Tevel and *Chulin* are intermingled - טבל וחולין מעורבין זה בזה

Overview

The ברייתא stated that if a ישראל and a נכרי bought a field in partnership the produce is an admixture of טבל and חולין according to רבי.[1] There is a dispute between רש"י and תוספות as to the exact status of this produce and how it can be מתוקן.

פירש בקונטרס[2] אין לך כל חטה וחטה שאין חציה טבל וחציה חולין -

רש"י explained that there is no single wheat that is not half טבל and half חולין -

וצריך לעשר מיניה וביה[3] ולא ממנו על טבל גמור ולא מטבל גמור עליו -

And so **it is necessary to tithe from this** mixture **itself, and not** to tithe **from this** mixture **on 'regular' טבל, and not from טבל גמור on this** mixture; the reason for this restriction -

מפני שמפריש מן החיוב על הפטור[4] ומן הפטור על החיוב[5] -

Since he is separating from grain which **requires** מעשר **to** grain **which is exempt** from מעשר, **or from the פטור on the חיוב -**

אבל כי מפריש מיניה וביה[6] מעשר מן החיוב שבו על החיוב שבו -

However if he is מפריש from this mixture **itself he is tithing from the חיוב on the חיוב contained therein -**

ומן הפטור שבו על הפטור שבו –

And from the פטור on the פטור therein -

ואפילו חלקו בספקן הן עומדים דאין ברירה[7] -

And this rule applies **even** after the ישראל ונכרי **divided** the grain, their **doubtful** status **still remains since** we maintain **אין ברירה –**

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[1] The half which belong to the ישראל is טבל, but the half which belongs to the נכרי is חולין (since there is no obligation on the נכרי to separate תרומות ומעשרות).

[2] בד"ה טבל.

[3] The ten percent מעשר for this mixture must be taken from this mixture, but not from other produce (which is טבל גמור). He may also not be מפריש from this mixture on other טבל גמור. Normally one may be מפריש from different harvests (from the same year) on one another since they are all טבל גמור, but not in this case.

[4] If he is separating from other טבל גמור he is being מפריש מן החיוב on the פטור, for part of this mixture is חולין and not obligated in הפרשת תו"מ. See רש"ש who asks; he could be מפריש half the amount, since (according to רש"י) half is טבל and half is חולין. See נחלת משה.

[5] If he is separating from the mixture on טבל גמור he is מפריש מן הפטור על החיוב.

[6] Let us assume that his share the harvest was a hundred grains; each grain is half טבל and half חולין. He separates ten grains as מעשר, so ten half grains of טבל גמור will be מתקן the remaining ninety half grains which were טבל גמור.

[7] If they divided and the ישראל took his hundred grains, he still cannot be מעשר from טבל גמור, for his hundred grains remain in the same status as they were before, namely חצי טבל וחצי חולין, we cannot say that now that the ישראל took half, these are his half of טבל, for we maintain אין ברירה, meaning that what happens later cannot clarify the initial ספק, and since initially each grain is half טבל and half חולין, this ספק remains throughout, and the only option is to be מעשר the ten percent from this very same mixture.

In summation; according to רש"י whenever a division takes place we do not assume that each party received the half initially designated as his share, but rather each item in the inheritance (each grain, for instance) belongs half to one party and half to the other party [it is only that each party agrees to relinquish his rights in the half that the other party took].

תוספות disagrees with פרש"י:

וקשה דאמר לקמן[8] דאי קנין פירות[9] לאו כקנין הגוף[10] דמי והאחים שחלקו לקוחות הן[11] -

And there is a difficulty with פרש"י, **for the** גמרא **states later, that if קנין פירות is not like קנין הגוף, and the brothers who divided** the estate **are buyers** from each other; if we make these two assumptions -

לא משכחת דמייתי בכורים[12] אלא חד בר חד[13] -

We cannot find a case **that one brings ביכורים, unless he is a single** son, the **son of a single son** until יהושע; this is what the גמרא states, and תוספות asks -

הא אפילו למאן דאמר אין ברירה יש לו בודאי חלק בו דמחייב בבכורים[14] -

However even according to the one who maintains אין ברירה, nevertheless he certainly has a portion which is obligated in ביכורים -

והמותר[15] שהוא חולין מצי מקדיש ליה כדאמרינן בפרק הספינה (בבא בתרא דף פא,ב) -

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[8] מח,א on the very bottom.

[9] קנין פירות means that the buyer only bought the rights for the produce of the land (for a certain extent of time), but he does not own the actual land.

[10] קנין הגוף means that one actually owns the item (in our case the land). In the times of the ביהמ"ק one could buy a field only up to יובל; when יובל arrived all the fields reverted back to the original owners. It therefore follows that the buyers only had a קנין פירות (up until יובל), but not a קנין הגוף.

[11] When two brothers inherit their father's estate and then divide it we can either assume that they are יורשים and each son took his share which rightfully belongs to him (this will be called יש ברירה), or we can say we are not sure which share belongs to which son (אין ברירה), rather when dividing the estate the two brothers agree that whichever portion falls to each one, they agree to relinquish their right in the part which the other brother took, in exchange that the other brother will relinquish his part in which he took. In short they are bartering or exchanging their portions which is the equivalent of buying and selling. If we make this assumption they will need to return the fields to each other on יובל (since they 'bought it' from each other) and make a new division. None of the brothers who inherit are considered true owners of the fields since they only have a קנין פירות in it.

[12] Regarding מצות ביכורים the תורה writes (דברים [תבא] כו,י) that the one who bring the ביכורים states, ראשית פרי האדמה אשר **נתת לי**; however since the heirs only have קנין פירות they cannot say אשר נתת לי (it does not truly belong to them).

[13] If the person, who received the field in the times of יהושע, had only one son, who inherits the property completely (קנין הגוף) and he in turn had only one son, and this continued till the present time, this single son can bring ביכורים and state אשר נתת לי; however in any other case they cannot.

[14] רש"י maintains that regarding the produce which belongs to the ישראל and נכרי; in each kernel of wheat, half belongs to the ישראל and half to the נכרי. We need to assume the same by an inheritance that each piece of property belongs half to one brother and half to the other. So whatever either brother took, half of that actually belongs to him (as a קנין הגוף) it is only the other half which belonged to his brother that he is buying it off him and in that half he only has קנין פירות. Therefore even though we do not know which half is קנין הגוף and which half is קנין פירות, nevertheless since a part of his field belongs to him, he must bring those fruits as ביכורים.

[15] This refers to the produce that grew on his 'bought' part of the field, which he did not inherit. תוספות is addressing the issue that since half of the produce that he is bringing as ביכורים is חולין, he is therefore bringing חולין לעזרה which

And the remainder which is חולין he can be מקדיש it, as the גמרא **states**[16] **in פרק הספינה –**

תוספות rejects a possible resolution according to רש"י:

ודוחק לומר דלא משכחת דמייתי בכורים כהלכתן שלא יצטרך להקדיש קאמר -

And it is difficult to say that the גמרא **means that we cannot find a case that one brings ביכורים properly, without needing to be מקדיש** part of **it -**

דלישנא משמע דלא מייתי כלל קאמר[17] **-**

For the expression לא משכחת **indicates** that the גמרא means **that he cannot bring it at all** (even with מקדיש); the question is why not according to רש"י –

תוספות has an additional question on פרש"י:

ועוד בפרק יש בכור[18] **(בכורות דף מח,ב) גבי**[19] **חמש סלעים ולא חצי חמש -**

And furthermore in פרק יש בכור regarding the discussion of '**five סלעים but not half of five** סלעים' -

קאמר דכולי עלמא אית להו דרב אסי דאמר האחין שחלקו מחצה יורשין ומחצה לקוחות[20] **-**

The גמרא there **states that all agree with ר''א who maintains, the brothers who divided** the estate are considered as **half inheritors and half buyers.** This concludes the citation from the גמרא there. תוספות continues -

משמע אבל אי לקוחות הן פטורין אפילו למאן דאמר חמש ואפילו חצי חמש[21] **-**

This implies that if they are considered **לקוחות they would be exempt even**

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is prohibited.

[16] See the גמרא there that he is מקדיש it קדושת דמים and then he redeems it. In any event why does the גמרא say that the only way to bring ביכורים is by חד בר חד, when we have this option of being מקדיש it, according to רש"י who maintains that half of the inheritance is indeed his.

[17] See מהר"ם שי"ף that even if someone bought the field לפירות he brings ביכורים, however he does not 'read' the פרשה of ביכורים; he is מביא ואינו קורא. See 'Thinking it over' # 1.

[18] The case there in the משנה (on the עמוד א') is when a woman gave birth to her firstborn twins and the father died before he performed a פדיון הבן. There is a dispute between ר"מ (who maintains that the sons are not obligated in פדה"ב), and ר"י (who maintains that they are obligated).

[19] The גמרא there establishes the מחלוקת in a case where the entire inheritance was exactly five סלעים. We assume that both ר"מ ור"י agree with רב אסי that the inheritance is considered half ירושה and half a purchase (see footnote # 19). We also agree that an oral loan (like the obligation of a פדה"ב) can be collected from the יורשין but not the לקוחות. Since their inheritance is מחצה יורשים ומחצה לקוחות, therefore only two and a half סלעים (or חצי חמש סלעים) is collectible. ר"מ maintains חמש ולא חצי חמש (therefore they are פטור), while ר"י maintains חמש ואפילו חצי חמש (therefore they are חייב). See there for more details.

[20] If we maintain יש ברירה then the sons are considered יורשין, each one received the proper parcel that was destined for him as his inheritance. If we maintain אין ברירה then the sons are bartering their respective share in the inheritance and so are considered לקוחות (see footnote # 11). רב אסי was in doubt whether יש ברירה or אין ברירה, therefore he said we will consider the sons as מחצה יורשין (for perhaps יש ברירה) and מחצה לקוחות (for perhaps אין ברירה).

[21] The only reason why they pay חמש חצי סלעים is with the understanding that they are מחצה יורשים, but if they would be לקוחות, they would owe nothing.

according to ר"י **who maintains חמש ואפילו חצי חמש;** the reason is -

דאפילו חצי חמש ליכא[22] -

For there is even no חצי חמש –

תוספות offers his view:

לכך נראה דאין תקנה לטבל זה דכיון דאין ברירה שמא הגיע לו כל חלקו של עובד כוכבים[23] -

Therefore it appears to תוספות **that there is no way to rectify this טבל, for since** we maintain **אין ברירה, perhaps** the ישראל **received the entire portion of the עכו"ם -**

או חציו ולא ידעינן כמה -

Of half his portion, **but we do not know how much** of the נכרי's portion the ישראל received -

ואי מעשר מיניה וביה שמא מעשר מחלקו[24] והשאר חלקו של עובד כוכבים[25] -

So if he will be מעשר from the produce **itself, perhaps the מעשר is from his share but the rest is the נכרי's share -**

או איפכא[26] או מקצתו -

Or the opposite, or partially his and partially the נכרי's. Therefore one cannot be מפריש מיניה וביה -

ומיהו יכול לתקנן שיפריש עליו ממקום אחר ויפריש גם עליו ממקום אחר[27] -

However he can rectify the produce **by separating** מעשר **for it from another place -**

ואחרון אחרון מקולקל עד שלא ישאר כי אם מעט -

And each last מעשר in this progression **is questionable, until there will remain only a small amount** which is questionable -

וכל המעשרות והתרומות[28] יתנם לכהן וללוי:

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[22] However according to רש"י who says that in every partnership each partner owns half of each part of the partnership, so even if they are לקוחות, but that is just regarding half, but one half is certainly his, so why are they פטור from פדה"ב even if we maintains הן לקוחות?!

[23] תוספות disagrees with רש"י that it is half and half, but rather we have no way to ascertain which part each partner or heir received; perhaps he received his designated parcel completely or he did not receive anything from his designated parcel, or he received a certain percentage of his designated parcel.

[24] He received a hundred bushels as his share perhaps only ten of them is his real inheritance (and is טבל) and the other ninety really belong to the נכרי (and is חולין) and he merely bartered it from him.

[25] In this case he is being מעשר from the חיוב (his share) on the פטור (the נכרי's share), in which case it is not מעשר and this מעשר is still טבל.

[26] The מעשר belongs to the נכרי (so it is really חולין) and the rest belongs to him (טבל), and one cannot be מפריש from חולין on טבל

[27] Let us assume that the ישראל received five-hundred bushels as his share; at most he is required to give fifty bushels as מעשר. H therefore finds fifty [five] bushels of unquestionable טבל and makes them מעשר for his five hundred bushels. Now his share is no longer טבל in any case. However it is possible that his entre share of five hundred was חולין (for it belonged to the נכרי), so therefore the fifty five bushels of טבל, which he used as מעשר, are still טבל (since he was מפריש מן החיוב על הפטור). He therefore takes a different six bushels of טבל ודאי and is מפריש them for the fifty bushels. So now the fifty five bushels are certainly מתוקן, the problem is only with the six bushels so he takes 2/3 bushel, and is מפריש it as מעשר for the six bushels and so he continues until the questionable מעשר is a very minuscule amount.

And all the מעשרות and תרומות he should give to the כהן and לוי.

Summary

According to רש"י when dividing a partnership each party owns a half of each piece (grain), while according to תוספות it is indeterminable (if we maintain אין ברירה).

Thinking it over

1. If we assume that if one has a קנין פירות he is מביא ואינו קורא,[29] why does תוספות write that והמותר שהוא חולין מצי מקדיש ליה, why is there any מותיר,[30] since he is obligated to bring even the fruits where he only has a קנין פירות?![31]

2. תוספות writes at the very end 'וכל המעשרות וכו' יתנם לכהן וללוי'.[32] Seemingly part of this מעשר was separated מספק, why is he required to give it to the לוי, the owner should say המוציא מחברו עליו הראיה; prove that these crops where actually טבל?![33]

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[28] The means the fifty five bushels and the six and the 2/3, etc. (see footnote # 27). See 'Thinking it over' # 2.
[29] See footnote # 17.
[30] See footnote # 15.
[31] See מהר"ם שי"ף והביאור and נחלת משה.
[32] See footnote # 28.
[33] See רש"ש and מהר"ם שי"ף ונחלת משה.