

אבל במתכוין להוציא מעות מעשר שני לחולין -

However, when he intends to spend the money of מע"ש for Chulin

Overview

only applies (במזיד תעלה ותאכל במקום) ת"ק that the ruling of the ר' יהודה qualified that if he intended to buy the animal לשם שלמים, however if he intended to be מוציא the money for חולין purposes, whether it was בשוגג or במזיד, the rule is יחזרו דמים אבל במתכוין how to interpret רש"י and תוספות. There is a dispute between רש"י and תוספות how to interpret רש"י. למקומם להוציא מעות מע"ש לחולין.

פירש בקונטרס¹ שלקחה לאוכלה חוץ לירושלים -

explained that the meaning of לחולין מע"ש is that he bought the בהמה with the intent to eat it outside ירושלים, and when ר' יהודה continues and says -

בין שוגג לאו אמתכוין להוציא לחולין קאי דאם כן לאו שוגג הוא² -

‘Whether it was שוגג (or whether it was מזיד)’, he was not referring to the case of it is not a שוגג, obviously - מתכוין להוציא לחולין, for if indeed he is a שוגג, obviously - והאי מתכוין דקתני אמזיד קאי -

So when ר"י taught regarding a מתכוין (יחזרו דמים למקומם) (that) he was referring to a מזיד, who knew it was מע"ש and nevertheless he intended to purchase the בהמה to eat it outside ירושלים; so how are we to understand שוגג בין שוגג -

והכי קאמר אבל לקחה לשם חולין³ דמזיד ידידה מכוין להוציא מעשר לחולין הוא -

And this is what ר"י meant to say; however if he bought the בהמה for use, which doing that במזיד is a case of intending to be לחולין מע"ש; therefore - בין שוגג בין מזיד יחזרו דמים למקומם -

Whether he was a שוגג or whether he was a מזיד, the money returns למקומם, the reason why by -

שוגג משום דמקח טעות הוא⁴ -

¹ בד"ה חולין (ובד"ה בין).

² בהמה לשם שלמים. However if he was מתכוין to be מוציא the money לחולין [whether בשוגג or במזיד] then יחזרו דמים למקומם. The question is how is it possible to be שוגג?! Therefore we must say that שוגג is not referring to להוציא מע"ש לחולין, but rather it (merely) means that he was unaware that he has מע"ש, so he bought the cow for חולין purposes, not for a שלמים, as תוספות continues to explain.

³ This can be שוגג, he did not now it is מע"ש. It can also be במזיד, he knew it was מע"ש; in which case he is שוגג. אבל מתכוין להוציא מע"ש לחולין (מזיד) is what ר"י meant by saying לחולין מע"ש.

⁴ He would never purchase a בהמה חוץ לירושלים had he known it was מע"ש, for it is a greater טרחה to bring the ירושלים than to bring the מע"ש ירושלים.

the money is **is because it is a mistaken sale** - **שוגג**

ומזיד דקנסין ליה למוכר⁵ כדאמרינן לקמן⁶ לאו עכברא גנב אלא חורא גנב -

And by מזיד we also say **יחזרו דמים למקומם**, **because we fine the seller as the גמרא explains later; 'the mouse is not the thief, rather the hole if the thief'.**

ופריך והאנן תנן⁷ רבי יהודה אומר במזיד קידש -

And the גמרא then asked, 'but we learnt in our משנה that ר"י maintains if it was **the woman is מקודשת** **במזיד** -

פירוש⁸ כיון דטעות ליכא משום קנסא לא אמרו רבנן דליבטל -

רבנן **the** **explains since there is no mistake (they knew that it was מעות מע"ש)**, **the** **did not decree to nullify the קידושין on account of a fine; not -**

כי הכא דאמרינן יחזרו דמים למקומם -

Like here (by purchasing a בהמה) where ר"י rules למקומם, **where we do** **punish the מוכר. The גמרא answers -**

אמר רבי אלעזר מתניתין ליכא למיקנסיה כלל -

א"ר said we cannot fine them at all in our משנה (regarding קידושין) -

דאשה יודעת כול⁹ ולא נתכוונה להוציאו לחולין -

For the woman knows, etc. and she has no intention to spend the קידושין **מע"ש** **money for חולין.**

אבל מוכר זה יודע שהמעות מתחללות על הבהמה וחולין הן בידו -

However this seller knows that the מעות מע"ש are transferred onto this בהמה **חולין** **is** **the seller's possession** **is** **the** **which he is selling), so the money in the**

ועובר על לפני עור לא תתן מכשול¹⁰ שהרי יודע הוא שהלוקח מתכוין לאוכלה בעירו -

And the מוכר transgresses the prohibition of מכשול, **לפני עור לא תתן מכשול**, **for the מוכר** **knows that the buyer intends to eat the בהמה (which received the קדושה of מע"ש)** **in his city, not in ירושלים, therefore there is a קנס -**

כך פירש הקונטרס -

This is רש"י explanation of the גמרא.

⁵ See previous **ואם** **תוס' ד"ה ואם** **(on this עמוד; TIE footnote # 6), why it is a קנס for the מוכר. The מוכר (also) knew that it is** **מעות מע"ש (see רש"י ד"ה אמר).**

⁶ On the **עמוד ב'**. The buyer is the **עכברא**; he is stealing the **מע"ש** and not eating it in **ירושלים**. The seller is the **hole**; he is enabling the buyer to steal (just as a hole enables the mouse to hide what he takes).

⁷ In the **משנה** on **נבב**, if one was **מקדש** a woman with **במזיד** **מע"ש** she is **מקודשת** according to **ר"י**.

⁸ **רש"י** **בד"ה במזיד**.

⁹ A woman knows that **מעות מע"ש** are not redeemed if they are given to a woman as **קידושין**, rather they maintain their **קדושה** as **מע"ש**, so when she accepts the **מעות מע"ש** for **קידושין**, she intends to bring them to **ירושלים**, but not to use them for **חולין**, therefore there is no point in a **קנס**.

¹⁰ **ויקרא (קדושים) יט, יד**. We are forbidden to place a stumbling block before a blind person. This prohibition (also) applies to cause someone to sin. See footnote # 12

פרש"י disagrees with תוספות:

וקשה טובא חדא דאטו בריעי עסקינן¹¹ שפירש שהלוקח מתכוין לאכלה חוץ לירושלים -
And there are many difficulties with this interpretation; firstly, are we discussing
sinners, for **ירושלים outside בהמה explained that the buyer intends to eat the**

A second question

ועוד קשה מאי לפני עור לא תתן מכשול איכא הכא¹² הלא אם לא יקח ממנו¹³ יקח מאדם אחר -
לפני עור לא תתן
And an additional difficulty, why is there a transgression of
here; is it not so that if he will not buy it from this seller, he will buy it
from another person -

ולא שייך לפני עור אלא דוקא דקאי בתרי עברי דנהרא כגון מושיט כוס יין לנזיר¹⁴ -
And the prohibition of לפני עור is only applicable in a case where they are
standing on two opposite banks of a river, for instance where one extends a
cup of wine to a נזיר -

ואבר מן החי לבני נח¹⁵ כדאמרינן פרק קמא דמסכת עבודה זרה (דף ו, ב) -
Or he gives **החי** **to a נח**, **as the גמרא states in the first פרק of**
מסכת ע"ז; **otherwise if the forbidden act can be accomplished anyways, the current provider is not liable for**
otherwise if the forbidden act can be accomplished anyways, the current provider is not liable for
since the transgressor has other means to violate the prohibition in question.

A third question:

ועוד קשה דמשמע מתוך פירוש¹⁶ שהבהמה נתפסת בקדושה והמעות נתחללו -
And there is an additional difficulty; for it seems from פרש"י that (if not for the
the קדושה of מע"ש takes hold of the בהמה, and the money of מע"ש become
they are exchanged for the בהמה; if that indeed is his view -
וכי משום קנס נאמר יחזרו דמים למקומם והמוכר יאכל הבהמה חוץ לירושלים¹⁷ -

Is it then right that on account of a קנס we should rule that the monies revert

¹¹ This expression is found many times in ש"ס (see יומא ו, א וש"נ) to indicate that the גמרא is not discussing willful sinners (for they will not listen to us). See 'Thinking it over' # 1.

¹² See footnote # 10, where פרש"י explains that the מוכר transgresses לפני עור by selling this cow.

¹³ If the current 'seller' will refuse to sell it to him (since it is מעות מע"ש and he wants to eat it לירושלים), he can always find another seller (to whom he will not disclose that it is מע"ש).

¹⁴ If a נזיר (who is prohibited from drinking wine) is standing on one side of the river and he has no access to wine, and another person on the opposite side of the river hands him over some wine; the provider of the wine is עובר on לפני עור, since without him the נזיר would not have transgressed. However if the נזיר has access to wine, the one who actually provides him with the wine is not עובר, since the נזיר could have received it without the provider. Here too the buyer with the מעות מע"ש can buy a cow from anyone, so the one who actually sold him the cow is not עובר on לפני עור.

¹⁵ An אבר מן החי (a limb cut off from a live animal) is forbidden even to בני נח (gentiles); we derive it from the פסוק (בראשית [נח] ט, ד) of לא תאכלו.

¹⁶ See מע"ש which states, בידו, indicating that the money becomes חולין, and the בהמה receives the status of מע"ש.

¹⁷ How can a קנס remove the מע"ש which is on this בהמה?! See [TIE footnote # 8 & 23].

to their initial place (meaning the money goes back to the buyer and remain מע"ש, and the cow goes back to the seller and remains חולין), so the seller can eat the בהמה outside ירושלים?!

anticipates a possible rebuttal to this (third) question:

ולכא למימר שיחזור ויחלל לוקח קדושת הבהמה על מעותיו¹⁸ -

And we cannot say that the buyer should go back and exchange the קדושה of the בהמה on his money (which he received back from the seller); this would seemingly resolve the problem how the בהמה can be eaten חוץ לירושלים -

responds that this is not a viable solution:

דהא ארבי יהודה קיימא דסבר¹⁹ לקוח בכסף מעשר אינו נפדה דלא אלים למתפס פדיונו²⁰ -

For we are discussing the view of ר"י who maintains, anything which was bought with the money of מע"ש cannot be redeemed again, for the קדושה on this purchased item is not sufficiently strong to take hold of it redemption. The question remains how can this cow (which received מע"ש קדושה) be eaten חוץ לירושלים?!

A fourth (and final) question:

ועוד קשה מאי פריך והאנן תנן רבי יהודה אומר קידש²¹ -

And yet another question, what does the גמרא ask; 'but we learnt in the משנה, הא לא דמיא כלל דהכא לוקח אמר בפירוש שלא יוליכנה לירושלים -

For the two cases are not similar at all, for here the buyer says explicitly that he will not take the בהמה to ירושלים (therefore there is a קנס) -

אבל הכא האשה אומרת²² שתוליכנו לירושלים -

But here (by קידושין) the woman says she will take the money to ירושלים (therefore there is no קנס)!

¹⁸ Perhaps we can answer that indeed the monies and cow go back to their original owner, and even though the בהמה has מע"ש קדושה and the money does not, there will be no problem if the owner eats the בהמה חוץ לירושלים, because after the seller received his money back (which is now חולין), he will redeem the בהמה (which became מע"ש) with this money (which became חולין), so now everything will be as it was originally; the מע"ש are מע"ש and the בהמה is חולין.

¹⁹ מע"ש פ"ג מ"י.

²⁰ When one exchanges the מע"ש for something (in our case the בהמה), the קדושה of the מע"ש leaves the money and transfers to the בהמה. However the קדושה of this בהמה is (somewhat) less than the קדושה מע"ש, which was on the מע"ש. Therefore (according to ר"י) one cannot exchange this בהמה for something else (in our case money) and have the weaker קדושה of מע"ש to be transferred to the money. For a transfer to be effective the קדושה מע"ש must be strong; something which was already exchanged for מע"ש, its קדושה מע"ש is too weak to enable a transfer, Therefore we can no longer redeem this cow.

²¹ See (the text by) footnote # 7.

²² See the גמרא on נגב, where it is implied that the woman would eat the מע"ש only in ירושלים.

תוספות offers his explanation:

לכך פירש רבינו יצחק אבל במתכוין להוציא מעות מעשר שני לחולין -

Therefore the ר"י explained, when ר' יהודה said ש"ש אבל במתכוין להוציא מעות מע"ש - לחולין -

כלומר שהתנה עם המוכר שלא תחול קדושת המעות על הבהמה -

He meant to say that the buyer stipulated with the seller that the קדושת המעות should not transfer onto the בהמה (which he is buying) -

אלא המעות יהו בקדושה ועל המוכר להעלותן לירושלים -

But rather the מעות מע"ש (which the מוכר is receiving for his cow) should retain their holiness and so the seller is obligated to bring the money up to ירושלים and spend them there as מעות מע"ש -

והיינו מתכוין להוציא מעות מעשר שני לחולין שהקדושה לא תחול על בהמתו²³ -

And this is what is meant by 'he intends to spend the מעות מע"ש for חולין, that the קדושה of the מעות מע"ש should not transfer on his בהמה which he purchased; in this case -

יחזרו דמים למקומם דחיישינן שמא יאכלם המוכר חוץ לירושלים -

The monies should revert to its initial place, for we are concerned that the seller will spend the money outside ירושלים -

שהוא סבור המוכר דפקע מינייהו קדושת מעשר שני -

For the seller assumes that the קדושת מע"ש was extracted from the money, since the buyer purchased a בהמה with this money so the קדושת מע"ש of the money transferred to the בהמה and the money is חולין -

תוספות responds to an anticipated difficulty

ואף על גב שפירש לו הלוקח קסבר שאין ללוקח להפקיע קדושת המעות -

And even though the buyer was explicit that the money should retain its קדושה (so how can the seller assume that the money is חולין), nevertheless the seller assumes that the buyer does not have the power to extract the קדושה of the money that it should not transfer onto the בהמה -

כיון שמכר לו דבר הראוי להתחלל²⁴ -

Since the seller sold him something which can be exchanged, therefore the seller

²³ Usually when one purchases something with מעות מע"ש, the purchased item becomes מע"ש (not חולין), so the initial holder of the מעות remains with מע"ש; however here he stipulated that he should spend the מע"ש for the בהמה, but the קדושה should not transfer, so he remains now with חולין (no קדושת מע"ש on the בהמה). See "Thinking it over" # 2.

²⁴ According to this פשט the questions on רש"י do not apply. Question # 1 (see footnote # 11) is answered because there is no רשע here; the מוכר mistakenly assumes that the מעות are not מע"ש. Question # 2 (see footnote # 12) is irrelevant, for there is no need for the concept of לפני עור (we are concerned for the mistaken מוכר). Question # 3 (see footnote # 17) is answered for indeed no קדושה was ever on the בהמה per the stipulation of the buyer. תוספות will now address the fourth (and final) question.

may mistakenly assume that the money is not מעות מע"ש and he will not eat them in ירושלים, when in truth it is מעות מע"ש, since the buyer stipulated that the קדושה should not transfer, so it will turn out that the מוכר may eat the לירושלים.²⁵

והשתא²⁶ פריך שפיר²⁷ והא תנן במזיד קידש ומעות לא נתחללו ושבקינן להו ביז האשה -

And now the קידושין במזיד משנה, that **by** **מזיד** **correctly asks, but we learnt in** **גמרא** **the woman is מקודשת and the money did not become חולין and we leave it by the woman** as מעות מע"ש -

וסמכינן עלה שתעלם לירושלים -

For we depend on her that she will bring the money up to ירושלים, so -

הכא נמי למה המכר בטל יעלם המוכר לירושלים ויאכלם בקדושת מעשר -

Here too why is the sale nullified, let us trust the seller to bring the money to ירושלים and eat it there **בקדושת מע"ש**, just as we trust the woman?!

ומשני אשה יודעת כולי אבל הכא המוכר אינו יודע -

And the גמרא answers that nevertheless there is still a difference; **the woman knows etc.** (that she cannot be exchanged for מעות מע"ש, so therefore the מעות מע"ש retain their קדושה), **however here the seller does not know** that the קדושה is not transferred to the בהמה, for the seller assumes -

לפי שמוכר לו דבר הראוי להתחלל עליו וקסבר שלא הועיל תנאי של לוקח ויצאו לחולין -

Since he is selling him a cow which is something that is fit that מע"ש should be exchanged on it, and the seller maintains that the stipulation of the buyer that the קדושה should not be transferred to the cow is ineffective, so therefore the money became חולין (since the קדושה was transferred from the money to the בהמה) -

ואם נאמר לו שיוליכם לא יאמין לנו:

And even if we will tell him that it was not transferred on account of the stipulation, he will not believe us and would spend the money outside ירושלים.

Summary

According to רש"י the meaning of לחולין מע"ש להוציא מעות מע"ש means that the buyer intends to eat the בהמה outside ירושלים, while according to תוספות it means that the buyer stipulated that the קדושת מע"ש in the money should not be transferred to the cow which he is buying with this money.

²⁵ See 'Thinking it over' # 3.

²⁶ Now that we say that מתכוין להוציא מעות מע"ש לחולין (does not mean that the buyer intends to eat the בהמה חוץ לירושלים, but rather it) means that the buyer stipulated that the קדושת מע"ש should not be על the בהמה, the question regarding the contradiction from ר"י in the משנה is understood.

²⁷ However according to רש"י the s'גמרא question is not understood, as תוספות asked previously; question # 4 that there is an obvious difference between the case of the בהמה (where he explicitly stated [according to רש"י] that he will not eat it in ירושלים), and the case of the משנה (where the woman states [see footnote # 22] that she will bring it to ירושלים).

Thinking it over

1. asks on תוספות that רש"י עסקינן ברשיעי²⁸ What is the question; we are referring to him as a מזיד, which implies that he is a רשע?!²⁹
2. According to תוספות that מתכוין וכו' means that the לוקה stipulated there should be no transfer of קדושה,³⁰ what does it mean בין בשוגג, how can there be a stipulation by a שוגג?!³¹
3. According to תוספות we are concerned that the seller may eat the בהמה outside³² Later³³ the גמרא asks why do we punish the seller (by voiding the sale), let us punish the buyer. However, according to תוספות that the concern is regarding the מוכר, it is obvious that we punish the מוכר, but not the לוקה! What is the גמרא's question?!³⁴

²⁸ See footnote # 11.

²⁹ פני יהושע.

³⁰ See footnote # 23.

³¹ See # 119. אוצר מפרשי התלמוד.

³² See footnote # 25.

³³ נו, ב.

³⁴ See הגהות הרב שמחה מדעסוי.