

היינו תשע חנויות – That is comparable to the case of ‘nine stores’

OVERVIEW

The גמרא states that if there were nine piles of מצה and one pile of חמץ, and a mouse came and took a piece from one of these piles and we do not know if it took a piece of מצה or a piece of חמץ, this case is comparable to the case of ‘nine stores’. If there were nine stores in town which sold בשר שחוטה and one other store which sold בשר גמול and a person bought meat from one of these stores and he knows not from which store, this ספק is אסור.¹ However if the meat was found outside the stores it is כשר.² The same rule applies to our case of ט' צבורין. If the mouse took it directly from the piles then ספיקו אסור; if however a piece separated from the piles and the mouse took that piece we follow the majority and assume that it is מצה. It is not clear from the גמרא however, to what specific situation this ruling is referring to. There is dispute between רש"י and תוספות in this matter.



לפי מה שפירש הקונטרס³ לענין בדיקה⁴ לא נהירא לרבינו יצחק –

According to the interpretation of רש"י that this ruling is in reference to **searching** for חמץ, **the ר"י finds that** the גמרא is **not clear**. There is a difficulty in understanding the גמרא if we assume that the issue is whether the house requires בדיקה under such circumstances. - תוספות explains the difficulty -

דהיכי מייתי ראיה מתשע חנויות דהוי ספיקא דאורייתא⁵ ואזלינן לחומרא –

For how can the גמרא **bring proof** how to deal with this case **from תשע חנויות**?! **For there** by ט' חנויות (since it is קבוע) **it is a ספק** in a תורה law, **and we follow the stringent** option and forbid the meat to be eaten -

והכא ספיקא דרבנן הוא כדאמרין בסמוך⁶ –

But here, if we are discussing בדיקה, **it is merely a ספק דרבנן** as the גמרא **shortly**

¹ This is the rule that כל קבוע כמחצה על מחצה דמי. If the איסור is ‘in its place’ (like the store which sells גמול), then even if it is a מיעוט, nevertheless it is considered as if the איסור and the היתר are equal. It remains a דאורייתא which is judged in a stringent manner; therefore it is (usually) אסור. The rule of קבוע is derived from the פסוק (דברים) [שופטים] יט,יא. See כתובות טו,א.

² This rule is 'כל דפריש מרובא פריש'. We assume that it ‘separated’ from the majority.

³ בד"ה ואתא.

⁴ The mouse took this piece and entered into a house with it. The issue is whether this house must be (re)checked for חמץ or not.

⁵ In the case where he bought it in the stores it is considered קבוע and the rule is that מחצה דמי; therefore it is a ספק and by a דאורייתא we are strict.

⁶ דף יא. The גמרא states that בדיקת חמץ alone is sufficient.

states. By a ספק דרבנן we are lenient⁷.

פירש"י offers a possible solution to justify תוספות:

מיהו יש לומר דאירי כגון שלא ביטל⁸ –

However it is possible to say that the גמרא **is discussing** a case **where for instance he was not מבטל** the חמץ. In such a situation by ט' צבורין, the בדיקה can be considered a ספק דאורייתא, and therefore this is a ספק, just as by the חנויות ט' and it is indeed a fair comparison.

בדיקה has an additional difficulty with פירש"י that we are discussing:

ועוד קשה דגבי תשע חנויות ליכא חזקת היתר אבל הכא אוקמא אחזקת בדוק⁹ –

And there is an additional difficulty to assume that the issue here is whether בדיקה is necessary, **for by חנויות ט' there is no presumption of permissibility** [as far as this piece of meat is concerned], **however here** (by ט' צבורין) **let us place** the house on its initial **presumption** that it is a **searched** house and has no need to be searched again.

תוספות explains why there is a חזקת בדוק to the house:

דהא בבדוק מיירי דאי לאו הכי פשיטא דבעי בדיקה –

For (according to רש"י) **we are discussing** a house that was **בדוק**, **for if this were not so** and the house was not **בדוק**, then **certainly it requires בדיקה** (even if the mouse did not bring in anything at all). Therefore since this house has a חזקת בדוק this should resolve the ספק whether the mouse brought in חמץ or מצה. The חזקת בדוק of the house resolves this ספק that we place the house in its initial חזקת that it is **בדוק** and requires no additional בדיקה.

1. בדיקה the house requires פירש"י that the issue here is whether תוספות has two questions on ט' (מדרבנן בדיקת חמץ is only ספיקא דרבנן) which is a ט' צבורין to compare the case of חמץ and here ספיקא דאורייתא which is a חנויות. 2. Even if we will assume that he was not מבטל the חמץ and here

⁷ Granted that the ט' צבורין is considered קבוע, but nevertheless קבוע על מחצה על מחצה which makes it an 'even' ספק (where תוספות claims that we should be lenient), and by a ספק דרבנן we are lenient. It will be necessary to differentiate between this ספק דרבנן (where תוספות claims that we should be lenient), and the case where a חולדה brought חמץ into the house and there is a ספק whether it ate it up (where we maintain that בדיקה is required). In the latter case, חמץ was certainly brought into the house; the question is whether it was eaten, in such a case there is a חזקת בדיקה (for the entire תקנה of חמץ is only on a ספק that maybe there is חמץ in the house), however if there is a ספק if חמץ entered into the house then we should rule that ספיקא דרבנן לקולא.

⁸ We will say that even though the following case of ב' ציבורין וכו' is discussing a case where he was מבטל, nevertheless our case of ט' צבורין is discussing a case where he was not מבטל.

⁹ Even if it is a ספיקא דאורייתא (where he was not מבטל the חמץ), nevertheless the rule is that by a ספיקא דאורייתא we rely on the חזקה to resolve the ספק. See ברכת אברהם פנ"י, and others who discuss how the חזקת בדוק of the house can resolve the ספק of whether this ככר was חמץ or not.

too it is a ספיקא דאורייתא (for whenever the חמץ was not נתבטל there is a מדאורייתא), nevertheless our case is different than חנויות ט'. By חנויות ט' there is no חזקת היתר for the meat that was bought; however here the בית (which obviously was already searched) has a חזקת בדוק. The חזקת היתר should resolve the ספק in a lenient manner.

ט' צבורין offers his explanation of the case of תוספות:

ונראה לרבינו יצחק דלענין שהביא עכבר לבית ונמצא קבעי אי שרי לאכילה אי לאו –
And it is the view of the ר"י that we are discussing a case where the mouse brought this piece that he took from the piles into the house and it was found; the question is whether this piece is permitted to be eaten or not.¹⁰

תוספות asks:

ואם תאמר כי אתא עכבר ושקל מהני ציבורין אמאי חשיב ליה קבוע¹¹ –
And if you will say; when the mouse came and took from these piles why is this considered קבוע?!

מאי שנא נמצא בפי עכבר מנמצא ביד נכרי –
What difference is there if it was found in the mouth of the mouse or if it was found in the 'hand' of a gentile?!

תוספות will show that if a ספק is found ביד נכרי it is not considered קבוע:

דבפרק גיד הנשה (חולין צה,א ושם) פריך לרב דאמר בשר שנתעלם מן העין אסור¹² –
For in פרק גיד הנשה גמרא challenges רב who maintains that meat which disappeared from 'the eye' is forbidden -

מבנמצא הלך אחר הרוב –
From the ruling of חנויות ט' which states that if the meat was found then follow the majority. It is evident that even if the בשר was נתעלם מן העין (for it was 'found') it is מותר.
ומשני שנמצא ביד נכרי¹³ –

And the גמרא answers that the case of חנויות ט' is where it was found in the hand

¹⁰ This resolves both difficulties; in both cases it is a ספיקא דאורייתא (a ספק אכילת נבילה and a ספק אכילת חמץ) and there is no חזקת היתר on this piece (of meat or what was taken from the piles). Therefore we can derive the ruling of ט' since both cases are identical. See 'Thinking it over' # 2.

¹¹ It seems that when asking this question תוספות assumed that the case of קבוע by the צבורין ט' was that we saw the mouse going into the house from the צבורין ט'. [We recognize this piece is from the צבורין piles.] We did not however actually observe the mouse taking the piece from the צבורין. See following footnote # 14. Perhaps תוספות maintained in this question that the rule of קבוע is only when the person himself goes to the מקום הקבוע, not when something was taken ממקום הקבוע.

¹² If meat was not seen for a period of time, it is forbidden to be eaten, for we are concerned that perhaps birds took away the original meat and replaced it with בשר טריפה.

¹³ There is no concern of 'birds' exchanging the meat. The נכרי bought it from one of the stores and is not suspect of tampering with his purchase.

of a נכרי (and the נכרי (it was not נתעלם מן העין). In any event even though it was found נכרי (and the נכרי acquired it only from the stores), nevertheless it is considered פירש (and not קבוע) and it is מותר. Similarly if we see the mouse entering the house it should also be considered פירש and not קבוע (even if we know that he took it from the piles).

answers: תוספות

ואומר רבינו יצחק דהכא מיירי כשראינו שלקח מן הקבוע¹⁴ –

And the ר"י answers that here by צבורין ט' we are discussing a case where we saw that the mouse took from the קבוע (we saw him taking it directly from the piles), so - **שנולד הספק במקום קביעות** –

That the ספק was created in the place of קביעות therefore it is considered קבוע -

אבל אם לא ראינו הוה ליה כפירש ואזלינן בתר רובא –

However if we did not see the mouse taking a piece from the piles (but rather noticed him running toward the house from the piles with something in his mouth) **then it would be considered like it separated** from the קבוע **and we would follow the majority**, thereby rendering it מצה. Therefore by the נכרי since we did not see him purchasing it in the stores, the ספק was not created in the מקום הקביעות (the stores); it is not considered קבוע, but rather פירש.

anticipates a question: תוספות

והא דפריך בתערובות¹⁵ (זבחים דף עג, ב) **גבי זבחים שנתערבו בחטאות המתות**¹⁶ –

And that which the גמרא asks in פרק תערובות concerning live sacrifices which became intermingled with חטאת sacrifices that are to be killed -

או בשור הנסקל –

Or these live sacrifices were intermingled with an ox that is to be **stoned**, the rule is that in either case all the sacrifices are to be put to death and cannot be brought as a קרבן even if the sacrifices are in the majority. The reason is that since they are intermingled; therefore on every animal, there is the possibility that it is a חטאת המתה or a שור הנסקל. The גמרא considers this mixture קבוע, and it is a ספק of מחצה ומחצה, even though the זבחים outnumber the חטאות המתות (or (שור הנסקל). The גמרא there asks -

אמאי ימותו כולם נכבשינהו וניידינהו ונימא כל דפריש מרובא פריש¹⁷ –

Why should all the זבחים die?! Let us pressure them so that they will move so

¹⁴ This is not as תוספות assumed in his question. See previous footnote # 11. What establishes the rule of קבוע is that the ספק is created in the מקום הקבוע, regardless if it was a man or a mouse.

¹⁵ We refer to this פרק as (שנתערבו) כל הזבחים.

¹⁶ One example of a חטאת המתה is a חטאת whose owner (the one who was obligated to bring this חטאת) died. This חטאת must be put to death; it cannot be offered on the מזבח as a קרבן.

¹⁷ The גמרא there answers that the reason we do not do this (נכבשינהו וניידינהו) is because we are concerned that he may take from the קבוע (before they have a chance to separate). See later in this תוספות.

it will not be considered קבוע, **and** (as the individual animals will be separated from the [large] mixture) **we will say that whichever animal separated, he separated from the majority** of the זבחים that are fit for the מזבח. This concludes the citing from the גמרא in זבחים תוספות. continues with the question:

אף על פי שכבר נולד הספק במקום קביעות –

even though the doubt arose in the place of the קביעות. There was initially a ספק when all the animals were קבוע (before they were moved). תוספות here just explained that once we see the ספק in the place of the קביעות (we see the mouse going and taking from the piles), we cannot say afterwards פריש מרובא פריש. How can the גמרא there ask ונבשינהו וניידינהו to make it! מרובא פריש, once there is a ספק במקום הקביעות, there can no longer be a rule of פריש!

replies: תוספות

שאני התם דלא הוי קבוע גמור שהאיסור מעורב בהיתר ואינו ניכר –

It is different there (in זבחים) for it was never a complete קבוע; for the איסור was intermingled with the היתר and the איסור was not noticeable -

ומדרבנן אסרו בקבוע זה –

And this type of קבוע where לא הוכר האיסור is forbidden only מדרבנן -

דמדאורייתא לא חשיב קבוע אלא כשהאיסור ידוע במקומו¹⁸ –

For מן התורה it is never considered קבוע¹⁹ unless the איסור is known in its place.

Therefore by a קבוע דרבנן we can say that if later it becomes פריש we will say מרובא פריש.

תוספות points out that this difference has an additional consequence:

ולחכי נמי גזרין התם טפי שמא יקח מן הקבוע מבנמצא כיון שאין האיסור ידוע:

And therefore also the חכמים **גזרו there** that even if they will be separated, nevertheless we forbid the פריש, for **perhaps he will take from the קבוע**; however this גזירה is not made by ט' חנויות if it was 'found'. We do not say that even if it is found and was פריש it should still be אסור on account of the גזירה that שמא יקח מן. This גזירה is only by the זבחים. The reason is that by the זבחים the גזירה is fitting **since the איסור is not known**, therefore if we allow the פריש the people will not distinguish the פריש from the קבוע. However by ט' חנויות everyone will distinguish between the פריש and the קבוע; even if we permit the פריש, no one will be מתיר by קבוע (since it is the איסור). (הוכר האיסור).

SUMMARY

According to רש"י the case of ט' צבורין is concerning the obligation of בדיקה, however according to תוספות the issue is whether the piece is permitted to be eaten.

¹⁸ In the case of ט' חנויות or ט' צבורין the איסור (המז' of צבור or חנות נבילה) is clearly identified in its place.

¹⁹ מותר in the case of the זבחים שנתערבו and they would follow the רוב מן התורה.

It is considered קבוע if we see the mouse take it from the מקום הקביעות; otherwise it is פריש. It is considered קבוע מדאורייתא if the איסור is known. If it is not known במקומו then it is קבוע מדרבנן (and even פריש can be אסור, on account of the חשש that he will take מן הקבוע since it is not ניכר).

THINKING IT OVER

1. What would the דין be if the עכבר took from the ציבורין (and we do not know from which), and later we found (in the house) half of what the עכבר took, does the house require בדיקה (for the other half) or not?²⁰
2. According to תוספות why was it necessary to mention the עכבר at all? The cases can be (without the עכבר); either if the person took from the piles or he took from the פירש!²¹

²⁰ See דבר שמואל.

²¹ See צל"ח.