בס״ד

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פסחים כ״א עמוד א׳

תוספות ד״ה: כל שעה. עבר זמנו אסור בהנאה

Background: The words of תוספות

The משנה teaches that it is forbidden to derive benefit from חמץ once the זמן האיסור begins, and תוספות specifies that it is therefore forbidden to sell the חמץ as well. תוספות adds[1] that if one nevertheless sold the חמץ during the זמן האיסור, it is permissible to derive benefit from the acquired money, for the prohibition to derive benefit does not extend from the חמץ to its payment. In support of this, תוספות cites the משנה in קידושין (on דף נ״ו ע״ב) which lists various איסורי הנאה, and which goes on to state that if one sold any of the listed איסורי הנאה, and he was מקדש (betrothed) a woman with the payment, she is מקודשת. From this, תוספות proves that it is permissible to derive benefit from the payment of איסורי הנאה,[2] for otherwise, the woman would not have received anything of value, and she would not be מקודשת.

The משנה that תופסות cites does not mention the איסור of חמץ in its list. How does תוספות know that the דין taught in that משנה applies to חמץ as well? The פני יהושע references to the גמרא in קידושין (on דף נ״ח עמוד א׳), which explains that there are only two instances in which the תורה specifies that an איסור extends to the payment. These are the איסורים of עבודה זרה and שביעית. The גמרא continues to explain that there is a difference between whether the תורה teaches a דין in one context or in two:

- When the תורה teaches a certain דין in **one** particular context, and there is no compelling reason to restrict that דין to that particular context, then it applies in all similar contexts. The basis of this principle is that it is sufficient for the תורה to teach a דין once, and it is unnecessary for the תורה to reiterate it time and again. This principle is known as a **בנין-אב** (“building through a father”; i.e. using one particular context in the תורה as the “father”, or source, from which to “build”, or apply, the same דין elsewhere), or a **מה-מצינו** (“just as we find”; i.e. just as we find a certain דין in a particular context, so too, it applies in other contexts as well).
- When the תורה specifies a certain דין in **two** (or more) particular contexts, this indicates that the דין applies only in the particular contexts where it is specified. For, had the תורה meant for this דין to apply in **all** similar contexts, then it would have been unnecessary for the תורה to state it more than once. This principle is known as ״שני כתובים הבאים כאחד אין מלמדין״ (“any two פסוקים which come as one do not teach”).

Now, the תורה teaches in two contexts – עבודה זרה and שביעית – that the איסור of an object is transferred to its payment. Thus, the principle of ״שני כתובים הבאים כאחד אין מלמדין״ applies; the

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[1] וכ״כ התוס׳ הרשב״א, הר״ן והנמוק״י.

[2] This is also the פסק הלכה in שולחן ערוך אדה״ז סי׳ תמ״ג סעיף ט׳, as well as in שולחן ערוך או״ח סי׳ תמ״ג סעיף ג׳.

תורה indicates that the איסור of an object is transferred to its payment only in the particular contexts of עבודה זרה and שביעית, and nowhere else[3]! From this גמרא, explains the פני יהושע, it is clear that the איסור הנאה of חמץ does not extend to its payment.

The above-mentioned גמרא also provides an alternate approach[4]: As mentioned above, there are only two instances in which the תורה specifies that an איסור extends to the payment – the איסורים of עבודה זרה and of שביעית. In both of these instances, the תורה specifically excluded all other איסורים. For, with regards to עבודה זרה, the תורה wrote ״כִּי חֵרֶם **הוּא**״ ("for **it** is banned"), and with regards to שביעית, the תורה wrote ״יוֹבֵל **הִוא**״ ("**it** is a Jubilee year")[5]. The expression **הוּא/הִוא** denotes that only these – עבודה זרה and שביעית – are subject to the stringency of the איסור transferring to the payment[6]. From this גמרא, it is clear that the איסור הנאה of חמץ does not extend to its payment.

This raises another question: Since the איסור הנאה of חמץ does not extend to its payment, why is it not listed explicitly in the above-mentioned משנה in קידושין? The answer of תוספות (in קידושין) is that

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[3] There is a מחלוקת רש״י ותוספות (see יבין שמועה כלל קנד-קנה) regarding the principle of שני כתובין הבאין כאחד אין מלמדין:
- רש״י holds that these two פסוקים teach us **nothing** about the הלכה in any other case. Those other cases might have the same הלכה as the שני כתובים, or they might not. We therefore need to turn to other sources to resolve the matter.
- תוספות holds that these two פסוקים **teach** that all other cases **do not** have the same הלכה.

According to תוספות, the גמרא in קידושין is easily understood; the שני כתובים demonstrate that all other cases have the opposite דין. However, according to רש״י, the שני כתובים demonstrate absolutely nothing at all about all other cases. If so, according to רש״י, how does the גמרא employ the שני כתובים to prove the דין of all other cases?

We might answer that, according to רש״י, logic dictates that the money should be מותר. Although the תורה specifies that the money is nevertheless forbidden in the cases of עבודה זרה and שביעית, contrary to logic, the fact is that those two cases are שני כתובים, and they demonstrate absolutely nothing about all other cases. Since all other cases are not addressed by the תורה, we resort to logic to determine their דין. [See the end of Shiur (footnote 15) for an explanation of the logic involved.]

[4] The גמרא in קידושין explains that a second approach is necessary because the rule of שני כתובין הבאין כאחד אין מלמדין is debated amongst the תנאים. For those who disagree with this principle, the two cases of עבודה זרה and שביעית should still serve as a source to establish the same הלכה in all other cases.

Furthermore, many ראשונים in קידושין are puzzled that the גמרא invokes the rule of שני כתובין הבאין כאחד אין מלמדין, because this rule applies only when it would have been enough for the תורה to state the הלכה in just one case, and we would have automatically known to apply it to the second case, due to their similarity. Since it was unnecessary for the תורה to state the same הלכה in both cases, and it did so nonetheless, we assume that the תורה did so as a way of indicating that the הלכה applies specifically to those two situations, and they cannot be used as a source from which to apply the הלכה in other cases, even if those other cases seem similar. The outcome: This rule applies only when one of the two cases could have been derived from the other case; therefore, the fact that both were nonetheless stated teaches that they cannot serve as a source for deriving the הלכה in other cases.

This criterion does not seem to be met in the סוגיא of קידושין, for the details of עבודה זרה and שביעית could not have been properly derived from each other had the תורה stated just either one of them. [See the ראשונים there for further details.] Since it was necessary for the הלכה to be stated in both cases, how can the גמרא of קידושין invoke the rule of שני כתובין הבאין כאחד אין מלמדין?

The ראשונים present a number of answers, beyond the scope of this discussion. However, it is noteworthy that the רשב״א and the תוספות רי״ד conclude that the rule of שני כתובין הבאין כאחד אין מלמדין is indeed completely out of place there, and the גמרא's second approach is therefore necessary according to all opinions. Although the גמרא sought a second explanation to account for those who disagree with the principle entirely, the רשב״א explains that the גמרא could have gone a step further and pointed out that a second explanation is needed even for those who agree with this principle in general, because it does not work in this specific instance. Nevertheless, the גמרא chose not to draw matters out and make this point.

[5] The מפרשים ask why two דרשות are needed to exclude other איסורים; one should seemingly be enough. A number of explanations are given, but it is noteworthy that the מהרש״ל (in that גמרא) discounts the second דרשה as an error in the text, and he maintains that only the דרשה of ״כִּי חֵרֶם **הוּא**״ is necessary. However, the מהרש״א disagrees.

[6] Interestingly, the only proof mentioned in שולחן ערוך אדה״ז סי׳ תמ״ג סעיף ט׳ is the דרשה of ״כִּי חֵרֶם הוּא״. The Alter Rebbe does not mention the explanation of the גמרא which draws on the rule of שני כתובים הבאים כאחד אין מלמדין, nor does the Alter Rebbe mention the דרשה of ״יוֹבֵל **הִוא**״. Perhaps the Alter Rebbe focuses on ״כִּי חֵרֶם הוּא״ because it is the only proof which is not disputed; as explained in footnotes 5 and 6, some of the מפרשים maintain that the other proofs are not valid.

the משנה in קידושין accords with ר׳ יוסי הגלילי, who holds that one may benefit from חמץ during פסח.[7] According to our משנה however, one may not benefit from חמץ during פסח, and the דין of חמץ is therefore synonymous with the דין of the other איסורי הנאה listed in קידושין.

Alternatively, the רבמ״ן and תוספות הרא״ש (in קידושין) answer that ״תנא ושייר״ – some cases were taught, and others were left out. In other words, the list in קידושין is not comprehensive, and there are other examples which could have been taught, but were left out, including the case of חמץ בפסח.

What is the catalyst for תוספות's remarks?

In general, תוספות is regarded as a מפרש and not a פוסק. In other words, the primary preoccupation of תוספות is to explain the גמרא, as opposed to determining the הלכה in new scenarios that the גמרא does not discuss. Since our משנה does not at all discuss a case where someone went ahead and sold his חמץ, why does תוספות? There are a number of answers provided by the מפרשים:

- פני יהושע – The משנה states ״עבר זמנו אסור בהנאתו״ – "If the time has passed, he is forbidden in its benefit." To this, the גמרא asks ״פשיטא״ – it is obvious that one may not benefit from the חמץ!

  Now, if the איסור הנאה extends not only to the חמץ but to its payment as well, we could have easily explained that this is the חידוש that the תנא intended to communicate with these words, and we could easily negate the question of פשיטא. Therefore, for the sake of the פשט of our סוגיא, it was necessary for תוספות to clarify that the איסור הנאה does not extend to the חמץ's payment, and the תנא's intention could not have possibly been to forbid such benefit.

  As the פני יהושע notes, this explanation is not so straight-forward, because it is subject to the following debate: Although the משנה of קידושין clearly rules that the payment of איסורי הנאה remains מותר, nevertheless, some ראשונים maintain[8] that the חכמים instituted a קנס on the מוכר specifically, forbidding him from using the funds, being that he ultimately profited from selling the איסורי הנאה. According to this approach, the משנה of קידושין only allows others to benefit from the payment, since they did not profit from the transaction.

  Now, according to this opinion, when the משנה states ״עבר זמנו אסור בהנאתו״, we could have explained that the תנא intended to communicate that the מוכר himself may not benefit from the payment he received from the חמץ. This דין is not obvious, and explaining the משנה this way would easily negate the question of פשיטא. Thus, according to this approach, it is not so clear why the גמרא regarded the phrase of the משנה as obvious.

  At the same time, other ראשונים argue[9] and hold that the payment for חמץ is completely permissible for everyone, even the מוכר, and the intent of the תנא could not have been to forbid such benefit. Thus, the פני יהושע concludes that his approach is compatible only with the latter opinion[10].

  [The Alter Rebbe in שולחן ערוך אדה״ז סי׳ תמ״ג סעיף ט׳ rules like the former opinion, unless it is a case of הפסד מרובה, in which case he rules that one may rely on the latter opinion.]

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[7] This approach of תוספות indicates that רבי יוסי הגלילי holds that חמץ בפסח is מותר בהנאה even מדרבנן.

Seemingly, תוספות could have answered that the תנא in קידושין might not necessarily agree with רבי יוסי הגלילי, but simply wanted to avoid citing examples which are subject to debate. Yet, the תוספות הרא״ש in קידושין explains that such an answer is untenable, because the תנא in קידושין also taught the case of בשר בחלב in its list of איסורי הנאה, even though it is subject to debate, with רבי ישמעאל (and the הלכה) ruling that it is אסור בהנאה, and רבי שמעון maintaining that it is מותר בהנאה. [See חולין קט״ז עמוד א׳.]

[8] דעת רש״י בחולין ד׳ ע״א ד״ה מפני שהן מחליפין ובעבודה זרה נ״ד ע״ב ד״ה למעוטי, תוספות שם (ד״ה מותר) ושם (ד״ה מכרן), ועוד.

[9] רש״י חולין שם בשם יש אומרים, רמב״ן רשב״א ריטב״א ור״ן ועוד ראשונים קידושין דף נ״ו ע״ב, דעת הרמב״ם מאכלות אסורות ה:טז.

[10] משמע דנקט בדעת התוס׳ דהכא, דדמי החמץ מותרים אפי׳ להמוכר עצמו, וכן נקטו השפ״א והגר״א (או״ח סי׳ תמג:ג), ודלא כדעת התוס׳ דחולין וע״ז.

- The ערך ש״י explains that תוספות was concerned with a very simple question: Why does the תנא say אסור בהנאתו, instead of אסור בהנאה, as is typical throughout ש״ס?[11]

  The phrase אסור בהנאה means: "He is forbidden to benefit". The phrase אסור בהנאתו means: "He is forbidden in **its** benefit". The shift in phrasing indicates that the prohibition of benefitting applies only to the חמץ itself. Therefore, to explain the תנא's intention, תוספות elaborates and explains that the prohibition of benefitting from the חמץ applies only to it – the חמץ itself, and not to the payment which derives from the חמץ.[12]

- The אמת ליעקב explains that when the משנה says "מוכר לנכרי ומותר בהנאתו", one might have interpreted it as a continuation, as follows: "One may sell the חמץ to a gentile, and it is permissible to benefit from the money that he receives." Since, according to this (mis)interpretation, the phrase ומותר בהנאתו refers to payment that one receives for חמץ, it follows that the next phrase אסור בהנאתו must also refer to payment that one receives for חמץ. In other words, the next line of the משנה, which states עבר זמנו אסור בהנאתו, would have to mean, "When the time passes, it is forbidden to benefit (even) from the money that one receives for selling the חמץ."

  Therefore, תופסות clarifies that this is not the הלכה, and the משנה should not be interpreted in this way. Rather, "מוכר לנכרי ומותר בהנאתו" states two separate דינים: "One may sell the חמץ to a gentile, and it is permissible to benefit from the חמץ." Accordingly, the following phrase עבר זמנו אסור בהנאתו refers to the חמץ itself, and not to the payment that one derives from the חמץ.

How is it even possible to sell חמץ after the זמן האיסור?

On דף ו׳ עמוד ב׳, the גמרא records the opinion of רבי אלעזר, who states that חמץ during the זמן האיסור is not "ברשותו של אדם" (in a person's possession). As רש״י (in ב״ק on דף כ״ט עמוד ב׳) explains, ownership of an item translates into the right to benefit from it. Thus, one cannot be said to own an item from which he may not benefit. Nevertheless, with regards to transgressing בל יראה ובל ימצא, the תורה treats חמץ as if it is in one's possession. Thus, although a person does not legally own his חמץ on פסח, he nevertheless transgresses בל יראה ובל ימצא. The גמרא goes on to explain that it is for this reason that one is unable to perform ביטול חמץ after the זמן האיסור, because he does not legally own the חמץ.[13]

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[11] The phrase "אסור בהנאה" appears 43 times in ש״ס, whereas the phrase "אסור בהנאתו" appears only here.

[12] In truth, this concept applies to **all** איסורי הנאה – one is forbidden only in **its** benefit, and not from its payment. If so, why is the expression אסור בהנאתו used only with regards to חמץ and not with regards to all other איסורי הנאה? We might answer that the דין of all other איסורי הנאה is explicitly taught in the משנה of קידושין, and it was therefore completely unnecessary for the תנא to allude to this דין again by using the expression אסור בהנאתו in those contexts. However, as stated earlier, the דין of חמץ was not taught explicitly in the משנה of קידושין. Therefore, the תנא chose to allude to this דין by using the expression אסור בהנאתו in the context of חמץ.

[13] There is actually a far-ranging מחלוקת in the ראשונים and אחרונים regarding the exact definition of ownership (or lack thereof) of איסורי הנאה. Some are of the opinion that one does not legally own the איסור הנאה at all, whereas some are of the opinion that one legally owns the איסור הנאה to some extent, but not to a degree powerful enough to perform an **act** of ownership, such as ביטול or a קנין. [See the Alter Rebbe's שו״ע in סי׳ תל״ה קו״א אות ב׳: The חק יעקב (quoted in this קו״א) maintains that one's חמץ is not inherited by his family when he passes away on פסח, whereas the Alter Rebbe holds that the חמץ is inherited. This is because the חק יעקב is of the former opinion (the חמץ is not inherited being that the deceased does not legally own it), whereas the Alter Rebbe is of the latter opinion (the חמץ is inherited being that the deceased legally owns it, and inheritance does not require an **act** of ownership).]

Within the latter opinion (that one legally does own the איסור הנאה to some extent), there is further debate as to why one's ownership is not powerful enough to perform an **act** of ownership; either because one doesn't **control** the איסור הנאה that he **owns** due to it being אסור בהנאה (approach of the קצוה״ח and the above-mentioned קו״א of the Alter Rebbe), or because the owner has despaired (יאוש) of benefitting from the חמץ (approach of the בית הלוי), or because one's ability to perform

From that גמרא, it seems clear that a person does not have the power to sell his חמץ (or any other איסורי הנאה), for he does not legally own it. If one does go through the motions of "selling" the חמץ, the transaction is meaningless, and the "payment" still legally belongs to the "buyer". If so, why is there even a discussion as to whether the "payment" becomes forbidden on account of being used to "purchase" חמץ (or any other איסורי הנאה), being that the purchase is meaningless!

- The רמב״ם famously (חמץ ומצה א:ג) discusses the punishment of a ישראל who buys חמץ on פסח. Now, if the sale of חמץ is void, why is the purchaser punished? The נודע ביהודה (in מהדו״ק סי׳ י״ט) infers from this רמב״ם that the sale of חמץ is indeed legally valid; it is legally possible for a ישראל to purchase חמץ from another ישראל on פסח. Although the גמרא on דף ו׳ עמוד ב׳ teaches that one does not have the power to perform ביטול חמץ, the נודע ביהודה distinguishes between **thought** and **action**. In other words, the גמרא teaches that one's thoughts are insignificant during the זמן האיסור, and his ביטול חמץ is therefore ineffective. However, one's actions are still significant, and one therefore has the legal ability to buy or sell חמץ, even during the זמן האיסור.

  According to this explanation, it emerges that the sale of איסורי הנאה is in fact legally valid, and the need to discuss the status of the payment is understood.

  However, the נודע ביהודה's interpretation of the רמב״ם is disputed by most of the מפרשים, who maintain that even the רמב״ם holds that there is no legal method for selling איסורי הנאה. [As to the רמב״ם's statement regarding the punishment of a ישראל who purchases חמץ on פסח: The ר״ן explains that the רמב״ם refers to a ישראל who brought חמץ from a גוי, in which case the חמץ was not אסור בהנאה at the time of the sale. Alternatively, the עונג יו״ט explains that although one does not legally own the חמץ that he purchases, he nevertheless transgresses בל יראה ובל ימצא on account of such חמץ, much in the same way that רבי אלעזר rules that one transgresses בל יראה ובל ימצא even though he does not legally own the חמץ in his possession.] Thus, the question still stands: Why is there even a discussion as to whether the "payment" becomes forbidden on account of it being used to "purchase" חמץ, being that the purchase is meaningless?

- In מס׳ עבודה זרה (on דף ס״ב עמוד א׳), the ר״ן initially mentions the following approach (with which he ultimately disagrees): It is true that the transaction is completely invalid! Nevertheless, the "buyer" and "seller" are willing to uphold the "transaction", and there is no denying that the "seller" has benefitted from "selling" his חמץ, by procuring funds that he otherwise would not have obtained. Thus, even if the funds cannot truly be regarded as payment for the איסורי הנאה, it can still be regarded as a benefit that he derived from it. That is why there is reason to believe that the funds should be forbidden, and it necessary for the תורה to clarify that it is nevertheless permitted – aside for in the cases of עבודה זרה and שביעית.

  According to this approach, this kind of indirect benefit from the חמץ is still regarded as benefit. Had the תורה not permitted it, logic would indicate that it should be forbidden.[14]

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an act of ownership stems from one's ownership (not of the item **itself**, but) of the item's **value**, whereas חמץ is absolutely valueless (approach of the קובץ שיעורים).

In any case, all of the above-mentioned opinions agree (for one reason or another) that one is unable to be מבטל his חמץ on פסח, nor to sell it or declare it הפקר.

[14] According to this, we can easily appreciate why the גמרא in קידושין (on דף נ״ח ע״א) asks ״מנא לן״ – "How do we know that the payment in all these cases is permissible?" Without any source, one would have logically thought that the payment remains forbidden in these cases. Indeed, this is how the תוספות הרא״ש explains the question of the גמרא in קידושין. [See footnote 16.]

❖ Alternatively, the ר״ן explains that this very fact – that a transaction involving איסורי הנאה is invalid – is precisely the reason that the money used to "purchase" איסורי הנאה is permissible! In other words, even though the "buyer" and "seller" are willing to uphold the "transaction", and there is no denying that the "seller" has benefitted from the חמץ by procuring funds that he otherwise would not have obtained, this does not really constitute benefit derived from the איסורי הנאה, because the transaction was not valid.

Thus, the ר״ן continues to explain, the true חידוש lies not in the fact that the איסור הנאה does not transfer to its "payment", but rather, that the איסור הנאה of עבודה זרה and שביעית **is** transferred to its "payment", even though the transaction is technically void[15]! The גמרא in קידושין explains that this חידוש is derived from the פסוקים, and the משנה and גמרא further clarify that this גזירת הכתוב applies **only** to עבודה זרה and שביעית.[16]

This explanation of the ר״ן raises a new question: When the "seller" was מקדש a woman with the money that he received as "payment" for the איסורי הנאה, why is she מקודשת? Since the sale of איסורי הנאה is technically void, it emerges that the money used by the "seller" really belongs to the "buyer", and the "seller" was not really מקדש the woman with his own money!

The ראשונים in קידושין answer (amongst several answers) that since the "buyer" advanced "payment" for the איסורי הנאה knowing full well that the transaction was inherently invalid, it is safe to assume that he intended for the "seller" to keep the money as a gift.

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[15] This point sheds light on the matter discussed in footnote 3.

[16] If so, why does the גמרא in קידושין ask ״מנא לן״ – "How do we know that the payment in all these cases is permissible?" Even without a source, logic indicates that it is permitted. The שער המלך (אישות ה:ב) explains that the initial question of the גמרא is not to be viewed in a vacuum, but along with the continuation of the discussion of that גמרא. The sum total of the גמרא's question really is: "Since the תורה explicitly tells us that the payment of עבודה זרה and שביעית is forbidden, how do we know that they do not serve as a source to establish the same הלכה in all other cases as well?"