

**אלא מלוה ברשות בעלים לחזרה איכא בינייהו –**

**Rather the difference between them is regarding whether the loan is in the possession of the owners for retraction**

**Overview**

There is a dispute between the רשב"א (משום ר"מ) and ת"ק, whether one who is מקדש (the view of רשב"א) or not (ת"ק). רבה explained that they are arguing whether the מלוה can retract and take back his money (before it is spent); the ת"ק maintains that he cannot and רשב"א maintains that he can.

פירוש דלתנא קמא דרבי שמעון אינה מקודשת משום דמלוה ברשות ליה קיימא<sup>1</sup> -

The explanation of their dispute is that according to the רשב"א of ת"ק, she is not מקודשת because the loan (even if it was not used at all) 'stands' in the possession of the ליה (the woman, so he is not giving her anything with the קידושין) -

ורבי שמעון בן אלעזר דאמר מקודשת משום דמלוה ברשות מלוה קיימא<sup>2</sup> -

And רשב"א who maintains she is מקודשת that is because the loan 'stands' in the possession of the מלוה (till it is used, therefore by being מקדש her with this money he is giving her something now).

תוספות asks:

ואם תאמר אכתי נימא רב כתנאי אמרה לשמעתי -

And if you will say; we should still assume that רב said his ruling (that המקדש (not according to everyone) תנאים only according to some) (במלוה אינה מקודשת

דהא איהו דאמר המקדש במלוה אינה מקודשת לא מצי סבר כרבי שמעון בן אלעזר<sup>3</sup> -

For רשב"א who maintains she is מקודשת אינה מקודשת רב who maintains that since מלוה ברשת מלוה קיימא, she is מקודשת with a מלוה –

<sup>1</sup> Even though the ליה did not spend any of the money, nevertheless once the ליה receives the loan from the מלוה, it is his money, and the מלוה cannot force the ליה to give it back to him now. Therefore prior to the קידושין the money belongs to the woman (the ליה) as a loan and the rule is one cannot be מקדש with a loan that is owed.

<sup>2</sup> If the loan was not used yet (the money is בעין), the מלוה has a right to cancel the loan and demand his money back immediately, meaning that at this point the money is still in the possession of the מלוה (not of the woman [even though physically it is by her]), therefore when he gives her the money to keep as קידושין, he is giving her his money.

<sup>3</sup> From תוספות answer it (seemingly) appears that in the question תוספות assumed that the dispute regarding ברשות לחזרה is in any case, even if some of the money was spent (not like the מסקנא), nevertheless regarding the remaining money which was not spent, רשב"א maintains that it is ברשות מלוה. This seemingly contradicts the ruling of רב that המקדש במלוה אינה מקודשת (even) if (only some of) the money was spent. [Alternately, in the question תוספות assumed that רב maintains המקדש במלוה אינה מקודשת, even if the entire מלוה is בעין (not like the מסקנא), which contradicts the ruling of רשב"א.]



was spent; while the ruling of רשב"א (that she is מקודשת) is when she did not spend any of the money (even if some of the money went missing [נגנבו או שאבדו]).

### **Thinking it over**

1. ר"ש maintains that a מלוה is לחזרה ברשות בעלים if it is כולה בעין (and therefore in such a case התחיל להוציאה). What will his view be in a case where (המקדש במלוה מקודשת (נשתייר שו"פ), is the remaining מלוה (that remainder that is בעין) still ברשות בעלים (and nevertheless she is not מקודשת, or that the remainder is not ברשות בעלים לחזרה and therefore she is not מקודשת? How would we explain the former view why is she not מקודשת (if the remaining [שו"פ] is still לחזרה בעלים). How would we explain the latter view that if nothing is spent it is ברשות בעלים, but if some of it is spent, even the remainder is not ברשות בעלים?

2. Why does the ת"ק state (in the revised גירסא) that אע"פ שנשתייר הימנה שו"פ אינה מקודשת, when the rule is that even if nothing was spent and it is all בעין, she is still not מקודשת (according to the ת"ק)?<sup>6</sup>

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<sup>6</sup> See מהרש"א.