

רבי יהודה ורבי יוסי ורבי שמעון אוסרין –

Rabi Yehudoh and Rabi Yosee and Rabi Shimon prohibit it

Overview

The תרו"מ stated that ר"י ור"י ור"ש prohibit drinking the wine if תרו"מ were not separated before it is drunk. They argue with ר"מ who permits it because he maintains יש ברירה, however they prohibit it; indicating that they maintain אין ברירה. Our גמרא reconciles our גמרא with seemingly contradictory גמרות.

משמע דרבי יוסי לית ליה ברירה¹ וכן בפרק בכל מערבין (עירובין דף לז,ב) -

It seems that ר"י does not agree to the concept of ברירה, and similarly in פרק בכל מערבין it also appears so -

גבי מעשר שני² שיש לי בביתי יהא מחולל על סלע שתעלה בידי מן הכיס -

Regarding a case where one said, 'the מע"ש which I have in my house should be exchanged for the first סלע which will come up in my hand from my wallet' -

דאמר רבי יוסי לא חילל³ -

Where ר"י ruled that it was not exchanged; the מע"ש remains מע"ש and the סלע remains חולין.

asks: תוספות

וקשה דתנן במי שאחזו (לקמן דף עג,א) גבי מה היא באותן הימים⁴ -

And there is a difficulty; for the משנה taught in שאחזו פרק מי שאחזו, regarding the question; **what is she in those days, where -**

רבי יוסי אומר מגורשת ואינה מגורשת⁵ ולכי מיית הוא גיטא אלמא יש ברירה כדדייק בסמוך - ר"י rules, she is divorced and not divorced, and when he dies, the גט is effective (retroactively), proving that יש ברירה, as the גמרא infers shortly⁶ -

¹ This is how the גמרא initially understood the view of ר"י ור"י ור"ש (according to משרשיא).

² מע"ש needs to be eaten in ירושלים, either by bringing the מע"ש itself to ירושלים or by exchanging (מחלל, חילול) the מע"ש for silver coins (which now have מע"ש קדושת מע"ש) and bringing the coins to ירושלים and purchasing food there to be eaten in ירושלים.

³ We do not say that the סלע which actually came up is the סלע with which he intended to be מחלל the מע"ש, since ר"י maintains אין ברירה. (He can always be מחלל it now, but his previous statement is ineffective.)

⁴ The משנה there on עב,א states that if one said, 'here is your גט as of today (מהיום), if I will die from this sickness'; if he dies from that sickness, she is divorced. The משנה on עב,א asked, what is her status during that time, between the giving of the גט and his death; what will be if someone lived with her, is she considered an איש or not.

⁵ ר"י questions whether he meant from today (so she is מגורשת retroactively), or he meant one hour before I die (so she is not מגורשת retroactively to נתינת הגט). It is a ספק and if someone was with her בשוגג, he has to bring an אשם תלוי.

⁶ See רש"י ד"ה ולכי. The question is, from the גמרא in שאחזו מי שאחזו it is apparent that ר' יוסי maintains יש ברירה, however from the גמרא here and in עירובין מס' it appears that he maintains אין ברירה.

offers a partial answer:

ולמאן דמחלק⁷ בין תולה בדעת עצמו לתולה בדעת אחרים ניחא⁸ אבל למאן דלא מחלק קשיא -
And according to the one who differentiates between one who relies on his own mind (where we say ברירה), and one who relies on the mind of others (where we say ברירה), **it is understood; however according to the one who does not differentiate, there is this difficulty⁹ -**

answers:

ויש לומר דהתם בגיטין עומד הדבר להתברר בודאי בהכי או יחיה או ימות -
And one can say; that there by גיטין, the issue will certainly be clarified, for either he will live or die, therefore we say ברירה -
אבל הכא יכול להיות שלא יבא לידי הפרשה לעולם או לא יעלה סלע מן הכיס¹⁰ -
However here by הלוקח יין, it is possible that there will never be a separation (no one [for some reason¹¹]) will be מפריש תרו"מ from this wine ever, or in the other case mentioned, **no סלע will come up from the wallet**, therefore we say ברירה -
והשתא נמי אתי שפיר דשמואל¹² אדשמואל -
And now the seeming contradiction from שמואל on שמואל will be resolved.

asks:

תימה למאי דסלקא דעתין דרבי יהודה לית ליה ברירה¹³ -
It is astounding! According to what we initially assumed that ר"י does not subscribe to ברירה -
אם כן סבר כרבי יוחנן דאמר האחין שחלקו לקוחות הן¹⁴ ומחזירין זה לזה ביובל -

⁷ This is רב מרשיא. See footnote # 1.

⁸ The case of גיטין is where he is relying on אחרים (he is relying on 'ה'; in whose hands all life is), therefore we say יש ברירה, however here by וכו' where he is separating the wine later), and similarly by מה שתעלה בידי מן הכיס [footnote # 3] we say ברירה.

⁹ Why by הלוקח יין and by מע"ש, we say ברירה, and by גט we say ברירה.

¹⁰ When we are certain that the issue will eventually be clarified, there is more reason to say that the clarification takes place retroactively (יש ברירה); however if are unsure whether it will ever be clarified, there is much less reason to say that when it was clarified, it is effective retroactively, therefore ברירה.

¹¹ See מהר"ם that perhaps יבקע הנוד or (by the סלע) someone will steal the money.

¹² See previous דברי תוס' ד"ה דברי [TIE (text by) footnote # 20-22). We can say that by גיטין where the issue will be resolved (as stated here) we say ברירה, however by חבית which may never be divided, we say ברירה.

¹³ See footnote # 1.

¹⁴ A father dies and left over four fields for his two children, they divided the four fields each one taking two fields. If we maintain ברירה, this means that we need not assume that the two fields which each son took is actually the two fields he inherited. Perhaps he inherited fields 1 & 3 and he took fields 2 & 4. Rather what happened here was that each son bartered his shares in his part of the inheritance for the actual fields which he is taking. So it is as if the two brothers sold to each other either their rights in the fields the other brother owns. When one sells an inherited field it reverts back to the owner on יובל. Therefore יוחנן ר' maintains that they must give back the fields on יובל to each other and make a new division (with a new גורל) should either of the brothers insist on a new division. However if we

And **ר' יוחנן** **who maintains** **מחזירין**,²⁹ **he will explain the reason of ר"י** regarding **that one may not drink is because** of the concern for **perhaps the barrel will burst**, but not because **ר"י maintains** **אין ברירה** -

כדמסיק במרובה (בבא קמא דף סט,א) **דלרבי יוחנן אית ליה לרבי יהודה ברירה** -

As the **גמרא concludes in פרק מרובה** **ר' יוחנן maintains** **יש ברירה**, according to **ר' יוחנן** -

ומתוך ההיא גופא דאחין שחלקו לקוחות הן ומחזירין זה לזה ביובל חוזר בו מסברא ראשונה;
And it is precisely **on account of this same ruling** which **ר' יוחנן maintains that** **האחין שחלקו לקוחות הן ומחזירין זל"ז ביובל** **to retract from his initial thought**.³⁰

Summary

We are more likely to say **יש ברירה** if the issue will certainly eventually be resolved. One may maintain generally that **קנין פירות כקנין הגוף**, and nevertheless by **אחין** it may be different. One may maintain **אין ברירה** and nevertheless the **מחזירין זל"ז ביובל** are not **שחלקו**.

Thinking it over

Our **גמרא** poses a contradiction between our **ר"י maintains** **אין ברירה**, and by **גט** where he maintains **יש ברירה**.³¹ However the one who explains that the reason of **ר"י** is because of **אין ברירה**,³² that is **ר"י** differentiates between **תולה בדעת אחרים** and **תולה בדעת עצמו**,³³ so there is no question. **רבא**, who does not differentiate between **תולה בדעת אחרים** and **תולה בדעת עצמו**, maintains that the reason of **ר"י** is **שמא יבקע**, but not that **אין ברירה**, so again there is no question! According to whom is **תוספות** asking his question?!

²⁹ According to **ר"י** that **ביובל זל"ז** how can **ר' יהודה ור"י** maintain **אין ברירה** since they maintain **קנין פירות לאו** **ר' יהודה** explains **ר' יוחנן** differently. (יום או יומים) **קנין הגוף דמי**

³⁰ **ר' יוחנן** initially suggested that the **גירסא** be changed from **כל הנלקט** to **כל המתלקט** (which would mean **יש ברירה**); however he had to retract since he himself maintains **האחין שחלקו לקוחות הן** (meaning that **אין ברירה**). This same ruling will cause that the reason of **ר' יהודה** is not because **אין ברירה**, but rather because **שמא יבקע הנוד**.

³¹ See footnote # 6.

³² See footnote # 1.

³³ See footnote # 7.