השואל את הפרה:

(שייך לע"ב) פרה במשיכה ובעלים באמירה –

The cow with pulling and the owner with talking

Overview

The גמרא infers from the סיפא of the משנה that the רישא, which states, 'השואל את הפרה ושאל בעלה עמה'; means עמה ממש (at the same time). The גמרא asks how can the שואל borrow the cow and the owner, simultaneously; the cow is considered borrowed only after he makes a משיכה in the cow, however the owner is indentured to him (to do whatever they agreed) just by the owner saying that he will be indentured to him. This indicates that even though the owner did not begin working for the שואל he is considered נשאל to the שואל. Our תוספות will reconcile our גמרא with a seemingly contradictory גמרא.

תוספות asks:

הקשה רבינו יצחק בן מאיר דאמר לקמן בפירקין (דף צז,א) -

The ריב"ם asked; for רבא **later in our** פרק **ruled** that -

שתלא טבחא ואומנא וספר מתא כולהו בעידן עבידתייהו כשאלה בבעלים דמו[1] -

A sharecropper, a שוחט, and a physician, and the city scribe, all of them when they are working, are considered שאלה בבעלים. This concludes the citation of רבא -

משמע דשלא בעידן עבידתייהו[2] לא הוי שאלה בבעלים[3] -

It seems from that גמרא **that at the time when they are not** actually **working** (for the borrower) **it is not considered שאלה בבעלים;** however from our גמרא it seems that as soon as the 'lender' agreed to be נשאל he is considered נשאל,[4] even though he did not begin to work yet.

תוספות answers:

ויש לומר דלאו דוקא בעידן עבידתייהו אלא בשעת הליכתן -

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[1] This means that if someone borrowed from the aforementioned people (the שתלא, טבחא, etc.) while they were working for the borrower (i.e. the שתלא was tending to the borrowers fields), the borrowing is considered as שאילה בבעלים, and the borrower is פטור from the responsibilities of a שואל.

[2] רבא stated explicitly that it is שאלה בבעלים (only) בעידן עבידתייהו.

[3] The פטור of שאלה בבעלים is in a case that when the borrowed object comes into the possession of the שואל, the משאיל is already in the 'employ' of the שואל. In these aforementioned cases the lender was already in the employ of the שואל (it is not any less than בעלים באמירה here), so since our משאיל is considered נשאל to the שואל only באמירה, these שתלא טבחא וכו', should also be considered נשאל to the שואל and it should be considered שאלה בבעלים, even שלא בעידן.

[4] Otherwise if he is not considered נשאל until he begins to work, what is the s'גמרא question how is it possible that he borrowed both of them simultaneously; it is possible in a case where the owner and his cow began to work together for the borrower simultaneously.

And one can say; that רבא **did not mean precisely** that it is שאלה בבעלים **only בעידן עבידתייהו, but rather** even **at the time when they go to work** for the borrower -

או אפילו מזמנים עצמן לילך ולעשות חשוב בעידן עבידתייהו[5] -

Or even if they prepare themselves to go and work; these situations **are also considered בעידן עבידתייהו.**

תוספות cautions, even though it is not necessary that he be actually working -

אבל ודאי משעת אמירה של קודם פסק[6] מלאכה לא חשוב שאילה בבעלים[7] -

However it is certainly not considered שאילה בבעלים from the time of the verbal agreement, **before the work** to be done **was established -**

כדאמרינן בסוף פרק האומנין (לעיל דף פא,א) **-**

As the גמרא **states in the end of פרק** השוכר את **האומנין -**

לסוף[8] איגלאי מילתא דההיא שעתא שכרא הוי שתי ולא הוי פשיעה בבעלים:

'Eventually it was realized that at that time he was drinking beer, so it was not a פשיעה בבעלים'.

Summary

שאלה בבעלים means that when the item is borrowed, the owner is somewhat involved (at least) in preparation to work for the שואל. However merely agreeing to work is insufficient to be considered שאלה בבעלים.

Thinking it over

According to תוספות that a verbal commitment is insufficient to consider him נשאל;[9] why is it not possible that it is עמה ממש, in a case where the משאיל began his preparation to work together with the משיכת הפרה?![10]

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[5] Therefore in our משנה, once the משאיל agreed [and prepared] to work for the שואל, it is considered בעידן עבידתייהו, but the שואל did not yet acquire the cow, so it cannot be עמה ממש.

[6] The מהר"ם amends this to read פיסוק and the רש"ש amends it to עסק (instead of פסק). See 'Thinking it over'.

[7] There must be some sort of commitment and action to begin working, not merely a verbal agreement..

[8] The case there is where ראובן agreed to bake bread for his colleagues. ראובן asked them to watch his garment. The colleagues however were פושע and lost the garment. רב פפא ruled that they are liable. They asked רב פפא why are they חייב, since it is פשיעה בבעלים, for he was working (baking) for them. It turned out that when they took the garment to watch, he was (still) drinking beer and he did not begin the baking process at all. We see from there that even though he agreed to bake, nevertheless since he did not get involved in baking yet, it is not considered שאילה בבעלים.

[9] See footnote # 5-7.

[10] See מהר"ם.