

מכריע is not a רבן גמליאל

רבן גמליאל לאו מכריע¹ הוא –

OVERVIEW

רב ruled that the הלכה is according to ר"י; one eats כל ארבע, is תולה כל חמש (he is permitted to have הנאה, but not to eat) and is שורף בתחלת שש.

The first משנה in שעה כל states² which would indicate that the הלכה is according to ר"מ, where one is permitted to eat (in the שעה כל שעה שאוכל (which is the meaning of) as long as he is able to have הנאה (החמישית). The גמרא there concludes that it is not necessary to assume that the משנה of follows the view of ר"מ, for in fact if the משנה would agree with ר"מ it would have stated שאוכל מאכיל (שמותר לאכול).³ The משנה apparently follows the view of ר"ג that only כהנים may eat החמישית and that is the meaning of [לכהן] לאכול. It would appear from that גמרא that the משנה סתם is according to ר"ג (and perhaps ר"מ), but certainly not ר"י.

רבא asked ר"נ why רב did not rule like ר"מ (who seems to be supported by a סתם) or like ר"ג (who is a מכריע). Our תוספות discusses the discussion between רבא and ר"נ.



asks: תוספות

וקשה לרבינו יצחק דלימא הלכה כרבן גמליאל⁴ –

And the ר"י has a difficulty; (רבא should have asked⁵) **that רב should have ruled that the הלכה is according to ר"ג -**

דסתם לן תנא כוותיה בפרק כל שעה (לקמן כא,א) מדקתני מותר⁶ –

since the תנא stated the משנה anonymously according to ר"ג, for the תנא taught - מותר

ואפילו אם מספקא ליה אם יש לדקדק בלשון מותר⁷ אם לאו –

¹ A מכריע is a third view in an argument who compromises between both sides; thus rendering the decision.

² כא,א ובגמרא שם.

³ The expression כל שעה שאוכל מאכיל indicates that the same person who is eating is permitted to feed. שמותר indicates that when one person may eat, then (even) another person (who may not eat, nevertheless, he) may feed. This is the view of ר"ג that the כהנים may eat חמץ של תרומה during שעה החמישית and the ישראלים may only have חמץ from their הנאה.

⁴ רב should have ruled like ר"ג not (only) because he is a מכריע, but rather because כוותיה. The same reason the גמרא initially asked that רב should rule like ר"מ.

⁵ See 'Thinking it over'.

⁶ See 'Overview' and footnote # 3.

And even if it is doubtful whether it is proper to be so exacting in the inference of the expression 'מותר', or not -

מכל מקום נימא הלכה כרבי מאיר או כרבן גמליאל –

Nevertheless רב should have said the הלכה is either according to ר"מ or ר"ג -

דממה נפשך ההיא דכל שעה כחד מיניהו אתו –

For in any event the משנה in פרק כל שעה is according to one of them and not according to ר"י. The question is why did רב rule according to ר"י (who disagrees with the סתם of משנה) and not according to either ר"מ or ר"ג whose ruling is followed in the סתם משנה.

answers: תוספות

ויש לומר דאביבעית אימא סמיק⁸ –

And one can say; that the גמרא depended on the 'איבעית אימא' to resolve this issue why רב ruled like ר"י and not like ר"מ or ר"ג.

concludes: תוספות

ודין הכרעה אפרש בסוף פירקין⁹ בעזרת השם:

And the rules concerning הכרעה I will explain at the end of our פרק with the help of השם.

SUMMARY

The משנה of כל שעה follows the view of either ר"ג (preferably) or (perhaps) ר"מ. Nevertheless there is a ruling in a ברייתא which follows the view of ר"י.

THINKING IT OVER

Is question why did not רב rule like ר"מ or ר"ג, or his question is on כר"ג since you suggest that the משנה is סתם? ¹⁰ then why did you not rule like ר"ג? (not like ר"מ) then why did you not rule like ר"ג?

⁷ The גמרא there inferred from the word מותר (לאכול) [and not שאוכל] that the משנה more likely follows the view of ר"ג. However one may argue that the משנה was not so precise in its expression of שמותר and the משנה actually follows the view of ר"מ.

⁸ The אביבעית אימא cites a ברייתא which rules like ר"י (that even תרומה may be eaten only till the end of 'ד' שעה). רב asked ר"נ initially that רב should have ruled כר"מ since this is the view of the משנה; to which ר"נ responded that it is not necessarily so (for the משנה may follow the view of ר"ג). Then רב continued to ask that רב should have ruled like ר"ג since (as ר"נ had just indicated that the משנה is סתם, and) ר"ג is the מכריע. ר"נ answered that ר"ג is not the מכריע and as to the (implicit) question of סתם משנה then אביבעית אימא that there is a ברייתא that rules like ר"י.

⁹ כא, א בד"ה אין.

¹⁰ See 1 תוספות הרא"ש הערה 1.