

Daf Hashvuah Gemara and Tosfos Beitza Daf 38
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If you say that R' Yochanan only doesn't hold of Breira by Torah laws, but he holds of it by rabbinical laws; but, does he really hold of it by rabbinical laws? Don't we have a Braisa that Ayo (a scholar) taught; R' Yehuda says that someone can't make a condition with placing two Eiruvim on opposite sides of the city, (and saying, since there will be a Chachum Darshining on both sides, I'll choose tomorrow who I want to go to hear, and therefore, I'll choose which side I made the Eiruv on Erev Shabbos). However (if you want to hear one Chachum, but you don't know which side he's coming) you can make a condition that, if that Chachum comes from the East, my Eiruv is to the East. If he comes from the West, my Eiruv would be to the West.

Daf 38a

However, it doesn't help to make a condition if a Chachum will come to both sides, I'll choose which one I want to go to.

Tosfos quotes Rashi: that we think that the Chachum will come on Shabbos through a tree or fence (that he recognizes) and says before Shabbos that his place should be under (those landmarks). Through this he can come on Shabbos from outside the T'chum (i.e., two thousand Amos from where he stands Bein Hashmashos to the landmark and two thousand Amos from the landmark until the place he'll Darshen.)

Tosfos asks: how can he go to both sides of the city (both areas outside of the T'chum of the city) since there is more than four thousand Amos between the two possible locations (that has at least two thousand Amos from the city to the location plus the width of the city. One person can't travel to both sides on the same Shabbos.)

Therefore, Tosfos concludes: it makes more sense the way Rashi says it in Eiruvim, that he could only come from one side. (Although you know which side he's coming from) you still need Breira since the Chachum might not come at all. So, if the Chachum wouldn't come from either side (there shouldn't be an Eiruv) and you'll have the T'chum as a regular person of the city.

Although the Braisa says "if he comes from the East or West," it's not exact, because that implies that you made a condition whether to go either to the East or West. Rather, it doesn't make a difference if you know the direction you want to go, East or West, there is still a problem of Breira, perhaps the Chachum won't come at all.

The Raf explains a case where we can say that the choice is whether the Chachum would go to the East or West of the city without needing a landmark of a fence or tree. The case is that he's in the North, and closer than six thousand Amos from your city. He wants to come closer to within four thousand Amos from your city, either in the Northeast or the Northwest of your city. (The reason he didn't come straight North above your city and be even closer) because on those sides there is a cleared area that they can gather. However, right above the city there is no cleared space to Darshen, but only to the two sides. Therefore, you don't put your Eiruv exactly to the East or West of the city, but you put it in the direction of the Chachum as close as possible. So, he puts it by two thousand

Amos in the East towards the North, and the same he did to the West towards the North. Therefore, we find he can walk within the two thousand Amos of the Chachum by walking the whole diagonal of four thousand Amos to the North by the Eiruv put in the East or West. This, which it writes West and East, (it doesn't mean of the city), but the East of your T'chum, or East of the Chachum. This should be easy to understand

The Gemara asks: what's the difference by the case of Chachumim coming from both sides that you can't (make the condition), since we don't hold of Breira, and the case of whether the Chachum comes from the East or West, he should also not hold of Breira.

R' Yochanan answers: we refer to a case where the Chachum already came (when you put out the Eiruv. So, you don't need Breira, but just to find out which side he was on already.) So, we see R' Yochanan doesn't hold of Breira (even by rabbinical laws).

Tosfos asks: why doesn't the Gemara answer that there is a difference whether you're relying on someone else to choose it or if you'll choose it yourself. Therefore, if you make a condition when a different Chachum comes to each side, then it's dependent on your choice (which rabbi you want to hear) so it doesn't work. However, (if it's one Chachum) and you make a condition the Eiruv is whichever side the Chachum decides to come, whether to the East or to the West, then we'll say that there could be Breira.

Tosfos answers: (although there are opinions who make such a distinction) R' Yochanan personally didn't hold of it.

Tosfos is bothered by the following question: if so, why did the Gemara pose it as a question why is the cases different? After all, it could have taken on the above distinction.

Tosfos answers: the question was posed by R' Yochanan himself so to answer that the first case refers to when the Chachum already came. (Although it doesn't quote R' Yochanan posing the question) but we find a similar Gemara in the beginning of Eilu Metzios that the Gemara asks: "how much (fruit needs to be piled in what space to need to return them)? R' Yitzchok says etc." It must have been R' Yitzchok who framed the question (since the Gemara then asked on the premise that you need an amount).

Tosfos asks: why did the Gemara asks from the Braisa of Ayo on R' Yochanan, since we need to say that R' Yochanan personally must hold that R' Yehuda holds of Breira, since he doesn't differentiate between if it's dependent on his own choice or someone else's choice?

After all, we see this in a Mishna in Eiruvim; someone can make a condition on two ways (by Eiruv to go to hear a Chachum) etc. R' Yehuda says; if one of the Chachumim was your Rebbi, you must go hear him (since we assume that's the one you wanted to hear). However, if both are your Rebbi, you may go to whichever one you decide. So, we see he holds of Breira. The Gemara says on this; we don't hold of this Mishna, since the Braisa of Ayo disagrees (and holds that R' Yehuda doesn't hold of Breira). The Gemara asks: on the contrary, we should say that we don't hold of Ayo because of our Mishna that someone can make a condition on his two Eiruvim. (After all, a Mishna is more authoritative than a Braisa.) The Gemara answers: since we have another Braisa about buying wine from a Kusi (where you say you're taking Trumas and Maasar according to what you'll separate after

Shabbos, where R' Yehuda disallows since he doesn't hold of Breira) and therefore, remove the one (Mishna) in favor of the two (Braisos) etc.

However, the Ri asks there: on the contrary, we shouldn't hold of Ayo and the case if buying wine that don't hold of Breira because we have another Mishna in Gitten (that if someone gives a Get that it should take effect before he dies) what is her status for the days (between the giving and the death)? She has a status of a married woman, and right before she dies, she'll be divorced. From there, the Gemara makes the implication that R' Yehuda holds of Breira (that you can find later when the Get will be given). Also, there is another Mishna that an owner (of a vineyard) can say, I'm making Hefker all fruit that the poor will gather (and mistake it to be fruit that they're allowed to take). This depends on Breira, since you're making fruit Hefker that will be chosen later when the poor gather them.) All these Mishnayos held that R' Yehuda held of Breira. Therefore, we should remove the two (Braisos that hold he doesn't hold of Breira) in favor of the three Mishnayos (that hold R' Yehuda holds of Breira).

So, the Ri answers: we really hold of Ayo, because the other Mishnayos refer to cases where it's dependent on another person's choice, and therefore he holds of Breira. However, Ayo refers to choosing yourself, (so, therefore, he doesn't hold of Breira).

However, Tosfos concludes his question: according to R' Yochanan who doesn't hold of that difference, must hold that we don't agree with Ayo in favor of the three Mishnayos (that hold R' Yehuda holds of Breira). Therefore, why did they ask on R' Yochanan from Ayo?

Tosfos answers: since they rather say not to switch the opinions, they asked a weak question, although R' Yochanan may not agree with Ayo.

Alternatively, R' Shimshon from Shantz answers: even if we don't hold like Ayo, that R' Yehuda never said that he didn't hold of Breira, still, one Tanna did say it. Therefore, R' Yochanan needed to answer according to him that the Chachum already arrived Erev Shabbos. Therefore, they certainly asked a good question.

The Gemara answers: really, you shouldn't switch the opinions. R' Hoshia only holds that there is no Breira for Torah laws, but holds there is Breira regarding rabbinical laws. Mar Zutra Darshined that the Halacha is like R' Hoshia.

Shmuel Darshined: the T'chum of an ox of an animal fattener is like anyone's T'chum (who buys it, even those who came out of the T'chum through an Eiruv). A shepherd's ox has the T'chum like the townsmen. (This is because we give it the T'chum of those the owner expects to sell it to. A fattener was more commercial, so he expects to sell to anyone. However, the shepherd is not as well connected, therefore, he doesn't expect to sell it but only to the local people.)

New Sugya

The Mishna says that if someone borrows a utensil from Erev Yom Tov, it gets the T'chum of the borrower. The Gemara asks: this is simple (so why mention it?) The Gemara answers: it's not needed but for the case that he didn't give it over until Yom Tov. I might think that we don't establish it in the borrower's possession (if he didn't have it from before Yom Tov), so we taught otherwise. This is a proof to R' Yochanan

who says that if someone borrows a utensil from Erev Yom Tov, even if it didn't get into his hands until Yom Tov, it gets the borrower's T'Chum.

The Mishna says that if he borrowed it on Yom Tov, it still has the T'chum of the lender. The Gemara asks: this is simple (so why mention it?) The Gemara answers: it's not needed but for the case where he usually borrows this utensil. I might think that (we should assume he'll borrow it), so, we should give it his T'chum, so we're taught otherwise. We say (that the owner assumes) perhaps he found someone else to borrow it (and he won't borrow it from me).

New Sugya

When R' Abba went up to Eretz Yisrael, he said a prayer that "it should be Hashem's will that he'll say something that people will accept." When he came, he met R' Yochanan, R' Chanina b. Pappi and R' Zeira. (Other say that it was R' Avahu and R' Shimon b. Pazi and R' Yitzchok Nafcha.) They were sitting and asking (on our Mishna) how can it say that the dough needs to be only carried within the T'chum of those who owned the salt and water) why is that so? Why isn't the water and salt Batul to the rest of the dough?

Tosfos quotes Rashi: since the dough is the largest ingredient.

Tosfos asks: isn't this a prohibition that will eventually become permitted (after Shabbos) which we say that they don't become Batul even in a thousand.

Tosfos answers: that's only when it's the same type of food, but in a different type of food, like in our case, it's Batul. This is explained explicitly in the Yerushalmi.

Alternatively, this is not similar to other prohibitions, that (to prohibit their mixtures) is all dependent on their taste. However, by T'chumim, it's dependent whether it's called the property of any given person, and in our case, it's only known as the property of the owner of the dough, and not known as the property of the owners of the salt and water, although it gives taste which is not Batul by other prohibitions. On that, R' Abba answers: the names of the owners of the water and salt are not Batul from the object just as the name of someone who owns a Kav doesn't get Batul in the ten Kavim of another just because it's more.

Daf 38b

R' Abba answers: if your Kav of wheat gets mixed with ten Kavim wheat of your friend, (would the friend be able to keep it) and laugh (how he got your money. So, we see ownership is not Batul.)

Tosfos asks: why did they need to wait to ask this question here? After all, it could have asked it any time we say that one piece can be Batul in two.

Tosfos answers: we couldn't ask in other places, since we can't compare cases of money to prohibitions. However, our Mishna deals with money. Although the concept of T'chum is a prohibition, but it's dependent on the owner's consent (who should have the object to get the T'chum). So, regularly, by other prohibitions we can say that one piece is Batul in two. However, by T'chum, we ask from the idea that your Kav of wheat etc. that just because of Bitul, we don't say the owner loses

his status as the owner. Therefore, the same here that he doesn't lose the status of being the owner because of Bitul and the water and salt get their T'chum by their owner, and shouldn't be Batul.

The next Tosfos explains: and you'll be happy to get something that you didn't work for. Therefore, these ingredients don't lose their owners (and have their T'chum), since they acquired their place they rested at the beginning Shabbos by their owners.

Tosfos explains: the Gemara never had a problem that it should take on the T'chum of the dough since she borrowed it or received it as a gift. After all, we said that if an object was lent on Yom Tov, it gets the T'chum of the lender, since we follow whose possession it was in Bein Hashmashes. The only question they had was concerning why doesn't the minority ingredients get Batul in the majority. This is as Rashi explains.

They laughed at him. He replied: did someone take off my cloak that you're laughing at me. They continued to laugh.

R' Oshiya said that they were right for laughing at him. What was the reason (he chose this case of wheat and wheat) and not wheat in barley? Since that's not the same type of food and we say it gets Batul, the same applies to wheat in wheat. Granted that R' Yehuda won't hold it's Batul (since he holds that something can't be Batul in its own type), but the Rabanan would say that it will be Batul.

Tosfos gleans from here that the Halacha is like the Rabanan that a food can be Batul in its own type of food. After all, this is being said by the Gemara in general (and not from a particular Amora to say he's the only one who Paskined that way). [The obvious question: isn't this a quote from R' Oshiya? I found the Shach in the Orech who asks this.]

R' Safra asks: Moshe (like swearing in the honor of Moshe) are you saying correctly!!! Didn't you hear what Rav says: if someone separates pebbles from the grains of his friend, he needs to pay him its volume in wheat (since he could sell it normal with the assumption that it still has its normal impurities in it, but people will not pay more for pure wheat, therefore, he loses that amount that he could have sold it with the impurities). So, we say you pay since you make him lose a measure, the same here (that ownership is so Chashuv, of course when the salt and water is here, but mixed in, that it shouldn't be Batul).

Abaya answers: didn't I tell you there is a difference between money that have someone claiming it (to get it back) and one whose owner is not claiming it (like by the salt and water, and therefore, it should be Batul).

R' Safra counter asks: according to you, how can you explain R' Chisda who says; (according to R' Yehuda who holds that a food can't be Batul in when it's mixed with the same type of food) however, a piece of Neveila can be Batul in many Shechted meat, since the Shechted meat can never turn into Neveila (so, it's not so similar to called "one type"), but a piece of Shechted meat can't be Batul in many Neveilos meat (to say that all of them are definitely Tamai), since the Neveila can become like Shechted meat (since it's only Assur while it's still edible and not if it spoils). Would we also say that, if the Neveila has owners, it shouldn't be Batul?

Tosfos quotes Rashi: and, of course it's Batul.

Tosfos asks: isn't R' Safra coming to salvage R' Abba's answer, and R' Abba says that it's not Batul even if no one is claiming the money, like by our Mishna, and of course he'll hold in this case where there is someone claiming it. So how can he bring a proof that even when there are claimants it's Batul? On the contrary, he should ask this question on himself.

Tosfos answers: we can understand this not to be a question to R' Safra, since he differentiates between money and prohibitions, even if (the prohibition) has claimants (it's still Batul). Therefore, here we refer to a piece of Neveila prohibition mixed in with permitted pieces, therefore, it's Batul even though there is a claimant. R' Safra brings this as a proof, if it's something that's applicable to being Batul, it doesn't help that there is a claimant to say, just because it's known to belong to its owner, it's not Batul, but it's very well Batul. Therefore, it never had anything to do with claimants and the Mishna fits well, even though there are no claimants, since it's something that it's not applicable to be Batul, since it's money and the prohibition of T'chumim involves who it belongs to, and the object gets its T'chum by its owner, so it's not applicable to be Batul.

If you want to say that it's true (that this only refers to where it doesn't have owners, but with owners it wouldn't be Batul), but R' Yochanan b. Nuri says that ownerless items have their own T'chum (lit. they acquire a place where they rested for Shabbos [and you can only carry them for two thousand Amos radius around it]), despite not having owners, we consider them as if they have owners. (So, even money that doesn't have claimants are Chashuv and shouldn't be Batul.)

Tosfos explains: although there are no claimants, still the object acquires its T'chum in its place.

Tosfos asks: how can you ask a question from R' Yochanan b. Nuri? After all, the Rabanan disagree with him, and we Paskin like the Rabanan who say that the object doesn't get a T'chum, but it gets the T'chum of the one who finds it., since there is no owner to claim it. Therefore, we can say the same in our Mishna.

Tosfos answers: we're bringing a proof, that the Rabanan only disagree with R' Yochanan b. Nuri by objects that don't have any concept of having an owner, like Hefker objects to say it gets a T'chum. However, he'll agree if they are applicable to have owners, like in our Mishna, that we follow who's the owner even if he's not claiming it now. So, from R' Yochanan b. Nuri, we can understand the Rabanan's position. Just as R' Yochanan holds that Hefker objects get a T'chum even though no one is claiming them, so too the Rabanan would hold that objects that had someone to claim it, even though now he's not claiming it, it acquires a T'chum.

Abaya answers: how can you compare prohibitions to money? Prohibitions are Batul but money isn't (and T'chum is, in essence, a prohibition).