

שאלה חצי היום ושכרה חצי היום –

He borrowed it for a half day and he rented it for a half day

Overview

The משנה teaches three cases where we say יחלוקו¹; by שאלה חצי היום ושכרה חצי היום, and by שכר אחת ושאל אחת, and finally שאלה חצי היום ושכרה למחר. Our תוספות explains the need to mention three cases which are seemingly the same

לא זו אף זו קתני² לא מיבעיא שאלה חצי היום ושכרה חצי היום -

The משנה teaches the three cases in an order of ‘not only in this (earlier) case do we rule יחלוקו, but even in this (latter) case, we also rule יחלוקו; meaning, there is no question that in the case of שאלה חצי היום ושכרה חצי היום that we rule יחלוקו -

דספק גמור³ דאיכא למיטעי⁴ שהכל ביום אחד⁵ וחשיב דררא דממונא⁶ -

For there it is a complete uncertainty, for a mistake is likely, [since] both the שאלה and the שכירות took place in one day, so it is considered a דררא דממונא -

ולחכי קתני בסיפא זה אומר איני יודע וזה אומר איני יודע יחלוקו -

So therefore it is understood why the משנה in the סיפא teaches that in this case (of שאלה חצי היום ושכרה חצי היום), if this one (משאל) said, ‘I do not know’, and this one (שואל) said. ‘I do not know’ we divide the loss. This is obvious -

אלא אפילו שאלה חצי היום ושכרה למחר⁷ אית לן למימר יחלוקו -

But even in the case where שאלה חצי היום ושכרה למחר we also need to say יחלוקו -

¹ This is in a case where both (the משאל and the שוכר) claim they do not know whether it died by שכירות or שאלה.

² There are times when the משנה teaches us various rulings in an ascending order of novelty, where the second case is a greater novelty than the first, and the third more than the second, etc. The משנה may teach it in this manner, even though if it would have just stated the last case (which is the greatest חידוש) we would be able to derive the previous cases (which are less of a חידוש).

³ The הגהות הב"ה amends this to read גמור הוצא דאיכא (instead of גמור דאיכא).

⁴ The הגהות הב"ה amends this to read למיטעי כיון שהכל (instead of למיטעי).

⁵ In this case of שאלה חצי היום ושכרה חצי היום and the animal died during the day, it is difficult to ascertain when the animal died (whether during the time of שאלה or שכירות). This results in a situation that regardless of their claims, there is a doubt (בי"ד) whether the שוכר is liable or not.

⁶ See יחלוקו (צחב, see; משנה in this whose ruling is followed in this) according to תוס' ב"ב ד"ה היכא (even) (only) if there is a דררא דממונא, which means that when all the known facts are presented we realize (without even listening to the claims of the litigants) that each party has a valid claim to the moneys involved. Here too, we know that שאלה חצי היום ושכרה חצי היום and we know that it died during the day, but it is intrinsically difficult to establish the time of death; therefore both the שואל and the משאל have rightful claims whether there is a חיוב or not. In such a case we say יחלוקו. See ‘Appendix’.

⁷ In this case it is reasonable to assume that the time of death can be determined; the only reason why there is a dispute is because of their claims (even if it is a [fraudulent] יודע), therefore since it may not be considered a דררא דממונא, we may have assumed that we do not say יחלוקו, so the משנה teaches that even in this case we rule יחלוקו.

ולא מיבעיא בפרה אחת⁸ דספיקא רבה⁹ היא אלא אפילו בשתי פרות יחלוקו:

And there is no question that by one cow where there is a major doubt we rule (שכרה אחר ושאלה אחת) even by two cows however the משנה teaches that יחלוקו we also rule יחלוקו.

Summary

There are levels of דממונא דררא.

Thinking it over

Can we argue that there is a greater ספק by two cows than by שכרה למחר ושאלה היום?

Appendix

The classic case of דממונא דררא is where an ox gored a pregnant cow, and the fetus was aborted, but we are not sure whether the abortion was caused by the ox, or it aborted prior to the goring. The owners were not present, so the facts alone tell us that there is a doubt as to the claim of בעל הפרה and the liability of בעל השור. In our cases where the cow was borrowed/rented (even though they both claim איני יודע) it would seem that the שואל would know when it happened (he is using the cow), so it should not be considered a real דממונא. Nevertheless there are gradations as to how reasonable it is for the שואל to know. In the case of שכרה חצי היום ושאלה חצי היום; the שואל at some point during his work realized the cow died. We cannot blame him if he does not know whether it was right before noon or exactly at noon or slightly afternoon. The ספק is therefore more intrinsic. However in the case of שכרה למחר ושאלה היום, the שואל should know whether the animal died on Sunday or on Monday; his claim of איני יודע may be suspect. This may not be considered a דממונא דררא, since in principle it should be verifiable. Nevertheless since they both claim איני יודע we consider it a דממונא דררא. However in the last case where שאל נשאל where presumably both the משאיל and the שואל know which cow was נשאל and which was נשכר, so obviously at least one of them is obfuscating by saying איני יודע which one died, so this should not be considered a דממונא דררא, nevertheless the משנה concludes since they both say איני יודע it is a דממונא דררא and we rule יחלוקו.

⁸ means that once the משנה teaches the rule by שכרה היום ושאלה למחר, that ruling is more obvious than the ruling by שכר אחת ושאל אחת.

⁹ It is still a major doubt (by שכרה למחר ושאלה היום) since it is still difficult to ascertain when the animal died; however when שכר אחת ושאל אחת, it would seemingly be easier to ascertain which animal died. This last case is the furthest removed from being considered a דממונא דררא. See 'Appendix'

¹⁰ The more intrinsic the doubt is to בי"ד, the more reason to offer each party a right to the money (יחלוקו), since the facts (partially) support his right.