

איהו לא ניהא ליה משום אונסא דאורחא -

It is not desirable for him because of the trip's potential for accident

Overview

ר' said over in the name of ר' יוחנן that there are two respective reasons why ר' maintains that by שגגת מעשר [and ר' מאיר maintains this by שגגת הקדש] that she is not מקודשת; one is because she is not pleased and the other reason is because both are not pleased (but he does not remember which reason applies to which case). ר' then considered that by מעשר both are not pleased that she should be מקודשת with מעשר שני¹; he is not pleased because of his responsibility if the מעשר is destroyed on the way to ירושלים (and she is not pleased because of the bother of taking the מעשר to ירושלים). Our תוספות clarifies what is meant by אונסא דאורחא.

פירש בקונטרס² דעל כרחק אונסא דאורחא עליה דידה רמיה³ -

רש"י explained that perforce the responsibility for any accident that may befall the מע"ש on the way to ירושלים lies exclusively on the man (if he desires to be מקדש her [with the מע"ש]) -

שהמעשר אין כאן בו' שוה פרוטה שלא ניתן להוציאו אלא בירושלים⁵ -

For here (outside ירושלים, where he is מקדש her) there is no שוה פרוטה of מעשר, for מעשר cannot be spent anywhere except in ירושלים -

שאפילו ימכרנו⁶ דמיו נתפסין בקדושתו וקידושין צריכין שיהו שוים שוה פרוטה⁷ -

For even if s/he would sell it here the money would be 'grabbed' by the קדושה of מע"ש (which again has no value outside ירושלים) and there is a requirement that מע"ש must be worth a פרוטה (and right now she does not have a שו"פ) -

¹ [which is מעשר ראשון, after שמיטה, separated on the first, second, fourth and fifth years of מעשר שני (which is given to the לוי) was separated], must be eaten only in ירושלים.

² בד"ה משום.

³ If the מע"ש with which he was מקדש the woman was destroyed before it came to ירושלים, the man will have to give her קידושין anew; she will not be מקודשת with the מע"ש he gave her, since at the time of giving her (before it came to ירושלים), the מע"ש was worthless (as תוספות רש"י continues to explain). [However it does not mean that if the מע"ש is lost it needs to be replaced; there is no such rule.]

⁴ In רש"י it reads אין כאן בו' (instead of אין כאן בו' שו"פ).

⁵ See (citing תוספות ישנים) מהרש"א that we must be discussing a case where the מע"ש is not worth (much) more than a שו"פ. If it were worth [much] more than a שו"פ, she will definitely be able to receive a פרוטה for it from anyone who is willing to take this [unredeemed] מע"ש (which is worth [much] more than a שו"פ) to ירושלים and keep it for himself.

⁶ In רש"י it reads תמכרנו (instead of ימכרנו); he gave it to her. She has the right to sell (or redeem) it.

⁷ As long as the מע"ש did not enter ירושלים it has no value, for it cannot be used for anything. She is only מקודשת once the מע"ש (or the redemption money) enters into ירושלים.

הילכך אי הוה ידע מעיקרא דמעשר הוי⁸ כיון דבעי לקבולי עליה אונסא דאורחא -

Therefore if this מקדש would have initially known that he is being מקדש her with ש"מ, so since he is required to accept the responsibility for אונסה דאורחא -

לא הוה מקדש לה ביה דשכיח לאיתנוסי גבי איתתא טפי מגברא⁹ -

He would not have been מקדש her with the מע"ש (outside ירושלים), since a woman is more prone to having an accident and losing the מע"ש, more than a man. This concludes פ"י.

תוספות comments:

משמע מתוד פירושו שלא יחולו הקידושיו במזיד עד שיהו בירושלים¹⁰ -

It appears from ש"ר explanation that if he is מקדש her knowingly with שני מעשר שני the קידושין will not be effective until the מע"ש will be in ירושלים.

תוספות asks:

וקשה דפריך בבכורות¹¹ (דף ט, ב) והרי מעשר שהקפידה תורה בכסף צורה -

And there is a difficulty (with פרש"י), for the גמרא asks in מסכת בכורות ‘but there is מעשר שני where the תורה was particular that it should be redeemed only with minted silver coins’ -

פירוש כשפודה אותו צריך לפדותו בכסף שיש בו צורה וקאמר רבי יהודה במזיד קידש¹² -

The explanation of the חקפידה תורה בכסף צורה is that when one redeems מע"ש it needs to be redeemed with silver which has a picture (minted), 'and nevertheless ר"י maintains that if he was מקדש a woman with במזיד מע"ש, the קידושין is valid'. This concludes the citation from the גמרא there. תוספות asks -

ומאי פריך והא איהו לא אמר שיגמרו עד שיהיה המעשר בירושלים -

⁸ The מקדש has מע"ש and חולין; he can be מקדש her with either one. If he is מקדש her with חולין, she is מקודשת immediately; however the man has the bother of bringing his מע"ש to ירושלים. On the other hand if he is מקדש her with מע"ש, he is relieved of the bother to bring it to ירושלים, however if the מע"ש is destroyed he will have to be מקדש her again, since the initial קידושין is not yet effective until the מע"ש reaches ירושלים.

⁹ In either case (whether he is מקדש her with חולין [and he brings the מע"ש to ירושלים] or whether he is מקדש her with מע"ש [where she brings the מע"ש to ירושלים]) there is the concern of אונסא דאורחא; however there is less concern of אונסא דאורחא when a man is bringing the מע"ש to ירושלים, than when a woman (who is not as strong and/or capable) brings it to ירושלים, therefore if he knows it is מע"ש, he will rather be מקדש her with חולין than with מע"ש, therefore the קידוש טעות מע"ש בשוגג with קידושין.

¹⁰ The reason there is אונסא דאורחא is because she is not מקודשת until the מע"ש is in ירושלים; if the קידושין is חל immediately then what is the concern of אונסא דאורחא, she is already מקדושת. See 'Thinking it over'.

¹¹ אסור בהנאה. The גמרא explains the logic behind ר"י that there cannot be something for which the תורה requires a specific item to redeem it (like the ש"ה by פטור חמור), that the item to be redeemed (the פטור חמור) should be מותר בהנאה before it is redeemed..

¹² מע"ש must be redeemed with something specific (כסף צורה), and nevertheless ר"י maintains that if he was מקדש a woman with מע"ש (before it was redeemed) she is מקודשת, indicating that it is מותר בהנאה (even though there is the requirement that it be redeemed with a specific item).

But what is the גמרא asking, for did not ר"י rule (according to רש"י) that the קידושין does not become effective until the מעשר שני will be in ירושלים -

ואירושלים לא הקפידה תורה בכסף צורה¹³ דכתיב (דברים יד¹⁴) ונתת הכסף בכל אשר תאוה נפשך -

And regarding כסף צורה as כסף צורה that it require מקפיד in ירושלים, the תורה was not מקפיד, as is written, 'and you shall spend the money for anything which your heart desires' so according to רש"י there is no question on ר"י -

אלא שמע מינה מקודשת אפילו בגבולין¹⁵ אם קבלה את המעשר¹⁶ -

So rather we derive from this that she is מקודשת even in the 'boundaries' (outside ירושלים) if she received the מעשר בגבולין.

¹⁷ offers the alternate interpretation: תוספות

לכן נראה לי כפירוש הקונטרס שני דפירש אי נמי אפילו דאין אחריות מוטל עלין¹⁸ -

Therefore it appears to רש"י like the second interpretation of רש"י, where he explained that even if the responsibility for the מע"ש does not rest on the מקדש, nevertheless -

לא ניחא ליה דתיהוי לה תרעומת עליה לומר לו קדשתני בדבר שלא הועיל לי¹⁹ -

The מקדש is not pleased that she should have complaints against him, saying, 'you were מקדש me with something which was not helpful for me'.

תוספות asks:

מיהו קשה דמשמע הכא דמתניתין איירי בגבולין²⁰ -

However there is a difficulty; for it seems here that our משנה is discussing a case where he was מקדש her in the 'boundaries' (outside ירושלים) -

¹³ Regarding מע"ש which is in ירושלים there is no rule of a specific item in order to redeem it, for if the מע"ש itself is brought to ירושלים, it cannot be redeemed (it must be eaten as is), and if it was מעות מע"ש (the money with which the מע"ש was redeemed) the rule is that it can be spent on anything edible, as the פסוק states. See רש"י.

¹⁴ . פ' ראה פסוק כה

¹⁵ Therefore the question on ר"י is understood, since בגבולין there is a requirement to redeem מע"ש with כסף צורה only, and nevertheless the מע"ש (before redemption) is מותר בהנאה for he can be מקדש a woman with it.

¹⁶ תוספות concludes that she is מקודשת immediately as soon as she receives the מע"ש (outside ירושלים). Seemingly we can say that according to explain why it is considered a שו"פ even though she cannot use it outside ירושלים. The meaning of דאורחא is not that the מקדש is liable, but merely he is concerned if there will be an אונס, the woman will have a complaint against him (but not that she is not מקודשת or that he will be responsible). The woman will be מקודשת as soon as he gave her the מע"ש, but she will retain this תרעומת.

¹⁷ The question remains however if she is מקודשת immediately what is meant by דאורחא (see footnote # 10). תוספות addresses this now.

¹⁸ This means she is מקודשת to him (immediately) even if the מע"ש is lost eventually.

¹⁹ The meaning of דאורחא is not that the מקדש is liable, but merely he is concerned if there will be an אונס, the woman will have a complaint against him (but not that she is not מקודשת or that he will be responsible). The woman will be מקודשת as soon as he gave her the מע"ש, but she will retain this תרעומת.

²⁰ גבולין is the term used to indicate outside ירושלים. The גמרא mentions דאורחא indicating that he was מקדש her outside ירושלים, where there is need to travel to ירושלים and be concerned for דאורחא.

ואפילו הכי קאמר רבי יהודה דבמזיד קידש דמעשר ממון הדיוט הוא²¹ -

And nevertheless ר"י maintains that if he was aware that he is being מקדש her with מע"ש it is a valid קידושין, indicating the מעשר is a commoner's money (it does not belong to הקדש) -

וכן משמע לקמן (דף נד, ב) דקאמר הפודה מעשר שני שלו מוסיף חומש ומוקי לה כרבי יהודה²² -
And similarly it also seems so later where the גמרא cites a משנה which states, 'one who redeems his own מע"ש must add a fifth' and the גמרא establishes that משנה according to ר"י -

וההיא על כרחך בגבולין איירי דאי בירושלים אין פודין בו מעשר שני -
And that משנה is perforce discussing בגבולין מע"ש, for we are not ש"ש in פודה מע"ש, and nevertheless ר"י maintains that he adds a fifth even if he received it as a gift²³ -

אלמא משמע דמעשר שני ממון הדיוט הוא לרבי יהודה אפילו בגבולין -
It evidently appears from both גמרות that מע"ש according to ר"י is ממון הדיוט even בגבולין -

וקשה מפרק חלק (סנהדרין דף קיב, ב) דמשמע התם דבגבולין כולי עלמא לא פליגי דממון גבוה -
And there is a difficulty (with this assumption that מע"ש is ממון הדיוט even בגבולין) from פרק חלק where it seems there that all agree that [according to ר"י] ממון גבוה is מע"ש; we know this from the משנה cited there -

גבי עיסת מעשר שני רבי מאיר פוטר מן החלה וחכמים מחייבין -
Regarding a dough made from מע"ש, ר"מ exempts this dough from the requirement of separating חלה from it, while the חכמים obligate this dough in חלה -
ואמר רב חסדא מחלוקת במעשר שני בירושלים -

- מע"ש בירושלים is regarding ר"מ וחכמים stated; this dispute between רבי מאיר סבר ממון גבוה הוא²⁴ ורבנן סברי ממון הדיוט הוא אבל בגבולין דברי הכל פטורים -
For ר"מ maintains that even in ירושלים it is ממון גבוה and the רבנן maintain that it is ממון הדיוט, however all agree that the עיסה is exempt from חלה; presumably because it is ממון גבוה,²⁵ how come we found in the two above-mentioned גמרות that מע"ש according

²¹ If מע"ש was (הקדש) ממון גבוה he cannot be מקדש her with הקדש, for it does not belong to him.

²² The משנה there states that he has to add the חומש whether the מע"ש was his initially or whether he received it (assumedly the מע"ש) as a gift. The גמרא there says that this cannot follow the view of ר"מ who maintains מע"ש is ממון גבוה, so there can be no gift of מע"ש. The recipient (of this supposed gift of מע"ש) does not own it, and the law of adding a fifth (when redeeming מע"ש) is limited to when the מע"ש belongs to the פודה, but according to ר"מ he does not own it since מע"ש is ממון גבוה and cannot be gifted away. Therefore the משנה follows the view of ר"י that it is ממון הדיוט.

²³ This indicates that it is ממון הדיוט and therefore the gift he received is valid; he now owns the מע"ש.

²⁴ Regarding חלה the תורה writes (in טו, כ) (במדבר [שלח]) that ראשית עריסותיכם חלה תרומה (your dough), but not the dough of הקדש.

²⁵ In ירושלים where מע"ש may be eaten, the חכמים maintain that it is ממון הדיוט, however בגבולין, where one is forbidden to eat מע"ש, even the חכמים (presumably) agree that it is ממון גבוה.

to בגבולין even ממון הדיוט is ר"י

תוספות answers:

ויש לומר דאף על גב דלרבי יהודה ממון הדיוט הוא אפילו בגבולין -

- בגבולין ממון הדינש ר"י according to מע"ש even though one can say that
מכל מקום קאמר רב חסדא דלאו עיסה היא להתחייב בחלה הואיל ואין ראויה שם²⁶ לאכול:

Nevertheless ר"ח maintains that it is not considered an עיסה to be obligated for the separation of חלה, since it is not fit to be eaten there in גבולין (but not because it is ממון גבוה [as we (mistakenly) assumed]).

Summary

According to (the first) פרש"י, the קידושין by מע"ש are effective only in ירושלים, however according to תוספות (and the second פרש"י), it takes effect immediately. ש"ס is ממון הדיוט even בגבולין (according to ר"י) and nevertheless it is פטור מחלה since it cannot be eaten בגבולין.

Thinking it over

outside מע"ש with the מקודשת she is not שוגג as we see by just that תוספות derives that because it is worthless, so too במזיד she will not be outside מקודשת ירושלים, (only in ירושלים).²⁷ However it is possible to say that granted בשוגג she is not מקודשת outside ירושלים because now it is worthless, however if he knew it was מע"ש and accepted upon himself אונסא דאורחא (he guaranteed her the full value of the מע"ש), perhaps she is מקודשת בגבולין, since she is assured of (much more than) a שו"פ!²⁸

²⁶ It cannot be called ‘your dough’ (even though it belongs to you), since one cannot eat it there בגבולין

²⁷ See footnote # 10. Based on this assumption תוספות asks a question on פרש"י

²⁸ See מהרש"א.