The words of *Rabi Mayer* - דברי רבי מאיר

Overview

We learnt that in the case of הלוקח יין מבין הכותים he is permitted to drink the wine, even though he was not מפריש yet תרו"מ, but since he said that he will be מפריש תרו"מ later, so we consider it as if now the תרו"מ are the wine which will remain, and the wine which he is drinking is already מתוקן and is not טבל. The reason is because we say יש בירה.[1] Our תוספות reconciles our גמרא with a seemingly contradictory גמרות.

משמע דאית ליה לרבי מאיר ברירה[2] ולרבי יהודה נמי קאמר רבא במסקנא דאית ליה ברירה -

It seems that ר''מ maintains that we say **יש בירה, and even according to ר''י** (who prohibits drinking the wine until he was מפריש תרו"מ), **רבא states in the conclusion** of our גמרא **that** ר''י also **agrees that יש ברירה -**

והכא אסר משום דחייש לבקיעת הנוד[3] -

And the reason he prohibits drinking the wine **here is because he is concerned that the barrel will burst –**

תוספות cites a seemingly contradictory גמרא:

ואילו בפרק יש בכור (בכורות דף מח,א) גבי[4] נתנו עד שלא חלקו -

However in פרק יש בכור regarding the case of '**they paid before they divided',** etc. -

מוקי רבא דרבי מאיר ורבי יהודה כרב אסי -

רבא established the views **of ר''מ ור''י according to ר''א**; they both agree with ר"א -

דאמר האחין שחלקו מחצה יורשין ומחצה לקוחות[5] אלמא מספקא להו -

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[1] יש ברירה in this case seems to accomplish two things; that we consider the הפרשה which he will do later as if it is effective now retroactively (so he is not drinking טבל), and also that we assume that the תרו"מ are in the leftover wine (which he separates later), and not in the wine which he is now drinking.

[2] ר"מ maintains he may drink the wine relying on the הפרשה which will be made later, as being effective retroactively.

[3] If the נוד will burst there will be no wine to be מפריש תרו"מ from; he will be drinking טבל למפרע.

[4] The issue there is where a woman gave birth to twins (in her first pregnancy), and the father of the twins (who was not פודה either one of them) died, whether the twins have to be פודה themselves and give the כהן the five סלעים. ר"מ maintains that if they gave the ה' סלעים before the twins divided the estate, fine and they cannot claim it back, but after they divided the estate, neither is obligated to pay, since each one can say that he is not the בכור. However ר"י maintains that the estate is liable for the five סלעים (since one of them is a בכור, and the father was obligated to the כהן for five סלעים), therefore they both have to pay, even after they divided.

[5] רב אסי is in doubt whether we say יש ברירה so when children inherit the estate, each heir receives the assets that were destined to him, or do we say אין ברירה and each heir may have received his brother's share, however they each agree to barter their shares, which makes them לקוחות; they purchased their shares from each other through this barter. Since it is a ספק therefore we say half their share is יורשים (for perhaps יש ברירה) and half their share is לקוחות (for perhaps אין ברירה). The details of how this explains the מחלוקת between ר"מ ור"י is somewhat complicated (and not that relevant to our discussion here). Nevertheless what is relevant to us is that ר"מ ור"י agree with רב אסי who is unsure whether we say יש ברירה or אין ברירה, and here we say that both ר"מ ור"י maintain יש ברירה!

Who maintains, the brothers who divided an estate **are** considered **half heirs, and half buyers; it is evident that they are in doubt** whether יש ברירה or אין ברירה.

תוספות responds:

ויש לחלק בין הכא שמברר דבריו ומתנה בפירוש ואומר שאני עתיד להפריש[6] -

And one can differentiate between the case **here where he clarifies his words and stipulates clearly and states 'which I will separate in the future',** in this case we say יש ברירה, since it was clearly stated and stipulated, and this case is different -

להה"א דאחין שחלקו שאינו מברר כלום[7] -

Than that case of brothers who divided an estate **where nothing was made clear,** in such a case we are unsure whether יש ברירה or אין ברירה –

In summation; תוס' distinguishes between a case where we say explicitly what our intention is, in which case ר"מ ור"י agree that יש ברירה, however in a case where nothing was stated, we are unsure whether יש ברירה or אין ברירה.

תוספות responds to an anticipated difficulty:

ובמרובה (בבא קמא דף סט,ב) דפריך דרבי יוחנן אדרבי יוחנן -

And in מרובה פרק **where** the גמרא **asks** a contradiction **from ר"י on ר"י,** namely -

דבההיא דכל המתלקט[8] איתא ליה ברירה וגבי אחין שחלקו שמעינן דלית ליה ברירה[9] -

For in that case of 'anything which will be picked', ר"י maintains יש ברירה, and regarding 'brothers who divided', we know that ר"י maintains there is no ברירה -

וחוזר בו הש"ס מתוך קושיא זו[10] הוה מצי לחלק כדפירשנו[11] -

And because of this question the גמרא retracted (the changing of the גירסא from כל המתלקט to כל הנלקט), even though the גמרא **could have differentiated** between

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[6] He is stating clearly that the תרו"מ will be from the wine which he will separate later, after he will drink the wine now, so it was made clear that the wine which he is drinking is not the תרו"מ, so there is a clear distinction between the wine he is drinking and the wine which he will separate.

[7] Seemingly this may mean that there is no way for anyone to state that 'I am receiving my intended share of my inheritance', for it is not clear which assets belong to which heir.

[8] The משנה there discusses what was done to prevent people from picking the fruit of כרם רבעי orchards and eating them there, when these fruits must be either redeemed or taken to ירושלים. The משנה states that the צנועין owners of these orchards would place aside money and say, whatever <u>was</u> picked should be exchanged for this money (so the people will not be eating רבעי). The גמרא had a difficulty with this [one cannot redeem the fruit which was picked by someone else, for it is no longer ברשותו], and ר' יוחנן changed the משנה to read (not כל הנלקט, but כל המתלקט) whatever <u>will be</u> picked, should be considered exchanged for this money. However this works only if we maintain יש ברירה that when it will be picked later it will be considered as if it was already redeemed.

[9] ר"י disagrees with רב אסי regarding האחין שחלקו and maintains that they are לקוחות since אין ברירה.

[10] By רבעי we find that ר"י איתא ליה ברירה and by אחים שחלקו he maintains אין ברירה.

[11] The גמרא could have said that by רבעי he stated clearly his intention therefore יש ברירה, but by האחין שחלקו there was no declaration as mentioned previously (see footnote # 7), therefore אין ברירה.

the two cases **as we have** just **explained -**

אלא דניחא ליה למימר לעולם כל הנלקט כדקתני במתניתין -

However, the reason the גמרא chose to retract **is since it was easier to say that really** the גירסא is **כל הנלקט as it was stated in the משנה** instead of כל המתלקט -

וניחא ליה למימר לעולם לא תיפוך[12] -

And it was also easier to say that really you should not switch around the תנאים –

תוספות offers an alternate explanation why the גמרא there did not distinguish between the two cases:

ועוד דאי הוה משני הכי אכתי הוה קשיא ליה אידך דרבי יוחנן -

And additionally if the גמרא **would have answered in this manner** (differentiating whether it was clearly stated or not) **there still would have been a difficulty with the other** ruling **of ר''י -**

דאמר לעיל[13] אף אחרון אינו פוסל[14] -

Where ר''י stated previously, even the last case does not disqualify her from כהונה –

תוספות comments:

ולעיל ודאי כי מצריך תרי מילי דרבי יוחנן[15] הוה מצי למימר דצריכי -

And previously when the גמרא taught **that the two cases of ר''י were necessary,** the גמרא **could have certainly said that it is necessary** for ר''י to say both cases -

דמההיא דלקוחות[16] הן לא הוה שמעינן דאף אחרון אינו פוסל[17] מטעם דפרישית[18] -

Since that from that case of **לקוחות הן,** where ר''י maintains אין בתירה, **we could not have derived** the rule that **אף אחרון אינו פוסל** since we maintain אין בתירה, **because of the reason which I have explained –**

תוספות offers another example how his distinction resolves a contradiction:

ובהא טעמא[19] מיתרצה נמי שמואל אדשמואל -

And this reasoning will resolve a contradiction between two rulings of **שמואל -**

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[12] In order to change the גירסא of the משנה from כל הנלקט to כל המתלקט, it was also necessary to change the views of ר' יהודה and ר' דוסא. However now that we retain the original גירסא of כל הנלקט we can also retain the גירסא for the תנאים.

[13] כה,א. There ר''י ruled that even in the case where he said לאיזה שארצה מהם אגרש, it is no גירושין at all and she is מותרת לכהונה since the rule is אין בתירה.

[14] This would seemingly contradict the view of ר''י regarding רבעי (where ר''י maintains יש בתירה). In both cases a declaration was made and nevertheless we find conflicting views of ר''י. See 'Thinking it over'.

[15] כה,א. The גמרא explained that it was necessary for ר''י to teach us אין בתירה both in the case of our משנה regarding לאיזה שארצה מהם אגרש and also the case of האחין שחלקו, because we could not derive the cases from each other.

[16] See footnote # 9.

[17] See footnote # 13.

[18] That even though by אחין לקוחות הן we say אין בתירה, but that is only because there was no declaration made, however in the case of אף אחרון אינו פוסל, he clearly stated לאיזה מהם שארצה אגרש, so there perhaps we do say יש בתירה.

[19] See text by footnote # 6.

דבפרק מי שאחזו (לקמן דף עה,ב) **אתקין שמואל בגיטא דשכיב מרע**[20] **-**

For in פרק מי שאחזו, it states that **שמואל instituted by a גט of a שכיב מרע,** that the שכ"מ should stipulate -

אם מתי יהא גט אם לא מתי לא יהא גט ולכי מיית הוי גיטא אלמא סבר דיש בריר ה -

'If I die from this sickness **it should be a גט** as of now, **and if I do not die** and recover **it should not be a גט', so if he dies it is a גט** retroactively**, indicating** that שמואל **maintains יש בריר ה -**

ובסוף ביצה (דף לז,ב) **גבי שנים שלקחו חבית ובהמה בשותפות אמר שמואל דחבית נמי אסורה:**

However in the end of ביצה מסכת **regarding two people who bought a barrel and/or an animal in partnership, שמואל ruled that the barrel is also prohibited**[21] to be taken out of the תחום of either partner.[22]

Summary

We can differentiate that when there was a clear declaration of the intention (like by הלוקח יין, or by the שכ"מ), there is more reason to say יש בריר ה, than in a case where no declaration was made (like by האחין שחלקו or regarding the חבית by תחומין).

Thinking it over

תוספות writes that if the גמרא would have reconciled the contradiction between the two rulings of ר' יוחנן, by differentiating whether or not a declaration was made, there would still be a contradiction between ר"י of רבעי (where יש בריר ה) and ר"י regarding לאיזה שארצה אגרש (where אין בריר ה).[23] However we can seemingly reconcile this contradiction based on what תוספות wrote previously,[24] that even according to the one who maintains יש בריר ה, he will agree that in the case of לאיזו שארצה אגרש it is פסול, since it is not considered sufficiently לשמה. Why does our תוספות maintain that it would be a contradiction?![25]

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[20] A שכיב מרע is a deathly sick person. He is concerned that if he dies his wife will need יבום or חליצה. However if he divorces her there is no דין יבום. He, however, does not want to divorce her in case he recovers. Therefore שמואל offered the following solution.

[21] They both own the entire barrel of wine. When they divide the barrel and each one takes half the barrel, so (if we maintain אין בריר ה) each partner has a share of the wine in the other partner's share. Therefore each partner cannot take this barrel of wine outside (his תחום obviously and also outside) the partner's תחום. The objects which belong to a person may only go wherever the person himself may go.

[22] We can resolve this contradiction (that by a שכ"מ he maintains יש בריר ה, and by תחומין he maintains אין בריר ה) according to תוספות distinction, that by the שכ"מ he was מברר by making a clear declaration, therefore שמואל maintains יש בריר ה, however by תחומין no declaration was made therefore the rule is אין בריר ה!

[23] See footnote # 14.

[24] כד,ב ד"ה לאיזו.

[25] See נחלת משה.