

What if she had all these defects

היו בה כל המומין הללו מהו –

OVERVIEW

The גמרא cites a ברייתא, which states; if someone says, 'this שפחה which I am selling you has many defects' (which he enumerated); however in truth she only had one defect which the purchaser objected to; the rule is that the sale is invalid.¹ If, however the seller said, 'it has this מום (which it had) and (an)other unspecified (מוםים)', the sale is valid.² רב posed the following query to רב אחא בריה דרב דרבא; what is the ruling in a case where the owner specified many מומין and it turned out (after the sale) that indeed she had all these מומין; is it a מקח טעות or not. תוספות explains both sides of this query.

מקח טעות first explains the side of the query why it should be a טעות:³

ברייטא דקתני הרי זה מקח טעות דלמא מיירי כגון שכל המומין היו בה⁴ והוי מקח טעות -
The ברייתא which states that this is a מקח טעות (in the case where he specified many מומין), perhaps it is (even) discussing a case where for instance the שפחה had all these מומין and nevertheless it is a מקח טעות -

אף על פי שלא בדק הלוקח אפילו באחד⁵ -

Even though the buyer did not check out even one מום of the many which the seller enumerated. The reason it is a מקח טעות is -

משום דאמר לוקח מסתמא כל הני דקאמר ליתנהו לכולהו⁶ ומדהא ליתא הא נמי ליתא⁷ -

¹ The buyer assumes that since she did not have many of the (other) apparent defects, she must probably does not have this particular defect (which she actually had). The buyer assumes that the seller was exaggerating (by mentioning all these non-existing defects) so the buyer should not complain later.

² Since the seller specified only one מום, the buyer should have checked it out, and since he did not, this indicates that he did not mind this מום.

³ Seemingly if we were to assume that by ט"ז מק"ט, why does our ברייתא state, ה' בה מום אחד, the ברייתא should have stated a greater חידוש that even if ט"ז מק"ט, the ברייתא should have explained that indeed this is what the ברייתא means.

⁴ We will need to say (according to this side of the query) that when the ברייתא states המומין בין המומין, that this מום אחד refers to the one מום, which the buyer objects to, but since it was included among all the other מומין, which the buyer did not mind, it is a מקח טעות as תוספות continues to explain.

⁵ The fact that he was not בודק should presumably validate the sale. In a case where the שפחה had one מום, but the seller enumerated many (which she did not have), one may assume that the לוקח saw that she does not have one or more of the other enumerated מומין, so presumably she does not have this מום, which the לוקח is particular about. However in this case where she had all the מומין (so we cannot say that the לוקח noticed that she did not have one (or some) of the מומים), and (additionally) he did not bother to make (even) a superficial search; this should indicate that these מומין are of no concern to him and the sale should be valid. Nonetheless we can maintain that it is a מקח טעות.

⁶ It is highly improbable that one person should be afflicted with so many defects. See (also) footnote # 1.

⁷ See 'Thinking it over' # 1.

For the לוקה thought; presumably this שפחה cannot possibly have all these מומין that the seller is mentioning, so since she does not have all the מומין, she does not have this particular מום, which I am concerned about –

continues to explain the סיפא of the ברייתא according to this side of the query that it is a מקה טעות:

ומום זה ומום אחר אין זה מקה טעות⁸ כיון שאין מזכיר אלא אחד -

And in the case where the מוכר said it has this מום (which the buyer objects to) and another unspecified מום, this is not a מקה טעות. The reason is **that since the seller is mentioning only one מום** (which the buyer objects to) therefore it is a valid sale -

ולא שייך למימר מדהא ליתא הא נמי ליתא⁹ -

For here it is not applicable to say since she does not have this (unspecified) מום she also does not have this specified מום! With this תוספות completes one side of the query.

now explains the other side of the query why it should not be a מק"ט:

או דלמא הא דקתני הרי זה מקה טעות היינו היכא דליתנהו לכולהו -

Or perhaps this case where the ברייתא states מקה טעות, is where the שפחה did not have all the מומין enumerated; she only had this one מום which the לוקה objects to -

ובדק לוקה¹⁰ בחד מינייהו ואישתכח דליתא ואמר מדמשקר בהך באידך נמי משקר -

And the לוקה checked one of other defects which the owner mentioned, and realized that it does not exist, so the לוקה assumed since the seller is lying regarding this מום, he is also lying regarding the other מום, which the לוקה objects to, and therefore he did not inquire regarding the objectionable defect -

אבל אם כולם אמת לא הוי מקה טעות -

However if all the defects were true (as is the case in the query), it would not be a מקה טעות, since the לוקה did not bother to check at all, so he was סביר וקיבל –

¹¹ responds to an anticipated difficulty:

⁸ Presumably one may argue that here too it is a מקה טעות, for since the לוקה (perhaps) does not see other מומין, he assumes that since there are no other מומין, the specified מום is also not there. תוספות responds that this is illogical.

⁹ The לוקה does not even know which unspecified מום the seller means, so how can the לוקה assume ליתא נמי ליתא.

¹⁰ According to the side that it is a מק"ט, we need to say that the לוקה was not בודק at all (for according to this צד the ברייתא is [also] discussing the case where המומין (היו בה כל המומין) for if he was בודק he would have found a מום and we would say (the opposite) that מדהא איתא הא נמי איתא (since it has one מום it also has the מום which I object to). However according to this צד that it is not a מק"ט if המומין if מק"ט, the ברייתא is discussing where it only had this one מום which the לוקה objected to, and the only reason it is a מק"ט is because he was בודק one מום (from the other enumerated מומים) and realized there was no such מום. However, if he was not בודק at all it would not be a מק"ט, for we could not apply the סברא of נמי משקר בהך באידך נמי משקר.

¹¹ We are now assuming (on this side of the query) that if מקה טעות אי"ז מקה טעות; so why does the ברייתא

והא דקתני מום זה ומום אחר הוא הדין הזכיר לו כמה מומין -

And this which the ברייתא states, 'מום זה ומום אחר', it is not limited to this case only, but rather the same rule (of אין זה מק"ט) will apply even if the seller mentioned many מומין, that it is not a מק"ט -

כיון שכולם בה אין זה מקח טעות -

Since she has all these מומין it is not a מק"ט, for the לוקח did not check it out.

¹²continues: תוספות

בתוספתא דכתובות¹³ משמע דאם הזכיר שני מומין אחת יש בה ואחת אין בה -

It seems from the תוספתא in כתובות that if the seller mentioned (specifically) two מומין, one which she has and one which she does not have -

דלא הוי מקח טעות אלא דוקא כי סנפו בין הרבה מומין שאין בה -

That it is not a מק"ט, unless he included the מום which she had, specifically among many other מומין which she does not have -

דהכי תניא עד שלשים יום יעמיד פרנס אמר ליה קדש לי בתך על מנת שאין בה מומין -

For this is what it states in the פרק which begins, 'עד שלשים יום יעמיד פרנס'; he said to his friend, 'be מקדש your daughter to me with the stipulation that she has no מומין' -

אמר ליה שוטה היא שעמומית היא נכפית היא -

The father responded to him, 'שוטה היא, she is a שוטה, she is שעמומית, she is נכפיה', the ברייתא there rules -

אם אמר ליה אותו המום ומום אחר עמו זה מקח טעות¹⁴ -

If the father mentioned that מום, which she had, and also mentioned another מום with it, which she did not have, it is not a מק"ט -

היה בה מום וסנפו עם הרבה מומין הרי זה מקח טעות:

However if she had a מום and he included it with many מומין (which she did not have), it is a מק"ט.

merely state that מום זה ומום אחר אי"ז מק"ט, when the ברייתא should have said that even if he mentioned many מומין and מום זה ומום אחר אי"ז מק"ט. This is a greater חידוש, for even if it has so many מומין it is not a מק"ט, and we do not say (as we said in the other side of the query) מום זה ומום אחר אי"ז מק"ט. See 'Thinking it over' # 2. However according to the other side of the query (that אין זה מק"ט) it is readily understood why the ברייתא states מום זה ומום אחר אי"ז מק"ט, because by the מומין it is a מק"ט (see footnote # 6).

¹² תוספות is offering an alternate explanation why the ברייתא states מום זה ומום אחר instead of מום זה ומום אחר אי"ז מק"ט according to the side of the query that it is not a מק"ט (see footnote # 11). See footnote # 14.

¹³ פ"ז ה"ט.

¹⁴ [See footnote # 12.] תוספות will learn that when our ברייתא stated מום זה ומום אחר אי"ז מק"ט it did not mean (the way we understood until now) that the מום אחר was unspecified (see רש"י ד"ה מום), but rather he specified the other מום, and our ברייתא is teaching us a חידוש (as stated in the תוספתא) that it is a מק"ט only if אחרים מומין אחרים, but if he combined it with only one other מום, it is not a מק"ט (see מהרש"א).

SUMMARY

The query depends on whether we can interpret that the ברייתא is also discussing the case of היו בה כל המומין and it is a מק"ט (if בדק), because we say מסתמא כל הני (לא בדק), or we say the ברייתא is discussing only if she had one מום, and it is a מק"ט (if בדק) because we say מדהא משקר באידך נמי משקר.

THINKING IT OVER

1. How is it even conceivable that the seller enumerated all the defects and nevertheless it should be a מק"ט?¹⁵ What else could the מוכר have done?!

2. היו בה כל המומין אי"ז (according to the צד that finds it necessary to explain¹⁶ why the ברייתא states (מק"ט) (and not היו בה כל המומין אי"ז) מום זה ומום אחר אי"ז מק"ט (מק"ט).¹⁷ Seemingly according to this צד, when the ברייתא stated that it is a מק"ט where סנפו בין המומין, we are discussing where there were no other מומין (just the one which the לוקה objected to), therefore the following case of אי"ז מק"ט (מק"ט) is (presumably) also in a case where there was no other מום, If, however, the seller would have mentioned many מומין (and she would not have them) it would be a מק"ט (as the case is in the רישא of the ברייתא). Why is תוספות bothered why it does not say many מומין,¹⁸ since in the ברייתא we are discussing cases where she only has one מום, and the ברייתא differentiates, whether he mentioned other מומין (where it is a מק"ט), or whether he did not mention other מומין (where it is not a מק"ט)?¹⁹

¹⁵ See footnote # 7.

¹⁶ See footnote # 11.

¹⁷ היו בה כל המומין maintains that לאו דוקא is מום זה ומום אחר and includes also המומין.

¹⁸ תוספות obviously means that he mentioned many מומין and she had them all.

¹⁹ See שיעורי ר"ד פוברסקי.