

## ואבר מן החי לבני נח – בני נח And a limb from a live animal to

### Overview

The בני נח cites a ברייתא which states that one may not serve to אבר מן החי (because he is transgressing the איסור of מכשול, for בני נח are prohibited from eating אבמה"ה). This indicates that he may, however, serve it to his dogs, indicating that אבמה"ה is permitted בהנאה even though the תורה writes לא תאכל. Our תוספות discusses the validity of this inference.

asks: תוספות

תנימה כיון דבאבר מן החי של נכרי מיירי –

**It is astounding! Since this ברייתא is discussing an אבמה"ה which belongs to a נכרי -**

כדאמר בפרק קמא דמסכת עבודת גילולים<sup>1</sup> (דף ו, ב ושם) –

**As the גמרא states in the first פרק of מסכת ע"ג concerning this ברייתא - מדקתני לא יושיט ולא קתני לא יתן –**

**Since the ברייתא reads 'he should not extend to him' and it does not state 'he should not give it to him'.** This concludes the citation and inference from the גמרא in ע"ז. This proves that the ברייתא is discussing an אבמה"ה which belongs to a נכרי.

concludes his question: תוספות

**אם כן היכי דייק דשרי בהנאה אי לא לפני עור<sup>2</sup> –**

<sup>1</sup> The גמרא there queries whether the איסור of selling animals to a נכרי prior to their holidays is because they will praise their idols (for the profit), or because (the נכרי will offer it as a קרבן לע"ז and) the ישראל will transgress לפני עור. The difference will be if the נכרי owns an animal; there will be no לפני עור, since he already has an animal to offer. The גמרא asks that there is לפני עור even if the נכרי already has an animal and cites this ברייתא as proof. The גמרא responds that there is no proof from this ברייתא for we are discussing a case where the נכרי cannot acquire the אבמה"ה (for it is across the river [דנהרא]). The גמרא concludes that this is indeed evident from the לשון of the ברייתא since it says יושיט and not יתן this implies that the נכרי cannot acquire it himself. This concludes the citation of that סוגיא. The פנ"י explains תוספות proof (in response to the מהרש"א's question) that since the דיוק infers that we are discussing דנהרא עברי, then it must be discussing where it belongs to the נכרי, for if it belongs to the ישראל, then he is always עובר לפני עור, for the נכרי cannot take it himself, since it does not belong to him.

Alternately; it is evident from the גמרא in ע"ז that it understands this ברייתא of לא יושיט is discussing where the אבמה"ה belongs to the נכרי. Otherwise why does it cite this ברייתא (to prove that לפני עור is prohibited even if the נכרי has an animal)? This is what תוספות means when he writes 'כדאמר בפ"ק דע"ז'. The question is why indeed does the גמרא there assume that it belongs to the נכרי? תוספות explains because if it did not belong to the נכרי the ברייתא should have stated לא יתן instead of לא יושיט. See footnote 64.

<sup>2</sup> If the אבמה"ה would belong to the ישראל, then the inference is understood. One may not gift to the נכרי an אבמה"ה on account of לפני עור; however the gifting to the כלבים would be permitted, even though that the ישראל is benefitting from gifting his אבמה"ה to the כלבים (of the נכרי). The נכרי appreciates the אבמה"ה that the ישראל is giving to his כלב. This proves that אבמה"ה is בהנאה; otherwise this gifting would be אסור.

**If this is so (that we are discussing אבמה"ח which belongs to the נכרי) how does the גמרא infer that אבמה"ח is אבמה"ח were it not for the איסור of לפני עור?!**

answers: תוספות

– ויש לומר דכיון דבשכר היה אסור להושיט דאסור להשתכר באיסורי הנאה<sup>3</sup> –

**And one can say; that since it would be forbidden to extend the אבמה"ח to the נכרי for payment, for it is prohibited to profit from איסור"נ and –**

– אף על גב דדיעבד שכונו מותר כדמשמע בפרק בתרא דמסכת עבודה זרה<sup>4</sup> (דף סב, א) –

**Even though that the profit from איסור"נ is permissible once it was earned as is indicated in the last פרק of ע"ז מסכת –**

– מכל מקום אסור לכתחלה –

**Nevertheless initially it is forbidden to profit from איסור"נ –**

– ובחנם נמי אסור דמה שמחזיק לו העובד כוכבים ומזלות טובה חשיב כמשתכר<sup>5</sup> –

**And therefore it is forbidden to be מושיט an איסור"נ to the נכרי even for free, for the implied appreciation that the נכרי extends to the ישראל is considered as profiting for the ישראל.**

anticipates a difficulty: תוספות

– והא דאמר בסוף אלו מציאות (בבא מציעא לב, ב) גבי אם היתה טעונה יין נסך אין זקוק לה –

**And that which the גמרא states in the end of מציאות פרק concerning the case in the ברייתא 'if the animal was laden with נסך he is not required to assist in unloading her; the גמרא comments –**

– ואי אמרת צער בעלי חיים דאורייתא אמאי אין זקוק לה –

**'And if you maintain that צער בעלי חיים is a Torah commandment, why is he not required to assist her to unload?'** This concludes the citing of that גמרא.

continues with his question: תוספות

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However in this case where the אבמה"ח belongs to a נכרי, nothing can be inferred. The ישראל cannot be considered benefitting from אבמה"ח when giving to the כלבים something which belongs to the נכרי. He is not deriving benefit from the אבמה"ח. The נכרי cannot appreciate the אבמה"ח which his dog receives for it belongs to the נכרי. At most the נכרי appreciates the effort and exertion of the ישראל to serve his כלב, but not the אבמה"ח which belongs to the נכרי, not to the ישראל. Seemingly even if אבמה"ח would be אבמה"ח, the ישראל should be permitted to feed it to the כלבים. The ברייתא is merely teaching us the extent of לפני עור (that it applies even when it belongs to the נכרי).

<sup>3</sup> This איסור is even if the איסור"נ do not belong to a ישראל. It is forbidden for a ישראל, for instance to transport איסור"נ for a נכרי, for he is משתכר באיסורי הנאה. See the גמרא in משנה וגמרא ע"ז סב, א.

<sup>4</sup> The גמרא there states that if one sold איסור"נ and was מקדש with the money it is a valid קידושין.

<sup>5</sup> Therefore since the prohibition to be מושיט אבמה"ח לנכרי is only because of לפני"ע; this indicates that אבמה"ח is משתכר באיסור"נ since it is considered מושיט to the ישראל for the אסור; for otherwise it would be אסור to give it to the dogs as well. See 'Thinking it over'.

אף על גב דחשיב כמשתכר באיסורי הנאה ואסור אפילו בחנם –

**And even though it is considered as if he is profiting from איסור<sup>נ</sup> which is forbidden even it is done for free** as תוספות just explained. How can the גמרא ask that if דאורייתא is צער בעל חיים, he should be required to assist?! But that cannot be for he is profiting from איסור<sup>נ</sup>?!  
answers:

תוספות

מכל מקום כיון דאינו מתכוון שיחזיק לו טובה –

**Nevertheless since he has no intention that the נכרי should extend his appreciation -**

ומשום צער בעל חיים חשיב כמו לא אפשר ולא מיכוון<sup>6</sup> דשרי –

**And because** there is also צער בעל חיים (which is a תורה concern), therefore **it is considered like** a case of 'it is not possible and he has no intention', where the ruling is that it is permitted.

תוספות offers an alternate solution:

אי נמי אין זקוק לה משמע ליה אפילו שלא בפני נכרי דאין מחזיק לו טובה:

**Or** you may also say; that the phrase 'אין זקוק לה' indicates that he is not required to unload **even where it is not in the presence of the נכרי**, in which case the נכרי is **not מחזיק טובה** for the ישראל. Therefore the גמרא rightfully asks that he should be required to unload since דאורייתא צער בע"ח דאורייתא and he gets no הנאה at all (so there can be no איסור).

### Summary

איסור<sup>נ</sup> is forbidden from assisting a נכרי [even for free] to acquire איסור<sup>נ</sup> which belong to the נכרי. It is considered as if the ישראל is benefitting from איסור<sup>נ</sup>. The exception is if it is קא מיכוון (or if the נכרי is not aware that he is being assisted).

### Thinking it over

איסור<sup>נ</sup> (as initially assumed that there is no איסור in handing a נכרי his איסור<sup>נ</sup> opposed to gifting him איסור<sup>נ</sup> that the ישראל owns). תוספת concludes that it

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<sup>6</sup> See לקמן כה, ב. This is referring to a case where the person receives הנאה from an איסור בע"ח, however if he cannot avoid the איסור and he has no intention of deriving הנאה from this איסור, then it is permitted for him to receive this הנאה בע"ח. An example of this would be if a person is traveling and the road takes him past a בית ע"ז from where there emanates a pleasant fragrance. If he has no other way to travel (לא אפשר) and he has no intent to enjoy the fragrance (לא מיכוון) he is permitted to pass by and inhale the fragrance. Similarly here it is לא אפשר since דאורייתא צער בע"ח (therefore he must relieve the animal from her load) and it is לא מיכוון for the ישראל is not interested in the החזקת טובה of the עכו"ם therefore it is permitted.

is (even בחנם) אסור for he is משתכר באיסורי הנאה. What changed from the question to the answer? Is there any difference between handing the נכרי his <sup>7</sup>איסור of the ישראל and gifting him the איסור?

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<sup>7</sup> See אור החמה and ח"ב אות קמא.