

According to their deterioration

בכדי חסרון –

OVERVIEW

The גמרא cited a משנה which stated; 'if someone deposited פירות by his friend even if they are deteriorating, the נפקד should not touch them; however, רשב"ג maintains that he should sell them in בי"ד for it is like השבת אבידה. This dispute was further clarified by ר' יוחנן who maintained that the argument between רשב"ג ורבנן is only if the loss was בכדי חסרון; however if the loss was more than כדי חסרון, all agree that he should sell it. There is a dispute between רש"י and תוספות as to the meaning of כדי חסרון.



פירוש הקונטרס כדרך חסרונם של פירות¹ –

רש"י explains that the term בכדי חסרון means **in the manner which produce deteriorates**. In such a situation רשב"ג maintains they should be sold; while the חכמים maintain they should be left alone.

בכדי חסרון has a difficulty with this interpretation of תוספות:

וקשה לרבינו יצחק אם כן מאי טעמא דרבנן שמעון בן גמליאל דאמר מוכרן בבית דין² –

And the ר"י has a difficulty with רש"י's explanation; if this is so that we are discussing a case where the produce is deteriorating in a normal manner, **what is the reasoning of רשב"ג who maintains that the נפקד should sell this produce through בי"ד?!?**

בכדי חסרון offers a different explanation of the term תוספות:

ואומר רבינו יצחק דמיירי דנחסר בחדש אחד יותר ממה שחסרון עולה לחדש³ –

And the ר"י states that בכדי חסרון means **that we are discussing a case where the produce deteriorated in one month more than the pro-rated deterioration would amount per month⁴** –

וקרי בכדי חסרון לפי שעדיין לא נתחסרו יותר מכדי חסרון העולה לשנה –

And it is called **בכדי חסרון** (even though it is more than the pro-rated amount) **because it did not deteriorate more than the loss that it accumulates for an**

¹ The produce is deteriorating in the normal manner which one would expect produce to deteriorate.

² (Seemingly) the owner is suffering no loss; for if the produce would be in his possession it would deteriorate at the same rate. He deposited it by his friend knowing full well that there will be normal loss.

³ If we were to assume that this particular produce losses twelve pounds per hundred in one year. The pro rated amount per month would be one pound (per hundred). If it deteriorates more than a pound per month (but less than twelve pounds) it is (still) called בכדי חסרון.

⁴ רשב"ג therefore maintains that he may sell it; for otherwise the loss may accumulate to more than the yearly allotment. The חכמים maintain that it should not be sold. See 'Thinking it over'.

(entire) year.

תוספות cites the amount of the yearly deterioration:

כדמפרש בהמפקיד (בבא מציעא מ, א) לחטין ולאורז תשעה חצאי קבין לכור –

As the משנה specifies in פרק המפקיד⁵; for wheat and rice he may subtract nine half קבין for each כור that was deposited⁶ -

אבל אם נחסרו יותר דברי הכל מוכרן בבית דין:

However if the loss exceeded the yearly allotted loss, everyone agrees that (at that point where it exceeds the yearly loss) he sells it in בי"ד.

SUMMARY

According to בכדי if the פירות deteriorate normally (which is considered רש"י), then רשב"ג maintain that the נפקד should sell it, while the חכמים maintain that he should not. If, however their deterioration is greater than the normal amount all agree that he should sell it.

תוספות maintains if the deterioration is less than the yearly amount [but more than the pro-rated monthly amount] (which is considered חסרונן) then רשב"ג maintains to sell it, and the חכמים disagree; however if the deterioration is more than the yearly allotment, then all agree that it should be sold. However if it is deteriorating according to the pro-rated yearly allotment (or less) then all agree that it should not be sold.

THINKING IT OVER

1. According to תוספות if it is deteriorating more than the pro-rated monthly amount, but less than the yearly amount the חכמים maintain that he should not sell it⁷. This is seemingly not understood; why should he not sell it? The owner will suffer a larger than normal loss!⁸

2. Why should the threshold for selling (according to the חכמים) be the annual loss?⁹ Are we assuming that he deposited it for a year?

⁵ The משנה there is discussing where one deposited פירות by his neighbor (and the נפקד mixed the deposit with similar פירות of his own), when it comes time to return the deposit, the נפקד may reduce the amount of פירות returned by the normal deterioration which the משנה states.

⁶ There are one hundred eighty קבין to a כור. Nine half קבין (or four and a half קבין) per כור is two and a half percent.

⁷ See footnote # 4.

⁸ See חידושי הר"ן.

⁹ See ח"ב מ"ת אות קג and קובץ שיעורים אות ס.