

He borrowed from the wife

שאל מן האשה –

OVERVIEW

The גמרא posed a query; if one borrowed an item from the wife, and the husband was שאל to the שואל; is this considered שמירה בבעלים or not.¹ תוספות explains what is meant that he borrowed it from the wife.

תוספות asks:

תימה דמה כח יש לאשה להשאל בנכסי² מלוג³ שהפירות לבעל⁴ -

It is astounding! For what right does a woman have to lend from the נכסי מלוג, since the 'fruits' (usage/benefits) belong to the husband!

ולבעל יש לו כח להשאל בלא רשותה והיא אינה יכולה להשאל כלל -

However, the husband has the right to lend the נכסי מלוג, without her permission, but she (the wife) cannot lend at all -

ואמאי נקט שאל מהאשה -

So why does the גמרא mention he borrowed from the wife, when it could have asked the same query if he borrowed a פרה (of the נכסי מלוג) from the husband (and he was עמה שאל).⁵

תוספות answers:

ויש לומר דאין הבעל יכול להשאל או למכור פירות נכסי מלוג בלא רשותה⁶ -

And one can say; that the husband is not allowed to lend or sell (the rights to) the fruits of the נכסי מלוג without his wife's permission -

כדאמר רבא⁷ בהאשה שנפלו (כתובות דף פ,ב) משום רוחא דביתא⁸ -

¹ The rule regarding the assets which a wife brings into the marriage is that while she owns the principal, the 'fruits' (or usage) belong to the husband. The גמרא is questioning whether the husband's right to the 'fruits' (of the פרה, for instance) make him the owner, so it is שאילה בבעלים, or it does not make him the owner and it is not שאילה בבעלים.

² Any income which the wife earns while married belongs to the husband, so practically the only thing she owns is the נכסי מלוג (or נכסי צאן ברזל) that she brought into the marriage (or that she receives [through inheritance] during the marriage).

³ נכסי מלוג, are the assets which a woman brings into the marriage. See footnote # 1 & 2.

⁴ How can the גמרא state he borrowed from the woman, when she has no rights to lend anything of the נכסי מלוג, since the פירות (or usage) belongs to the husband?!

⁵ The query would be that even though he has פירות, nevertheless it is קנין הגוף so it is שמירה בבעלים, or not.

⁶ Therefore the גמרא states שאל מן האשה; meaning that after he asked the husband he also asked the wife, so the שואל had permission from both.

⁷ רבא said this reasoning regarding selling נכסי מלוג, but not about lending. In his question תוספות assumed that the husband may lend without the wife's permission. In this answer תוספות maintains that just as he may not sell, he may also not lend without his wife's permission. See 'Thinking it over'.

⁸ See ד"ה משום רש"י who writes; that the reason he has the נכסי מלוג is in order שיכנס הפירות לביתו ויהא מזון. However if he sells the rights to the fruits, or if he lends out the cow there will not be an abundance of food in the house; therefore he must acquire his wife's permission to sell or to lend it out.

As **רבא ruled in פרק האשה שנפלו**, that a husband may not sell **נכסי מלוג** because of the **‘comfortableness of the household’**.

תוספות offers an alternate explanation:

אי נמי הכי קאמר שאל מן האיש נכסי מלוג שהן של אשה מהו:

Or you may **also** say; **this is what שאל מן האשה means; he borrowed from [the husband the נכסי מלוג which belong to] the wife; what is the ruling regarding שמירה** בבעלים.

SUMMARY

A woman cannot lend or sell the **נכסי מלוג**. The meaning of **שאל מן האשה** is either he borrowed from (the man and) the woman, or he borrowed from (the man, the **נכסי מלוג** of) the woman.

THINKING IT OVER

Should lending be equated with selling¹⁰ that they both require the wife's permission, or can they be distinguished (and if they are distinguished what should logically more likely require the wife's permission)?

⁹ This א"נ maintains, as תוספות did in his question, that the husband may lend (but not sell) without his wife's permission. See footnote # 7.

¹⁰ See footnote # 7.