

Mine is new and my friend's is old

שלי חדש ושל חברי ישן –

OVERVIEW

The גמרא cites a משנה which states, two donkey drivers come into a city and one of them said, 'my produce is 'new' and my friend's produce is 'old'; my produce is not properly tithed and my friend's is'; there is a dispute between the ר' and רבנן whether or not he is believed. תוספות discusses what is the meaning and relevance of חדש and ישן.

בפרק אף על פי¹ פירש בקונטרס דיש מפרשים משום עומר² –

states that there are those who explain חדש וישן in regards to פרק אע"פ in רש"י – עומר the

there negates this interpretation:

ולאו מילתא היא דאם כן מאי מתרץ בדמאי הקילו התינח דמאי חדש ישן מאי איכא למימר – And there is no substance to this explanation, for if indeed חדש means forbidden grain because of the עומר, what does אביי³ answer that the חכמים are lenient by דמאי⁴; this explains the contradiction regarding דמאי, what can we say regarding the contradiction regarding חדש and ישן!⁵

there continues to ask on this interpretation:

ועוד דלא מצינו בשום מקום שנחשדו עמי הארץ על החדש⁶ –

And in addition we do not find anywhere (in the גמרא) that ע"ה are suspect regarding חדש. There is no need to testify that it is ישן and certainly no reason for the חכמים to say he is not believed that it is ישן.

¹ לקמן נוב, ד"ה שלי.

² The עומר (a barley מנחה) was brought on the second day of פסח. Until the עומר was brought it was forbidden to eat any grain that grew from the time last year's עומר was brought. That grain is called חדש. Grain which grew before the עומר may be eaten after the עומר. This grain is called ישן. It is old because it already grew before the עומר. Grain that took root before the עומר (of year 100) is permitted to be eaten anytime (after the עומר of year 100) and is called ישן. Grain which took root after the עומר (of year 100) cannot be eaten until the עומר (of year 101) is brought (and is called חדש until the עומר of year 101).

³ The גמרא posed a contradiction from the ברייתא of אביי (where it appears that ר"י is חייש לגומלים and the רבנן are not) to the משנה of חדש וישן (where it appears that ר"י is not חייש לגומלים and the רבנן are). אביי answered that ר"י is חייש לגומלים regarding תרומה לזר but not regarding דמאי. However (if we assume that we are also discussing the איסור of חדש) אביי did not explain why ר"י is not חייש לגומלים by חדש.

⁴ דמאי is produce which is purchased from an הארץ. The חכמים were מחמיר and required one to give מעשר from this even though מעשרים are given. Therefore if it is a ספק (like in our case) we are lenient.

⁵ תרומה לזר why is it different than the case of תרומה לזר.

⁶ We may buy produce from an ע"ה and need not worry that it may be חדש; it is surely ישן.

תוספות offers an alternate explanation:

ורבנו שמשון בן אברהם⁷ פירש דקאי אשביעית –

And the רשב"א explained that חדש וישן is referring to שביעית; it was the שביעית year –
וקאמר שלי חדש וגדל בשביעית ואסור להשהותו אחר הביעור⁸ –

And when he said my produce is חדש, he meant. It grew on שביעית and therefore
it is prohibited to keep it after the time of ביעור –

ושל חבירי ישן וגדל בשנה שעברה –

And my friend's produce is ישן and it grew in the past (sixth) year and is
permitted. תוספות supports the view that חדש וישן can be referencing שביעית –

ואשכחן דקרי לשביעית חדש דתנן במסכת שביעית (פרק ז' משנה ז') –

For we find that שביעית is called חדש and שביעית is referred to as ישן, for we
learnt in a משנה in מסכת שביעית –

ורד חדש שכבשו בשמן ישן ילקט את הורד –

A 'new' rose (that grew in שביעית) which was preserved in 'old' oil (oil which
was harvested before שביעית) he should gather and remove the ורד from the שמן and
eat the ורד before the זמן הביעור and the שמן can remain. In any event we see that we can refer to
פירות שביעית and פירות היתר as חדש וישן respectively.

תוספות responds to an anticipated question:⁹

וכי משני בדמאי הקילו בשביעית לא חש לתרץ –

And when אב"י answered, 'דמאי they were lenient by', he was not concerned to
answer the contradiction from שביעית –

דפשיטא ליה להש"ס דרבי יהודה מיקל בשביעית –

For it was obvious to the גמרא that ר"י is lenient regarding שביעית and is not חייש
by שביעית. The reason ר"י is not לגומלין by שביעית is –

משום דבאתריה דרבי יהודה חמירא להו שביעית כדאמר בהניזקין¹⁰ (גיטין נד, א) –

Since in the place where ר"י lived שביעית was very strict as the גמרא states in
פרק הניזקין, therefore we can assume indeed that he is telling the truth that חבירי ישן.

תוספות disagrees with this פירוש, as well:

⁷ רשב"ם (רבינו שמואל בן מאיר) amend this to read רש"ש.

⁸ ביעור is the term used to indicate the time when פירות שביעית may not be kept (at home). This is when this type of food is no longer found out in the field for the animals to eat. The expression is מן הבית כלה להשהות.

⁹ אב"י only answered the contradiction from דמאי, but not from שביעית (where ר"י is not לגומלים).

¹⁰ The גמרא there cites a ברייתא that ר"י maintains that if one plants בשוגג on שבת, he must uproot it (after שבת) because we are גוזר שוגג אטו מזיד, however if one plants בשוגג on שביעית, it can remain and we are not גוזר. The גמרא explained the reason we are not גוזר שוגג אטו מזיד by שביעית according to ר"י is because in his area they were very strict regarding שביעית, therefore a גזירה is not necessary. Similarly here too since they are strict regarding שביעית we believe him that חבירי ישן and we are not לגומלין.

ואין נראה לרבינו תם דסתם עמי הארץ לא נחשדו אשביעית –

And the ר"ת disagrees with this פ"י, because generally ע"ה are not suspect regarding שביעית, so it is not even necessary that one חמר should testify on the other that his produce is not שביעית (and the חכמים cannot say אינו נאמן) –

דתנן בפרק עד כמה (בכורות ל, א ושם) החשוד על המעשר אינו חשוד על השביעית –

For we learnt in a משנה in פרק עד כמה, 'one who is suspect regarding מעשר is not suspect regarding שביעית' –

החשוד על השביעית אינו חשוד על המעשר –

One who is suspect regarding שביעית is not suspect regarding מעשר –

אלמא דסתמא אינן חשודין בשביעית¹¹ –

It is evident that generally people (even ע"ה) are not suspect regarding שביעית –

¹² responds to an anticipated question: תוספות

ומעשר דקתני היינו מעשר שני דאמעשר ראשון חשודין הם¹³ –

מעשר (אינו חשוד על המעשר) mentions משנה מעשר which מעשר מעשר ראשון on חשודים ע"ה¹⁴, (ירושלים) for the שני only (which is bought to לויים [or כהנים]) – (which is given away to the

anticipates a difficulty: תוספות

והא דתנן במסכת דמאי (פרק ג' משנה ד') ומייתי לה בהניזקין (גיטין סא, א) –

And regarding this which the משנה teaches in דמאי מס' and is brought down in פרק הניזקין –

המוליך חיטין לטוחן כותי או לטוחן עם הארץ –

‘One who brings wheat to a כותי miller or to a miller who is an ע"ה –

אינו חושש לא משום מעשר ולא משום שביעית¹⁵ –

He need not be concerned neither for מעשר not for שביעית, this concludes the משנה –

דמשמע דחשודים על השביעית –

This seemingly indicates that ע"ה are חשודים for שביעית; otherwise why even

¹¹ If we would assume that ע"ה is סתם על השביעית the משנה should have said that ע"ה are not מעשר. In addition the רישא states that even one who is חשוד על המעשרות is not שביעית; indicating that an ע"ה (who is not חשוד על המעשרות) (see following footnote # 14) is (certainly) not שביעית.

¹² By the same token we can also prove that ע"ה are not חשוד על המעשר since the משנה states חשוד על השביעית אינו חשוד. Just proved that ע"ה are not שביעית חשוד since the משנה states חשוד על השביעית אינו חשוד. By the same token we can also prove that ע"ה are not חשוד על המעשר since that same משנה states חשוד על השביעית אינו חשוד. But we know that ע"ה are חשוד על המעשר; that is the reason that we are מעשר דמאי.

¹³ They are suspect of not tithing מעשר ראשון [and also מעשר שני (see רש"י)].

¹⁴ Seemingly this means that if an ע"ה sells you food outside ירושלים there is no concern that perhaps this is מעשר שני which must be eaten in ירושלים, rather one may eat it anywhere. See 'Thinking it over' # 1.

¹⁵ There is no need to be concerned that perhaps the ע"ה or the כותי substituted his own flour or wheat that was מעשר (was not tithed), in place of the wheat the ישראל brought him to grind. or (טבל from which) שביעית

mention it; there can be no concern at all if they are not השביעית –

replies: תוספות

איכא למימר דמשום כותי נקט שביעית –

We can say that he mentions the concern of שביעית on account of the כותי, who is even less observant than the ע"ה and is חשוד (not only on מעשר like the ע"ה but) even on שביעית (which the ע"ה is not חשוד) –

offers an alternate answer: תוספות

אי נמי בודאי חשוד איירי –

Or you may also say that the משנה there is discussing an ע"ה who is certainly suspect (we know in the past that he violated the שביעית prohibitions), but nevertheless we are still not concerned that he substituted his חשוד for the other חשוד –

brings another case which we also have to interpret that it is discussing a חשוד:

וכן ההיא דמייתי בפרק קמא דחולין (דף ו, א ושם) הנותן לשכנתו עיסה לאפות וקדירה לבשל –

And similarly that case which is mentioned in the first פרק of חולין; ‘one who gives to his neighbor dough to bake or a pot to cook -

אינו חושש לשאור ותבלין שבה לא משום מעשר ולא משום שביעית –

He need not be concerned for the sourdough or spices, which the neighbor may add to the dough or the pot, **neither that it is מעשר nor that it is שביעית**, for we assume that the neighbor will not exchange it with his own שאור or תבלין. This indicates that if the neighbor would use his own שאור ותבלין there is a concern for שביעית, however תוספות claims that ע"ה are not השביעית חשוד. We will therefore have to answer here as well that we are discussing a חשוד who is a חשוד.

חשוד על השביעית ע"ה are not שביעית, since חשוד וישן that פי' רשב"א rejected the תוספות.

continues to disprove the י"מ and the רשב"א: תוספות

ועוד קשה לרבינו תם דאי באיסור חדש או שביעית מיירי –

And the ר"ת has an additional difficult, for if וישן חדש is relating to the איסור of חדש (as the י"מ maintain) **or שביעית** (as the רשב"א maintains), the חמר who is testifying -

הוה ליה למימר של חברי אינו חדש כדקאמר אינו מתוקן¹⁶ –

Should have said mine is חדש (and therefore prohibited [either because of חדש or שביעית]) **and my friend's produce is not חדש** (but he need not say וישן), **just as he said אינו מתוקן -**

¹⁶ In the statement regarding תרומה הפרשת תרומה he says מתוקן and the negative אינו מתוקן, similarly here too by חדש or וישן (but not אינו חדש and the negative אינו חדש). (ישן).

ועוד has an additional question:

ועוד הקשה רבינו תם דלעיל דההיא משנה דחמרינ תנן במסכת דמאי (פרק ג'¹⁷) –

And furthermore asks the ר"ת that prior to that משנה of חמרינ (which the גמרא cites here) there is a משנה in דמאי –

הנכנס לעיר ואינו מכיר אדם שם ואמר מי כאן נאמן מי כאן מעשר –

One who enters into a city and does not know anyone there and he asked; ‘who here is trustworthy, who here tithes’?

ואמר לו אחד אני איני¹⁸ נאמן איש פלוני נאמן הלך ולקח הימנו –

And someone said to him, ‘I am not נאמן, however that person is נאמן’, and he went and bought from him produce –

אמר ליה מי כאן מוכר ישן אמר ליה מי ששלחך אצלי –

The buyer said to this נאמן (the seller), ‘who here sells ישן’, the seller answered him, ‘the one who sent you to me’ (the one who initially said, ‘I am not נאמן’), the משנה concludes –

אף על פי שהן כגומלין זה את זה¹⁹ הרי אלו נאמנים –

Even though it appears that they are in collusion, nevertheless they are believed. This concludes the citation from the משנה there. תוספות asks –

ואי ישן היינו דלית ביה איסור חדש או שביעית היאך קונה ממי ששלחו אצלו –

And if ישן means that it does not contain חדש or שביעית, how can he buy it from the sender –

והלא הוא בעצמו אומר שאינו נאמן²⁰ –

When the sender said on himself that he is not נאמן²¹ –

תוספות asks an additional question.

ועוד מדקא שאיל להיאך מי מוכר ישן מכלל שמה שקנה ממנו כבר היה חדש או שביעית²² –

And furthermore since he asked this seller, ‘who sells ישן’ this indicates that what he already purchased from him was חדש or שביעית (for after this purchase he

¹⁷ It is actually in מ"ו פ"ד.

¹⁸ In the משניות the גירסא is; איני נאמן, אני, meaning if he said ‘I am נאמן’ the rule is that he is not נאמן. See footnote # 20.

¹⁹ The first one said the he is not נאמן on מעשר, but the second one is. The second one said he does not sell ישן but the first one sells ישן. Obviously these two are in collusion they refer to each other regarding מעשר and ישן respectively.

²⁰ See footnote # 18. According to the גירסא in the משנה, there is no difficulty, for he never said נאמן, on the contrary he said ‘I am נאמן’.

²¹ However if ישן merely means a better quality (as 'תוס' will soon say), then it is understood; since it has nothing to do with איסורים. The second person told him that he can buy ישן from the first person (and he will have to verify whether it is טובל or שביעית and act accordingly [to be מעשר or to eat it הביעור]).

²² The buyer bought from the second one מעושר; however this was not sufficient for he is looking for ישן (not חדש and not שביעית); however he only went to the second one because he is נאמן, so obviously he sold him ישן and not שביעית, what else does he want?! See ‘Thinking it over’ # 2.

asks now where can I get (ישן), but this cannot be that he bought חדש או שביעית -

והלא לא הלך אצלו אלא לפי שהוא נאמן –

For he only went to this seller because he was נאמן, but if he sold him חדש ושביעית he is not a נאמן.

offers an acceptable explanation:

ופירש הקונטרס²³ נראה לרבינו תם עיקר דלהשביח קאמר –

And it is the view of the ר"ת that s'י"ר explanation is the correct one, that his intention of saying ישן וחברי ישן was to praise the produce of his friend that is if good quality (but it has nothing to do with והיתר –

responds to an anticipated difficulty:²⁴

ולרבותא דרבי יהודה נקטיה דאף על פי שמגרע את שלו ומשביח את של חבריו –

And was mentioned to show the novelty of s'י"R position, that even though he is degrading his own produce and praising his friend's produce –

ומיחזי טפי כגומלין²⁵ אפילו הכי נאמנין –

And it appears even more as if they are in collusion, nevertheless they are believed regarding מתוקן ר"י maintains לגומלין even in such a case –

asks:

ואם תאמר אם כן מאי קשה ליה דרבנן אדרבנן –

And if you will say; if indeed this is so (that there is a greater חשש of גומלין in the case of רבנן (of רבנן (שלי חדש וחברי ישן) **what is the contradiction from the רבנן** (חייש לגומלין where they are not לגומלין to the רבנן (of רבנן (שלי חדש וכו' where they are not לגומלין) –

דלמא הכא הוא דחיישינן לגומלין דדומה שהן גומלין בדפירשית²⁶ –

Perhaps it is only here (by שלי חדש) where the רבנן as חייש לגומלין because it is very likely that they are גומלין as I just explained!

answers:

²³ See ד"ה שלי that חדש מן החדש רש"י ד"ה שלי.

²⁴ If חדש is merely referring to the quality of the produce why does the גמרא mention it; it seemingly has no relevance להלכה.

²⁵ It is extremely unusual for a person to degrade the quality (שלי חדש) his own produce and praise his competitors (ושל חברי ישן); the only plausible explanation is that they both have an ulterior motive; they each deprecate their own produce (both regarding its quality [שלי חדש] as well as its permissiveness [מתוקן]) in alternate cities in order that in one city one of them will be able to sell his wares and the other will sell them in the following city

²⁶ See footnote # 25. In the case of רבנן, neither is defaming himself therefore the חשש גומלין is small. However here where one is deprecating himself, it causes one to wonder, why he is doing it, and the obvious answer is on account of גומלין. Therefore by רבנן the רבנן are not לגומלין but by שלי חדש they are חייש לגומלין.

ויש לומר דאי לאו דחיישינן לגומלים בעלמא משום הכי לא הווי חיישינן²⁷ טפי:

And one can say; that if the רבנן are not generally חייש לגומלים (in a case of אני כהן); because of this additional concern of גומלים by חדש שלי the רבנן would not be more concerned for גומלים.

SUMMARY

The terms וישן חדש refer to the physical quality of the produce (but not regarding the שביעית of חדש or איסורים).

THINKING IT OVER

1. מעשר שני writes that ע"ה are חשודין for מעשר ראשון but not for מעשר שני.²⁸ It is evident from elsewhere²⁹ that the ע"ה were not separating מע"ש as well. The explanation of תוספות here is that the ע"ה are not careful to tithe מע"ש ומע"ר; however they will not eat or sell מע"ש (or מע"ר שלא ניטלה תרומתו) as חולין. Therefore instead of saying חשודין על מע"ש ומע"ר (implying also that they are not חשודין על מע"ש ומע"ר) תוספות should have said that ע"ה are חשודין to sell טבל from which מע"ש ומע"ר was not separated but they are not חשודים to be מאכיל to others actual מע"ש ומע"ר!³⁰

2. משנה asks if חדש refers to איסור חדש or שביעית how can we understand the משנה where the second buyer asks again who sells ישן, for seemingly the buyer trusted the second man, so certainly he is not selling him חדש or שביעית.³¹ Seemingly we can say he trusted the second person only regarding מעשר and he was not concerned either regarding חדש because he would eat it later after the עומר, or regarding שביעית because he would eat it before זמן הביעור. He merely wanted to buy מעושר to eat it either immediately or after the זמן הביעור. What is תוספות question?!³²

²⁷ Indeed there is a difference in the level of suspicion whether they say שלי חדש or אני כהן; however the difference is not that great that there should be a difference in law, that in one case (אני כהן) we are not חייש לגומלין and in the other (שלי חדש) we are חייש לגומלין; we are either חייש (in all cases) or not חייש (in all cases). However regarding ר"י where we are not changing the הלכה we just are informing that ר"י's position that לא חייש לגומלין is true even in the case of חדש שלי, where there is seemingly more reason to be חושש. However we are not distinguishing between the two cases.

²⁸ See footnotes # 14 & 15.

²⁹ See (סוטה מח, א).

³⁰ See פרדס יצחק אות מב.

³¹ See footnote # 22.

³² See כסא שלמה.