

1 משנה the זאגט:
 נכרי שהלוה את ישראל על חמצו אחר הפסח מותר בהנאה
 If a non-Jew lends money to a Jew before פסח, with the Jew's
 חמץ as security - when the Jew defaults on the loan, the חמץ is
 considered to have belonged to the נכרי the entire time and is
 therefore מותר בהנאה after פסח.
 וישראל שהלוה את נכרי על חמצו אחר הפסח אסור בהנאה
 If a Jew lends money to a non-Jew before פסח using the נכרי's
 חמץ as security - when the נכרי defaults on the loan, the חמץ is
 considered to have been owned by the Jew the entire time
 and is therefore אסור בהנאה after פסח.

1 **מלכה:**

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| וישראל שהלוה את נכרי על חמצו <i>Security</i> אחר הפסח אסור בהנאה | נכרי שהלוה את ישראל על חמצו <i>Security</i> אחר הפסח מותר בהנאה |
| The חמץ is considered to have belonged to the JEW the entire פסח | The חמץ is considered to have belonged to the נכרי the entire פסח |

2 איתמר אביי אמר בעל חוב למפרע הוא גובה
 - ורבא אמר מכאן ולהבא הוא גובה
 In a case where an item is designated as security on a loan,
 and the borrower defaults on the loan;
 אביי considers the lender to be the owner of the item retroac-
 tively from the time of the loan. Therefore, the lender had the
 right to sell it or give it to הקדש from the time of the loan.
 רבא holds that the lender only becomes the owner at the time
 of the default of the loan, because the borrower could have
 paid money up until the moment of default. Therefore, the
 lender had no right to sell it or make it הקדש before that time.

2 **איתמר...**

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| רבא אמר בעל חוב מכאן ולהבא at TIME OF DEFAULT הוא גובה | אביי אמר בעל חוב למפרע RETROACTIVELY הוא גובה |
| Had NO right to sell or make it קדש before that time | May sell the security or give it to קדש from the time of the loan |

?

3 רבא asks two questions on גמרא:
 First, in a case where
 - ראובן שמכר שדה לשמעון באחריות וזקפן עליו במלוה
 sold a field to שמעון with a guarantee that if the field is
 ever taken from שמעון, he would reimburse שמעון for the
 value of the field, and instead of paying for the field upfront
 שמעון wrote up a סטר that he owes ראובן the money.
 If שמעון dies and his creditor tries to take the field from ראובן,
 who paid the creditor off with money.

3 **1st**

| | | |
|---|---|--|
| ראובן שמכר שדה לשמעון באחריות וזקפן עליו במלוה | ראובן sold his field to שמעון with a guarantee that if the field is ever taken, he would repay שמעון | But instead of paying for the field upfront שמעון wrote a סטר that he owes ראובן the money |
|---|---|--|

If ראובן dies - and his creditor
 wants to take the field from שמעון
 Shimon paid the creditor off with money

4 ראוּבן's children can say that the money שמעון owed them was not indebted to their father's creditor because מטלטלי דיתמי לבעל חוב לא משתעבדי - moveable property of יתומים is not mortgaged to the creditor.
As a result, שמעון would still have to pay the יתומים what he owes them - the purchase price of the field.

4

ראובן's children can say...

מטלטלי דיתמי
לבעל חוב
לא משתעבדי
moveable property
of יתומים
is not mortgaged
to the creditor!

שמעון
would still
have to pay
the יתומים
what he owes
them!

5 רבא suggested that אי פקח שמעון - if אי פקח is smart he would have the יתומים collect the land itself instead of money as payment for the land. He can then take the land back from them based on the guarantee that ראוּבן had given him. The גמרא points out that this would seem to work only if we say למפרע הוא גובה - a creditor becomes the owner of the security retroactively. שמעון can collect from the יתומים since the land that they took from שמעון is considered to have belonged to their father the entire time, which would mean that the land is considered to be land that their father had left them, and not new land that they had bought. However, רבא himself holds מכאן ולהבא הוא גובה - the creditor only becomes the owner of the security after the default. Therefore, the land that the יתומים collect should be considered their own land, and not be subject to collection from שמעון?

5

אי פקח שמעון
he would have the יתומים
collect the land itself

He can then take the land back
based on the guarantee
that ראוּבן had given him

► This would work well if we say
למפרע הוא גובה

However, רבא himself holds
מכאן ולהבא הוא גובה

6 The גמרא answers;
שאני התם דאמר להו כי היכי דמשתעבדנא לאבוכון משתעבדנא נמי לבעל חוב דאבוכון -
Shimon can tell the orphans that, just like the land is mortgaged to pay ראוּבן, it is also mortgaged to pay ראוּבן's creditors, and שמעון is also one of ראוּבן's creditors. Therefore, he can take back the land as the guarantee. This works based on שעבודא דרבי נתן -
If A owes B money and B owes C money, C can collect directly from A.
In our case שמעון is in the position of both A and C.

6

שאני התם - דאמר להו

משתעבדנא נמי לבעל חוב דאבוכון
it is also mortgaged to pay ראוּבן's creditors

כי היכי דמשתעבדנא לאבוכון
just like the land is mortgaged to pay ראוּבן

שמעון

This works based on...

שעבודא דרבי נתן
If A owes B, and B owes C,
C can collect directly from A

7 Second, in our משנה we say that חמץ which is used as a security on a loan that is defaulted on after פסח, is considered to be in the possession of the lender throughout פסח, indicating that למפרע הוא גובה - the security belongs to the lender from the time of the loan?

The גמרא answers;

הכא במאי עסקינן כשהרהינו אצלו -

The משנה is speaking of a case where the borrower actually gave it to the lender to keep in his possession in advance. In such a case it is considered to be owned by the lender from the time of the loan.

7

חמץ

Our משנה says...
 A loan that is defaulted on after פסח, is considered to be in the possession of the lender throughout פסח

למפרע הוא גובה ?

הכא במאי עסקינן כשהרהינו אצלו

In the Mishnah, the borrower actually gave it to the lender to hold

it is therefore considered owned by the lender from the time of the loan

8 Let's continue first with;
 - אמור ר' יצחק מנין לבעל חוב שקונה משכון
 From where do we learn that the creditor acquires the collateral?
 שנאמר השב תשיב לו את העבוט כבוא השמש ושכב בשלמותו וברכך ולך - תהיה צדקה לפני ה' אלקיך -
 אם אינו קונה משכון צדקה מנין
 If it is not considered to be owned by the lender, returning the garment would not be considered a charitable act on his part.
 - מכאן לבעל חוב שקונה משכון
 This Posuk teaches that we view the creditor as the owner of the collateral.

8

אמר ר' יצחק

מנין לבעל חוב שקונה משכון

השב תשיב לו את העבוט כבוא השמש ושכב בשלמותו וברכך ולך תהיה צדקה לפני ה' אלקיך

אם אינו קונה משכון - צדקה מנין?

- מכאן לבעל חוב שקונה משכון

9 מחלוקת תנאים - לימא כתנאי - there is a ברייתא that at first seems to be about the same issue as the Machlokes of תנאים and רבא. However, the Gemara explains it otherwise.
 The ברייתא says:
 If a Jew lent money to a non-Jew before פסח and הרהינו אצלו - the non-Jew deposited his חמץ with the Jew as collateral:
 The תנא קמא says;
 When the Jew collects the חמץ after פסח it is not בהנאה, because he is NOT considered to have owned the חמץ during פסח. Even though we view the creditor as the owner of a collateral, that is only true when the creditor and debtor are both Jewish, but לא קנה - a Jew does not acquire the collateral from a non-Jew.
 עובר ר' מאיר - it does become בהנאה, because If one Jew acquires the collateral from another Jew, he certainly acquires it from a non-Jew! Therefore, it became עליו הפסח in the possession of the ישראל.

9

לימא כתנאי

ישראל שהלוה לנכרי על חמצו הרהינו אצלו

the non-Jew deposited his חמץ with the Jew as collateral

| | |
|---------------------------|---|
| רבי מאיר | תנא קמא |
| לאחר הפסח עובר | לאחר הפסח אינו עובר |
| <i>ישראל מן ישראל קני</i> | <i>He is NOT considered to have owned the חמץ during פסח</i> |
| <i>ישראל מן כנעני</i> | בעל חוב קונה משכון ? |
| <i>אם לא קנה</i> | <i>that is only true when the creditor & debtor are both Jewish</i> |
| | <i>ישראל מן ישראל קנה</i> |



10 נכרי שהלוה לישראל על חמצו
 If the נכרי lent money to a ישראל, even if the ישראל deposited the חמץ with the נכרי,
 - לאחר הפסח דברי הכל עובר
 Everybody agrees it is אסור בהנאה after פסח, because
 - ודאי נכרי מישראל לא קני
 A נכרי certainly does not acquire the collateral of a ישראל.
 Therefore, it belonged to the ישראל throughout פסח, and became חמץ שעבר עליו הפסח.
 Although, regarding this very case our משנה says that the חמץ is מותר בהנאה?
 We must differentiate and say that the Mishnah is speaking of מעכשיו ליה - דאמר ליה ישראל, the borrower explicitly said to the נכרי, the lender, that in case of default he shall take ownership of the חמץ retroactively.
 The Braisa is speaking of מעכשיו ליה דלא אמר ליה - דלא אמר ליה מעכשיו.
 He did not so specify.

10 נכרי שהלוה לישראל על חמצו
 ...even if the נכרי deposited the חמץ with the ישראל
לאחר הפסח דברי הכל עובר
 אסור בהנאה
 ודאי נכרי מישראל לא קני

| | |
|--------------------|--------------------|
| The Braisa | Our Mishnah |
| דלא אמר ליה מעכשיו | דאמר ליה מעכשיו |

11 מושגת the זאגת:
 - חמץ שנפלה עליו מפולת הרי הוא כמבוער
 If a building collapsed on חמץ, the תנא קמא considers it to be destroyed.
 - רבן שמעון בן גמליאל אומר כל שאין הכלב יכול לחפש אחריו
 רשב"ג qualifies that this is only true if the חמץ is so deeply buried that a dog would not be able to find it.
 - אמר רב חסדא וצריך שיבטל בלבנו
 Even though the חמץ is considered already destroyed, he still needs to do ביטול חמץ.
 Rashi explains, because the rubble might be removed during פסח.
 The גמרא explains that a dog can reach up until three טפחים deep. More than that is beyond his ability to sniff out.
 However when it comes to a חנם שומר חנם guarding somebody's money, he only has to bury it one טפה deep in the ground to have done a good job guarding it, since all he has to do is cover it up so that it is not seen.

11 חמץ שנפלה עליו מפולת
 הרי הוא כמבוער
 מלא קמא
 רבן שמעון בן גמליאל
 כל שאין הכלב יכול לחפש אחריו
 Only if buried deeply so that a dog could not find it
 אמר רב חסדא - וצריך שיבטל בלבנו
 because the rubble might be removed during פסח