שוכר benefited (somewhat) from half the trip, as opposed to the ספינה, where he derived no benefit at all from half the trip since his wine sunk.

⁸ According to this explanation it is understood why he is obligated to pay for the half way he already traveled, for the owner can argue, 'אי עד הכי בעית למיחוי וכו', as we ruled regarding the donkey that he has to pay for half the way. [It will be necessary to assume that the לפרש אין disagrees with ד"ה אילו תוס' explanation in that the reason he has to pay half the way is because the renter can either continue on his way and sell his wares or sell them here. Rather the אין לפרש takes these words of אילו עד הכא וכו' at face value (you hired a donkey to travel a certain distance, it turned out you traveled only half; so pay for the half). This reasoning applies by a boat just as by the donkey.]

⁹ תוספות already rejected (in ד"ה אילו) the 'face value' interpretation mentioned in [the bracketed area of] footnote # 5. תוספות is adding that if for some reason we were to justify that reasoning, nevertheless the גמרא here would be inconsistent.

the rental payment, **he should not give it', which indicates that he should not pay anything at all, even the payment for half the way;** so according to the **אין לפרש** -

הוי ליה לאקשווי אמאי לא יתן כלל:

The **גמרא** **should have asked why should he not give anything;** he should have to pay for the first half of the way?!¹⁰ Since the **גמרא** does not ask it, this proves that the **גמרא** never assumed that there is justification (in the case of a **ספינה**) that he should pay for half the way.

Summary

Paying for half the way is justified only if the renter benefited from it (as in the case of the **חמור**), but not if no benefit was derived (the sunken wine in the **ספינה**).

Thinking it over

What does **תוספות** want with his opening remark¹¹ of **לא מיבעיא וכו'**¹²

¹⁰ The **אין לפרש** assumes that it is a given that he has to pay for the half way which he traveled.

¹¹ See footnote # 1.

¹² See **קיקיון דיונה**.