

He found it between two dovecotes

מצאו בין שני שובכין –

OVERVIEW

The גמרא challenged (רוב וקרוב הולכין אחר הרוב (who maintains) from our משנה which states that if the bird was found between two שובכין (each within fifty אמות of the bird¹) it belongs to the closer שובך. Our תוספות clarifies this question and other questions as well.

תוספות states that we can infer that this ruling of the משנה that we follow the קרוב, is valid -

ואף על גב דחד מינייהו נפיש² -

Even though that one of these שובכין is larger than the other, and nevertheless we follow the קרוב; this contradicts the ruling of ר"ח that we follow the רוב.

תוספות anticipates a difficulty:

אומר רבינו יצחק דהך פירכא הוי מצי למיפרך אמתניתא דתשע חנויות³ -

The ר"י states that the גמרא could have asked this question (that from our משנה it appears that we follow the קרוב against the רוב) **on the ברייתא of nine stores –**

תוספות responds to an anticipated answer and rejects it:⁴

דהאי קורבא דלא מוכח הוא דאי הוי תוך חמשים לזה הוי נמי תוך חמשים לזה -

For in our משנה it is also a מוכח דלא מוכח, for if it is within fifty אמות from one שובך it is also within fifty אמות from the other שובך -

ואי הוי חוץ חמשים לזה הוי נמי חוץ חמשים לזה⁵ אפילו הכי אזלינן בתר קורבא -

¹ See רש"י ד"ה נמצא. See however later in this תוספות (footnote # 5).

² Seemingly our גמרא states this clearly (ואע"ג דחד מינייהו נפיש מחבריה) (בדוחק) we can say that תוספות had a different גירסא (where these words do not appear), or תוספות may be stating that this which the גמרא states גמרא states 'וכו' וואע"ג is to be inferred from the משנה.

³ See (תוס' ד"ה רוב) (and previously in רוב פסחים ט,ב). The case is where in this city nine stores sell (כשר) בשר שחוטה. The rule is if meat is found in this city, it is כשר, for we assume it came from the רוב stores, which sell כשר. This rule is valid even if the meat was found closer to the store which sells כשר. The question that should have been asked is, in that ברייתא we follow the רוב against the קרוב, and in our משנה we follow the קרוב against the רוב. See 'Thinking it over'.

⁴ See previously רוב (TIE footnote # 17 & 18), where תוספות distinguishes between a קורבא דמוכח and a regular קורבא which is not מוכח. The ר"י there explained that ר"ח maintains הרוב אחר הלוח even if it is a קורבא דמוכח. Perhaps we can answer that the גמרא asks from our משנה on ר"ח because both rulings are by a קורבא דמוכח (our משנה can be considered a קורבא דמוכח [the שובך ניפול comes from the closest]), however the case of ט' חנויות is a קורבא דלא מוכח, therefore (only) there do we follow the רוב.

⁵ According to תוספות the rule of שובכין בין ב' שובכין where within fifty אמות of the bird or they were both outside the fifty אמות (See footnote # 1). However, if one is within fifty and one outside, it obviously belongs to the one within the fifty.

And if it is outside the fifty for one, it is also outside the fifty for the other so it is not a קורבא דמוכה,⁶ and **nevertheless we follow the קרוב**, why then by ט' הניית (which is also a קורבא דלא מוכח) do we follow the רוב?!

תוספות responds:

ומיהו מצינן למימר דעיקר לא פריך⁷ אלא משום דבעי למיפרך וניזל בתר רובא דעלמא⁸ -

However we can say that essentially he did not want to ask on ר"ה that from our משנה we assume that we do not follow the רוב, **rather he wanted to ask, 'but let us follow the רוב of the world'**; the birds at large vastly outnumber the birds of the שובך; we should follow that majority according to ר"ה. He should be allowed to keep it.

תוספות asks:

אבל קשיא לרבינו שמשון בן אברהם דהיכי מצי למימר אף על גב דחד מינייהו נפיש -

However, the רשב"א has a difficulty; for how could the גמרא assume that the ruling of the משנה that we give it to the closer שובך is **even** in a case where one שובך is **larger** than the other, for then how can we explain -

הא קתני מחצה על מחצה שניהם יחלוקו ואי חד מינייהו נפיש ניזל בתר רובא⁹ -

This which the משנה teaches if they were half and half apart (equidistant), the rule is that the two שובכין **divide** the bird, **but if one was larger, we should follow the majority?!**

תוספות answers:

ואומר רבינו יצחק דהוי מצי למימר¹⁰ וליטעמיד:

⁶ There is no clear indication (קורבא דמוכה) that there is a greater chance that it came from the שובך which is thirty אמות away, any more than it came from the שובך which is forty אמות away.

⁷ The ששניהם suspected that his first question of מחבריה נפיש מינייהו ואע"ג דחד מינייהו can be easily answered by saying ששניהם. He only asked this question as an introduction to the next question of רובא דעלמא וליזל בתר רובא דעלמא.

⁸ וליזל בתר רובא ר"ה maintains that we follow the רוב even against a קורבא דמוכה (see footnote # 4). In the question of רובא דעלמא, it is a case of a רוב against a קורבא דמוכה; it is fairly obvious that most probably these birds are from these two שובכין, and not from birds at large. We have a valid question on ר"ה; even if both שובכין are of equal size, we should follow רובא דעלמא, even though it is against a קורבא דמוכה, for this is the ruling of ר"ה. However, the גמרא could not ask this question on the ט' הניית ברייתא (that just as there we follow the רוב, so here too we should follow the רובא דעלמא), because we cannot infer from that ברייתא that we follow a רוב over a קורבא דמוכה. The possible קרוב by ט' הניית is certainly not a קורבא דמוכה. In our משנה however the קרוב of the birds to the שובך as opposed to רובא דעלמא is certainly a קורבא דמוכה. There is no contradiction between our משנה, which follows a קורבא דמוכה and the ברייתא which follows the רוב by a קורבא דלא מוכח. Therefore, since we could not ask the follow up question (וליזל בתר רובא) (דעלמא), from ט' הניית, we did not bother to ask the initial question (of following the רוב) since we anticipated the answer of ששניהם שווים, so there is no רוב.

⁹ Everyone agrees that when there is no קרוב (such as the case of מחצה על מחצה) we certainly follow the רוב; why does the משנה say יחלוקו?! Obviously, we need to say that the סיפא (and therefore also the רישא) is in a case where all the שובכין are of equal size, so how can the גמרא assume that מחבריה נפיש מינייהו ואע"ג דחד מינייהו?!

¹⁰ This 'וליטעמיד' is different than the usual 'וליטעמיד'. Here the actual answer and the 'וליטעמיד' say the same thing that

And the ר"י says; you are correct; the גמרא **could have responded** to this מקשן (who assumed that one was larger), saying **and according to your reasoning** that one שובך is larger, how will you explain the סיפא?! Obviously you cannot. Rather we must assume that both שובכין are of equal size.

SUMMARY

The real intention of the מקשן was to (ultimately) ask רובא דעלמא (even against a דמוכה), so therefore it did not ask on ט' חנויות (why we follow the רוב there) since there is no דמוכה there.

THINKING IT OVER

תוספות asks that our משנה of ב' שובכין which rules that we follow the קרוב (even by a קורבא) contradicts the ט' חנויות ברייתא (קורבא דלא מוכח).¹¹ Seemingly תוספות could have asked that the ruling of ב' שובכין contradicts our own משנה. Previously when the גמרא assumed that the ruling of תוך נ' belongs to the בעל השובך is even in a case where there is another larger שובך outside the נ' אמות (we rule that it belongs to the closer one because it is a קורבא (דמוכה)). We then need to understand that in the סיפא where it is חוץ לנ' it belongs to the finder because we assume that it came from הפקר, etc. the רובא דעלמא.¹² In this case the קרוב of the שובך outside נ' is a קורבא דלא מוכח that is why we follow the רוב. However, in the case of ב' שובכין we follow the קרוב (even though it is מוכח). This seems to be a contradiction in our משנה itself! Why did not תוס' ask this question?!¹³

the שובכין are of equal size. The difference is in the tone of the answer. The גמרא answered it in a 'quiet' way; we can say that the משנה is discussing where they are all equal, The גמרא could have taken a more 'aggressive' tone; saying how can you even assume they are not the same; how will you then explain the סיפא?!

¹¹ See footnote # 3.

¹² See beginning of ד"ה ואי תוס'.

¹³ See מהרש"א.