

Majority and closest; follow the majority – רוב וקרוב הלך אחר הרוב

OVERVIEW

ruled that when there is a conflict whether to follow the majority (רוב), or whether to follow that which is closest (קרוב); follow the רוב. Our תוספות discusses this ruling of ר"ה.

asks:

ואם תאמר מאי קא משמע לן מתניתא היא (כתובות דף טו,א) -

And if you will say; what is ר"ה teaching us; this ruling is already stated in a ברייתא. The ברייתא reads -

ט' חנויות כולן מוכרות בשר שחוטה ואחת מוכרת בשר נבילה [וכולי]¹ -

All the nine stores are selling slaughtered (כשר) meat and one store is selling meat from a carcass (non-כשר), etc. -

ובנמצא הלך אחר הרוב² משמע אפילו נמצא קרוב לחנות המוכרת נבילה³ -

But if the meat was found outside the stores, and we do not know from which store it came from, the ruling is to follow the majority; this rule is valid even if the meat was found closest to the store that is selling נבילה!

answers:

ותירץ רבינו יצחק בר מרדכי דאי ממתניתא הוה אמינא כגון דאין דלתות מדינה נעולות⁴ -

And the ברייתא ר"י בר מרדכי answered that if our only source would be from the ברייתא, I could say that the ברייתא is in a case where for instance the doors to the city were not locked shut -

דאיכא תרי רובי⁵ -

For in that situation there are two majorities, and only in such a case do we follow רוב over קרוב, but not if there is only one majority, therefore -

¹ The ruling is if the person went and bought meat in one of the ten stores and he does not remember in which store he bought the meat, the meat is forbidden since the ספק originated in the store, which is קבוע (it is fixed in its place), we rule that כל קבוע is like מחצה על מחצה so it is a ספק and a (דאורייתא) אסור is ספק איסור.

² The majority of stores sell בשר שחוטה; therefore, it is permitted to eat this found piece of meat.

³ This is a classic case of רוב (so it is כשר), or קרוב (so it is אסור) and the ruling is that we follow the רוב. Why do we need the ruling of ר"ה (who is an אמורא), when there is a clear ruling in a ברייתא that אחר הרוב?

⁴ If the doors are open, there is the possibility that this meat came from outside the city, where most of the meat is (also) כשר. [We are dealing with cases in ארץ ישראל, where most of the שחיטה was כשר.]

⁵ We say that whether the meat is from the city, we have the רוב of ט' חנויות, or whether the meat is from outside the city we have the רוב that most of the meat is בשר שחוטה, therefore since there is תרי רובי, therefore it overpowers קרוב. However, we do not know what the ruling should be if there is only one רוב (like if דלתי מדינה נעולות), this is what ר"ה is teaching that even in cases where there is only רובא חד, nevertheless אחר הרוב (and not קרוב).

קא משמע לן רבי חנינא דאפילו דלתות מדינה נעולות דליכא אלא חד רובא -
ה"ה informs us that even if the doors of the city are locked, so there is only one
רוב, nevertheless we still maintain that אחר הרוב הלוך אחר הרוב.

anticipates a difficulty:

ורבי זירא דפריך ליה בסמוך⁶ -

And ה"ה who shortly challenged ה"ה from the law of ערופה -

אף על גב דרבי זירא נמי אית ליה לקמן⁷ אפילו דלתות מדינה נעולות⁸ -

Even though ה"ה also maintains later that even in a case where נעולות
ה"ה (so there is only one רוב), we still follow the רוב and not the קרוב –

replies:

היינו בתר דשני ליה⁹ דקיבלה מרבי חנינא¹⁰ -

This which ה"ה maintains that even רובא בהזד רובא we follow the רוב, **this was after** ה"ה
answered ה"ה, for ה"ה accepted from ה"ה his answer.

presents a differing opinion:

ואין נראה לרבינו יצחק בן אברהם¹¹ דאם כן מאי פריך ליה מקרא -

And the ר"י בר מרדכי, why **did ה"ה challenge ה"ה** from the פסוק of ערופה -

תיקשי ליה אמתניתא דתשע חנויות¹² -

ה"ה should have asked on the משנה of חנויות ט' from the פסוק of ערופה!

anticipates and rejects a possible resolution to his question:

⁶ ה"ה asked how can ה"ה say אחר הרוב, when in the case of ערופה, the תורה clearly states that the closest city to the corpse is required to being the ערופה, but not the city which has the most people. This shows that we follow the קרוב and not the רוב.

⁷ כד, א.

⁸ Why is ה"ה challenging ה"ה, when even ה"ה agrees with ה"ה that (even by one רוב) we follow the רוב and not the קרוב? The question should be on ה"ה himself, not (only) on ה"ה!

⁹ ה"ה answered ה"ה (see footnote # 6) that the פסוק is discussing a case where there is no רוב. There is no other city (within reasonable distance) which had more people than the קרוב. Therefore, we follow the קרוב, since there is no רוב. However, when there is a רוב we follow the רוב, not the קרוב.

¹⁰ However, when he asked the question ה"ה assumed that the ruling by ערופה is even if there is another city with a רוב. Therefore, he challenged ה"ה. However, in the end he accepted and agreed with ה"ה.

¹¹ The ר"י בר מרדכי does agree with the ר"י בר מרדכי that the משנה of חנויות ט' is a 'classic' case of קרוב.

¹² The same question he has on ה"ה from ערופה (that from there it is apparent that אחר קרוב), the same question should also apply to the משנה of חנויות ט' where we follow the רוב and not the קרוב, which is in opposition to the פירוש of ערופה, where we follow the קרוב and not the רוב (in the אמינא). [The advantage of asking the question on the משנה rather than on ה"ה, because regarding an אמורא we can somehow say that he was mistaken; however, it is much more difficult to say that concerning a משנה from חנויות.]

ואפילו תוקמה כשאין דלתות מדינה נעולות¹³ -

And even if you will establish the ברייתא of ט' הנייות that it is in a case where the דלתות המדינה are not נעוליות, so there it is תרי רובי –

תוספות rejects this answer:

הא טעמא דבעינן תרי רובי אינו אלא מדרבנן¹⁴ -

But the reason we require תרי רובי is only מדרבנן, however מן התורה one רוב is sufficient. We (sometimes) require תרי רובי -

משום גזירה כדאמר בסוף פרק קמא דכתובות (דף טו,א) –

On account of a concern, as the גמרא states in the first פרק of כתובות.

תוספות offers a differing view:

ונראה לרבינו יצחק דאי ממתניתין הוה אמינא בנמצא באמצע¹⁵ -

And it seems to the ר"י that if we would derive the ruling from the ברייתא of ט' הנייות, I would have said that it is in a case where the meat was found in the middle it was not closer to either of the stores –

תוספות offers an alternate solution:¹⁶

ועוד נראה לרבינו יצחק דרבי חנינא אתא לאשמועינן -

And additionally, it appears to the ר"י that ר"ה is coming to teach us -

דאפילו בקורבא דמוכח¹⁷ דאזלינן בתר רובא¹⁸ -

And even by a 'closeness' which is compelling, nevertheless we follow the רוב –

¹³ Seemingly this would answer the question; if there is only one רוב we follow the קרוב as by עגלה ערופה, however when there is תרי רובי (like by ט' הנייות) we follow the רוב. However, תוספות rejects this resolution.

¹⁴ This means whenever רוב is effective, מה"ת we only require one רוב, and even in places where we require תרי רובי this is only a stringency מדרבנן, so for instance even if we rule regarding ט' הנייות that תרי רובי are required (that דלתי (דלתי מדינה נעולות) that is only מדרבנן, however מה"ת the meat would be כשר even רובי בהד (where נעולות). We therefore have a contradiction between the ברייתא of ט' הנייות, where we follow the רוב (even רובי מה"ת), and the פרשה of ערופה, where we follow the קרוב. Why did ר"ז not ask his question on the ברייתא of ט' הנייות? See 'Thinking it over'.

¹⁵ There is no קרוב at all therefore we follow the רוב. This answers all the questions. It explains the חידוש of ר"ה that רוב is stronger even than קרוב, which we would not know from ט' הנייות, since there is no קרוב there at all; it was נמצא באמצע, and obviously there is no challenge from עגלה ערופה, since there is no קרוב (by הנייות). (ט' הנייות).

¹⁶ The previous answer may not be that satisfying for it requires us to establish the case of ט' הנייות in a unique situation where the meat was found (exactly) in the middle (which is highly unusual).

¹⁷ A קורבא דמוכח is that not only is there a קורבא, but additionally there are other indications to support that it came from the קרוב. It is not clear (in this תוספות) whether עגלה ערופה is a קורבא דמוכח or not, but it has no bearing on the question of ר"ז on ר"ה for if ע"ע is not a קורבא דמוכח and nevertheless we follow it, the question on ר"ה is all the greater.

¹⁸ The case of ט' הנייות is (seemingly) not a situation of דמוכח. Therefore, we need ר"ה to teach us that even by a קורבא דמוכח we follow the רוב.

תוספות supports his contention:

וכן משמע בסמוך גבי חבית שצפה בנהר¹⁹ =

And so it seems shortly regarding a barrel of wine which was found floating in the river -

דבעי למימר דרב דאמר כנגד עיר שרובה ישראל מותרת לית ליה דרבי חנינא²⁰ -

Where the גמרא wanted to say that רב, who maintains that if it was found in the river **opposite a city where the majority were Jews, the wine is permitted**, it is because רב **disagrees with ר"ה** regarding רוב וקרוב and רב maintains קרוב אחר הלוך. This concludes the citation from the גמרא –

תוספות asks (to prove his point that there is a concept of דמוכה):

והיכי מתוקמא דהא משמע דמותרת אפילו נמצאת סמוך לבית נכרי -

But how is s'רב ruling justified by saying that he argues with ר"ה, **since it seems from the גמרא that the wine is מותר even if it was found near a s'נכרי house -**

וזהו מטעם דאזיל בתר רוב העיר ישראל וכרבי חנינא²¹ -

And this is because he agrees with ר"ה that we follow the majority of the inhabitants of the city who are Jewish, so how does the גמרא state that רב disagrees with ר"ה?!

תוספות explains:

אלא ודאי לגבי קורבא דביתו של נכרי הוי קורבא דלא מוכח -

Rather it is certain that regarding the קורבא of the s'נכרי house, that קורבא is considered a דלא מוכח -

כיון שדרים רוב ישראל באותה העיר²² -

Since most of the inhabitants of the city are ישראל -

ורב אזיל בתר רובא היכא דהקורבא לא מוכחא ודלא כרבי חנינא²³ -

¹⁹ כדא, A barrel of wine was found floating in a river opposite a city whose majority were Jews. רב ruled that it is permitted to drink from this wine (presumably it is from this city), and שמואל maintained that it is אסור for perhaps it came upstream (from דקרא) where there was a preponderance of נכרים and it could be נסך יין.

²⁰ Presumably the גמרא meant that most of the wine (in the world) is from נכרים; however, this barrel since it was found near (קרוב) a Jewish city, so we follow the קרוב, but not the רוב, in opposition to ר"ה.

²¹ We are assuming that if the barrel was found in the river in the vicinity of a בית נכרי; the קרוב tells us that it belongs to the נכרי; the רוב tells us that it belongs to the ישראל (since רוב העיר are ישראל). Why does the גמרא assume that רב argues with ר"ה, when it seems that the only way to understand the ruling of רב is if he agrees with ר"ה?!

²² The fact that the barrel in the river was in front of the s'נכרי house gives us little indication that it belongs to the נכרי; it is more likely that it is from the Jews since they comprise a majority of the people in that city. This is not the issue which ר"ה was addressing; since it is a דלא מוכח קורבא everyone agrees that we follow the רוב. This is obvious.

²³ The רש"י indicates that these words 'ודלא כרבי חנינא' belong on the next line, after the words ודלא כרבי חנינא. We could perhaps say that the words can be understood here to mean that רב, who follows רוב only when it is a דלא מוכח קורבא, is not in agreement with ר"ה, who always maintains אחר הרוב even by a דמוכה.

And רב also follows the רוב in a case where the קורבא is not compelling (and not like ר"ח) -

אבל אותה עיר כנגד האי דקירא הוי קורבא דמוכח ולכך אזיל בתרה²⁴ -

However, if we would compare that city, where the barrel was found, as opposed to the דקירא (which had a majority of נכרים); that city is a קורבא דמוכח and therefore רב rules to follow it (against the רוב) [and this is not like ר"ח] –

continues: תוספות

וכל ההלכה תתיישב כמו שאפרש²⁵ -

And the entire הלכה of ר"ח will be understood (according to the second answer of the ר"י), as I will explain –

ולחכי לא מייתי בכוליה גמרא דרבי חנינא -

And therefore (since ר"ח is addressing a case of קורבא דמוכח), ר"ח is not cited in the entire ש"ס where רוב וקרוב is discussed -

אלא לקמן²⁶ גבי חצבא דאישתכח בפרדיסא של ערלה -

Except for two places, one is later in our גמרא regarding a barrel of wine which was found in a vineyard of ערלה -

דקורבא דמוכח הוא שנמצא בפרדיסא דערלה גופיה²⁷ -

Which is a case of קורבא דמוכח, since the barrel was found in the ערלה vineyard itself –

cites the only other time in ש"ס that this ruling of ר"ח is cited: תוספות

ובפרק קמא דביצה (דף יב, ב) מייתי ליה נמי גבי הא דתנן -

And the גמרא also cites ר"ח in the first פרק of ביצה, regarding this which the משנה taught there -

זימן שחורים ומצא לבנים לבנים ומצא שחורים אסורים -

²⁴ When the question is regarding the city itself, obviously it makes more sense that it came from the majority of Jews than to say it came from the נכרי since the barrel is closest to his house; for this closeness is no proof at all (a floating barrel moves around a bit). All agree that in this type of case where a רוב opposes a מוכח that we follow the רוב. However, regarding this barrel there is another issue. perhaps it came from faraway city upstream where the majority are נכרים. In this case the fact that it was found near a Jewish city is a קורבא דמוכח (that it is from this city) and that is where there is the מחלוקת between רב and ר"ח; where רב maintains that a קורבא דמוכח is stronger than רוב, and ר"ח maintains that אחר הרוב even against a דמוכח.

²⁵ See the following וד"ה מתיב וד"ה ניפול, etc.

²⁶ כדא, In the גמרא there, רבינא ruled that it is permitted to drink the wine of this barrel, for we follow the רוב, and most wines are not from ערלה, rather than following the קרוב (that it was found in a ערלה vineyard). The גמרא assumed that רבינא agrees with ר"ח. We cite ר"ח here because this not a regular case of רוב וקרוב, rather it is a case of רוב versus a דמוכח.

²⁷ There is a strong indication that the wine in the barrel came from this vineyard in which the barrel was found, and nevertheless רבינא ruled that it is מותר, for presumably he agrees with ר"ח that רוב is stronger then even a דמוכח.

He designated²⁸ the black doves from a dovecote for his יו"ט meal, but he found white doves instead, or he designated white doves and he found black doves, they are forbidden to be slaughtered on יו"ט -

ומפרש בגמרא²⁹ כגון שזימן שחורים ולבנים³⁰ -

And in the גמרא there explained that the משנה is discussing a case where for instance he designated both black and white birds -

ומצא שחורים במקום לבנים ולבנים במקום שחורים -

And he found the black ones in the place (in the pigeonhole) of the white ones, and he found the white ones in the cubicle of the black ones -

מהו דתימא אינהו נינהו ואיתהפוכי איתהפיך -

We would have said (if not for the משנה) these are the same birds that he designated and they merely switched cubicles, and are מותר לשחוט -

קא משמע לן דהנך אזול לעלמא והני אחריני נינהו ומעלמא אתו -

The משנה therefore teaches us that these original birds went away elsewhere, and these current birds are other non-designated birds and they come from elsewhere -

ומסיק עלה לימא מסייע ליה לרבי חנינא כולי³¹ -

And on this the גמרא concludes let us say that this משנה, according to the interpretation of רבא is a support to ר"ה, etc. The reason the גמרא cites ר"ה there, is -

והתם קורבא דמוכח הוא דהא שחורים ולבנים היו שם ומוכח³² דאינהו נינהו:

For there it is a דמוכח for the black and white birds were there yesterday, so it is evident that these are the same birds and they merely switched קנים.

SUMMARY

The novelty of ר"ה's ruling (over the משנה of ט' חניות) is (a) that one רוב is sufficient,

²⁸ The rule is that birds that are in the house or courtyard are permitted to be slaughtered on יו"ט; they are not מוקצה for we assume that the birds will ultimately be נשחט. However, the birds in the שובך are מוקצה, unless one designates them specifically on יו"ט that he intends to שחט them on יו"ט.

²⁹ The גמרא asks on the משנה that this ruling is obvious; these birds are not the ones he designated.

³⁰ A dovecote consists of many cubicles (pigeonholes) in each cubicle there is a set (קן) of two birds. The owner designated two separate קנים one (a) was white, and the other קן (b) was black. When he came back on יו"ט the white קן was in (b) and the black קן was in (a). The question here is whether these are the same two קנים and they merely switched their cubicles (and therefore are לשחיטה), or perhaps these are two new different קנים who were never designated and are לשחוט.

³¹ The question regarding these new birds is one of רוב וקרוב. The קרוב tells us they are the same birds, for they are the closest to these cubicles; on the other hand, since the question is where did these birds come from (since the birds had to come from somewhere (even if we assume that they just switched, nevertheless these birds were not in the קן before), the רוב tells us that these birds came from the majority of birds which were not designated.

³² Nevertheless, according to ר"ה we follow the רוב even against a דמוכח.

(b) there is no קרוב by ט' חניות, and (c) the ruling of אחר הרוב is even if it is a קורבא דמוכח (as in the case of the wine barrel found in a דערלה, or the case of the black and white birds).

THINKING IT OVER

עגלה ערופה asks on the ר' זירא ריציב"א, why did ר' not ask his question from ערופה (where we follow the קרוב) on the ט' חניות ברייתא (where we follow the רוב).³³ תוספות explains that this is a valid question even if by ט' חניות we require רובי ב', since רובי ב' is only required מדרבנן however מה"ת one רוב would suffice.³⁴ It seems from תוספות that if the requirement of תרי רובי is מה"ת, there would be no contradiction from ע"ע.³⁵ However it seems that by ע"ע there is also תרי רובי (and nevertheless we follow the קרוב); there is the רוב of a city (farther away) with a larger population, and רובא דעלמא (the murderer could have come from anywhere in the world). Why was it necessary for תוספות to say that it is a valid question since תרי רובי is מדרבנן, it would seemingly be a valid question even if תרי רובי is מה"ת?!³⁶

³³ See footnote # 12.

³⁴ See footnote # 14.

³⁵ We follow the רוב by תרי רובי only (the case of ט' חניות); we follow קרוב by one רוב (the case of ע"ע).

³⁶ See מהרש"א. [Is there a difference between the ט' חניות of תרי רובי and the ע"ע of תרי רובי.]