

## בשלמא לרבי מאיר – רבי מאיר It is appropriate according to

### Overview

The נבילה cites a מחלוקת between ר"מ and ר"י concerning גר. According to ר"מ, one may gift or sell a נבילה to either a גר or a נכרי without restrictions. However, ר"י maintains that one must follow the תורה literally; you may gift only to a גר and sell to a נכרי exclusively. Therefore according to ר"י we cannot derive איסור הנאה (by other אכילה) from the היתר of מכירה ומכירה by נבילה, since that היתר is necessary for the aforementioned restrictions. However according to ר"מ since there are no restrictions by נבילה; the היתר is teaching us that only by נבילה is there an איסור הנאה; however by all other אכילה it is אסור even בהנאה. One of the focal points of the מחלוקת between ר"מ and ר"י is the word 'או' (מכור לנכרי); according to ר"מ the 'או' is teaching us to give preference to לגר over נכרי. This seems to put the whole לימוד of איסור הנאה in question as תוספות will ask and explain.

תוספות has a difficulty:

**תימה לרבי מאיר נמי יקשה דהא איצטריך לאקדומי נתינה לגר<sup>1</sup> –**

**It is astounding! It is difficult even according to ר"מ; for the פסוק is necessary to prioritize the giving to the גר over selling it to (either a גר or) a נכרי.** How can אבהו ר' derive from this פסוק that לא תאכל means איסור הנאה?!

תוספות answers:

**ותירץ רבינו יצחק דודאי אי לא הוה כתב קרא כל עיקר הוה ידעינן מסברא לאקדומי –**  
**And the ר"י answered that certainly if the פסוק would not have written anything (concerning gifting to a גר or selling to a נכרי); it would only state the איסור נבילה, we would logically conclude the preference of gifting to a גר over selling to a נכרי<sup>2</sup> –**

**אבל השתא דכתב נתינה<sup>3</sup> תתננה ואכלה ומכור –**

**However now that the תורה wrote gifting; gift it and let him eat it and sell it, it became necessary to write 'או', for –**

**אי לא הוה כתב או הוה אמינא דאתא למידרש שאין צריך להקדים<sup>4</sup> –**

<sup>1</sup> We cannot derive איסור הנאה from נבילה according to ר"י because the היתר there is necessary to teach us the specific restriction of מכירה ולנכרי במכירה; similarly according to ר"מ the היתר by נבילה is not 'extra', it is necessary to teach us the limitation of מכירה לנכרי.

<sup>2</sup> Therefore there is seemingly no purpose why the תורה writes לגר וגוי לנכרי; unless we understand that it is to teach us that only by נבילה is there an איסור הנאה however by all other אכילה it is also אסור בהנאה.

<sup>3</sup> Others add ומכירה.

<sup>4</sup> The פסוק is coming to refute our logic that נתינה לגר has priority; therefore we would not know איסור הנאה.

**If the תורה would not have written 'או' (or), [but rather לנכרי] I would have thought that it is coming to teach that there is no necessity for preference; one may choose either way, giving or selling. Therefore the תורה writes 'או' to give precedence for נתינה over מכירה.<sup>5</sup>**

תוספות responds to an anticipated question:

**וצריך ליכתב נמי גר ונכרי<sup>6</sup> –**

**And it is also necessary for the תורה to write both גר and נכרי –**

**דאי לא הוה כתב אלא גר<sup>7</sup> הוה אמינא דאתא למעוטי נתינה דנכרי<sup>8</sup> –**

**For if the תורה would only write גר, I would have thought that it comes to exclude giving to a נכרי; that it is not permitted –**

**ואי הוה כתוב נכרי לחודיה<sup>9</sup> הוה אמינא דאתא למעוטי מכירה דגר<sup>10</sup>:**

**And if it נכרי alone would have been written I would have thought that it is coming to exclude selling to a גר. We should gift it to the גר and not sell it. Selling is limited to נכרים.**

### Summary

The להקדים נתינה לגר למכירה לנכרי cannot be teaching us היתר נבילה, for we would have known this on our own. Therefore we must conclude that the איסורי הנאה is to teach us היתר נבילה.

### Thinking it over

Why did it not say just נתינה לעכו"ם? If נתינה לעכו"ם is permitted (as it is according to ר"מ), then seemingly there would be no reason to exclude anything.<sup>11</sup>

<sup>5</sup> However, this precedence I would have known without any פסוק at all; why is there a need to write anything? Therefore we must conclude that it is teaching us איסור הנאה by other אכילה. See מהרש"א.

<sup>6</sup> תוספות concluded that if the תורה would not have written anything by נבילה we would assume that it is מותר. מכירה (לנכרי) over נתינה לגר. Therefore the whole purpose of writing the ומכור it to teach us that elsewhere there is an איסור הנאה (however if the תורה would have written נתינה then we might have thought that there is no precedence for נתינה over מכירה, therefore the תורה writes או to reinstitute this precedence). However the question is why write both גר and נכרי to teach us איסור הנאה (and then be required to write או); the תורה could have written היתר הנאה by only one, either גר or נכרי and I would derive the איסור הנאה by other איסורים (and it would not be necessary to write או since there will be only one היתר for a גר or a נכרי). תוספות now explains that it is necessary to write both גר and נכרי.

<sup>7</sup> See גר. נתינה ומכירה by א מהרש"א.

<sup>8</sup> We would exclude נתינה to a נכרי for we should not do them any favors; we are obligated to do favors only to a גר. However there is no cause not to sell it to a נכרי (it is not different than selling it to a גר).

<sup>9</sup> See נכרי who interprets this to mean נתינה ומכירה by א מהרש"א. See footnote # 7.

<sup>10</sup> See מהרש"א that if only one would be written (גר or נכרי) we would not know איסור הנאה. We would assume that whoever is written (גר or נכרי) is coming to exclude the other.

<sup>11</sup> See שפ"א and מהרש"א (הארוך אות ק).