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פסחים ב' ע"א

תוספות ד"ה אור לארבעה עשר

Why is איסורים בדיקה וביעור not required for other איסורים?

Question of תוס' תוס'

תוס' asks: The חכמים require בדיקה וביעור for חמץ, in order to prevent one from encountering and accidentally eating it. If so, why didn't they also require בדיקה וביעור for הכרם וכלאי הכרם, in order to prevent one from encountering and accidentally eating them?

[This question stands only according to those שיטות who hold, like תוספות, that בדיקת חמץ was instituted in order to ensure that one does not encounter and accidentally eat חמץ. Since this concern applies to other איסורים too, it is logical to ask why the חכמים didn't institute בדיקה וביעור in those cases! However, according to those שיטות who hold, like רש"י, that בדיקת חמץ was instituted to prevent one from transgressing ימצא ובל יראה, nowhere do we find that the חכמים required בדיקה וביעור in order to prevent one from encountering and eating an איסור! Thus, there is no basis to ask why בדיקה וביעור isn't required for הכרם וכלאי הכרם!]]

Analysis of the question of תוס' תוס'

The דף ל"ג ע"ב (on תמורה of משנה second last) clearly states that בשר בחלב must be buried, and ערלה וכלאי הכרם must be burned! Many אחרונים explain that this requirement is in order to prevent one from inadvertently deriving benefit from these items. If so, why does תוס' consider these items to be different from חמץ?

- a) חתם סופר: The משנה of תמורה does not mean that there is an **obligation** to burn or bury the הכרם וכלאי הכרם! Rather, the משנה merely means that one who burns these items fulfils a מצוה. Alternatively, the משנה merely teaches that (the ashes of) הכרם וכלאי הכרם are אסור בהנאה after they are burned, whereas (the ashes of) בשר בחלב remains אסור בהנאה even after burning them, and there is thus no point in doing anything other than bury them². Now, although the חת"ס does not discuss our תוס' explicitly, his position allows one to explain the question of תוס' as follows: Why is ביעור חמץ an **obligation**, as opposed to the destruction of other איסורים, which is not an **obligation**?
- b) קובץ שיעורים: Although both חמץ and other איסורי הנאה must be destroyed, they are still very different with regards to בדיקה; there is no obligation to search for other איסורי הנאה,

¹ שו"ת או"ח סי' ק"פ.

² שו"ת יו"ד סי' רפ"ו.

whereas there is an obligation to perform חמץ בדיקה! Accordingly, the question of תוס' is: Why did the חכמים institute בדיקה for חמץ, and not for other איסורים?

[The שפת אמת rejects the possibility of this being תוס' question, for it is easily answerable! With regards to בדיקה, there is a simple reason to distinguish between חמץ and שאר איסורים; חמץ is commonly brought into a person's home, and he must therefore search for anything remaining of it. However, בשר בחלב וערלה וכלאי הכרם are not commonly brought into a person's home, and there is thus no reason to make him search for it – just as he is not obligated to search a place into which no חמץ was brought!]

- c) Although both חמץ and other איסורי הנאה must be removed and destroyed, there is still an important difference; חמץ must be removed and destroyed **without delay**, whereas the removal and destruction of other איסורים may be delayed. Accordingly, the question of תוס' is: Why did the חכמים institute for חמץ to be removed and destroyed without delay, whereas they did not require the same for other איסורים! [See שפת אמת who raises various objections with his own explanation.]

In summary, תוס' views חמץ and בשר בחלב וערלה וכלאי הכרם as different, with regards to:

- חמץ סופר: The element of ביעור.
- קובץ שיעורים: The element of בדיקה.
- שפת אמת: The element of שהי' (delaying the removal and destruction).

Thus, תוס' asks, why weren't the חכמים as strict with בשר בחלב וערלה וכלאי הכרם as they were with חמץ?

⌘ First answer of תוס'

In their first answer, תוס' explains that the חכמים were concerned specifically about חמץ, because it is מותר year-round, and one does not instinctively abstain from it. Therefore, the חכמים required בדיקה וביעור for חמץ, in order to prevent one from encountering and accidentally eating it. In contrast, the איסורים of בשר בחלב וערלה וכלאי הכרם are applicable year-round, and one instinctively refrains from eating them. Thus, the חכמים determined בדיקה וביעור to be unnecessary, as it is highly unlikely for someone to inadvertently eat them when he encounters them.

The שפת אמת asks: A person is certainly well accustomed to eating fruit. Why, then, does תוס' assume that he will instinctively refrain from eating a fruit of ערלה or כלאי הכרם?

We might answer by pointing out that there are two ways of explaining a person's innate aversion to איסור:

1. A person instinctively refrains from certain **substances** or **foods**; e.g. he instinctively recoils from cheese on meat (בשר בחלב) – which is **always** אסור, and he does not instinctively recoil from bread (חמץ) – which is **usually** מותר. This is the way the שפ"א seems to understand the issue, and he therefore asks why תוס' assumes that a person will instinctively recoil from a **fruit** of ערלה or כלאים, being that most **fruits** are not ערלה or כלאים!
2. A person instinctively refrains from certain **איסורים**; i.e. he is constantly on the lookout for the איסור of בשר בחלב in **any** form, being that this איסור applies year-round, and he is not constantly on the lookout for the איסור of חמץ, being that this איסור does not apply for most of the year. Accordingly, תוס' assumes that a person will instinctively recoil from the איסור of ערלה or כלאים in **any** form, being that this איסור applies year-round, and one is on the constant

³ So much so, that it is actually a מצוה which requires a ברכה – even though it is possible that nothing will be found during the בדיקה!

lookout for it. This explanation seems quite clear in the words of תוס', and even clearer in the words of רבינו פרץ and the ריטב"א.

According to this explanation of תוס', a question still remains: It emerges that the חכמים instituted בדיקה וביעור only because one is not accustomed to the איסור of חמץ. If so, why didn't the חכמים also prevent a נזיר from encountering יין, being that he, too, is unaccustomed to the איסור of יין?

The ריטב"א answers: It is true that the נזיר is unaccustomed to abstaining from wine, and there is the concern that he will accidentally drink it when encountering it. Nevertheless, since a נזיר is permitted to benefit from his wine, the חכמים did not require him to destroy it, as this would cause him an undue loss. Only with regards to חמץ did the חכמים institute בדיקה וביעור, being that the חמץ is in any case אסור בהנאה, and destroying it does not cause the owner any loss.

Question: This explanation addresses why the חכמים didn't require the **destruction** of the wine! But why didn't the חכמים require the נזיר to **remove** the wine from this possession? In other words, the חכמים should require the נזיר to sell his wine, (or store it in a place where he is unlikely to encounter it,) in order to prevent him from encountering the wine! Such a תקנה would not even cause the נזיר an undue loss!

תוס' answers that the חכמים did not require the נזיר to remove the יין from his possession, since it is permissible for others. תוס' does not elaborate further, but other ראשונים explain that the חכמים did not make a תקנה which by its very nature applies only to a few individuals (רבינו פרץ). Alternatively, the חכמים did not wish to make it difficult for the נזיר to live together with those family members who are permitted to drink wine, and who will want to access it (מהר"ם חלאווה).⁵

⌘ Second answer of תוס'

In their second answer, תוס' explains that the תורה itself is especially stringent with regards to חמץ, decreeing that one transgresses not only for eating it, but also, for possessing it (בל יראה ובל ימצא). Accordingly, the חכמים followed suit; they were especially stringent and instituted בדיקה וביעור with regards to חמץ, but not with regards to other איסורים. [Note: Even according to this approach, the **main** reason for בדיקה וביעור is so that one should not encounter חמץ and inadvertently eat it. תוס' is only explaining why the חכמים went to such lengths with regards to חמץ, and not with regards to other איסורים.]

⁴ With regards to a נזיר, there is a well-known principle: "לך לך אמרינן נזירא סחור סחור לכרמא לא תקרב" – "Go away, go away," we say to a נזיר, "Go around, go around! Do not approach the vineyard!" The מהרש"א הארוך interprets this to mean that a נזיר is prohibited from keeping wine in his possession. However, his opinion is clearly negated by the words of the ראשונים, who write that a נזיר may keep wine in his possession. Furthermore, from the רמב"ם it appears that this maxim only means that a נזיר must avoid any place where people are **actively** engaged in eating grapes or drinking wine. However, in the absence of that, the נזיר may certainly keep wine on his property.

⁵ This explanation of תוס' is based on words of the תוס' הרשב"א.

Based on תוס' words earlier on in the דיבור, the מהרש"א has an entirely different approach to understanding תוס'; the חכמים did not see fit to institute **any** תקנה for an item which is מותר בהנאה. Based on this premise, the מהרש"א asks: Why did תוס' find it necessary to present yet another justification (that the איסור of חמץ is universal, whereas the איסור of יין applies to only a few individuals) as to why the חכמים did not make a תקנה in the case of נזיר? Even without that explanation, it is still understood why the חכמים did not make a תקנה in the case of נזיר, being that the יין is מותר בהנאה! Because of this difficulty, the מהרש"א asserts that תוס' was not really referring to the case of a נזיר – who **may** benefit from wine, but rather, to a case in which someone made a נזיר not to **benefit** from wine. That is why תוס' needed to present a different justification; that the איסור of חמץ is universal, whereas the איסור of יין applies to only a few individuals.

One problem with the מהרש"א's interpretation is that תוס' (earlier on in the דיבור) only seems to indicate that the חכמים did not mandate the **destruction** of things which are מותר בהנאה! However, it is still valid to ask why the חכמים did not mandate their **removal**! How would the מהרש"א answer that question? Furthermore, many ראשונים discuss the same issues as תוס', and while all of them mention the case of לנזיר, not one of them mentions the case of יין מן היין. As such, it is more than likely that תוס' also means the case of לנזיר, and not the case of יין מן היין.

Question: רבינו תם (as opposed to רש"י) is of the opinion that the transgression of בל יראה ובל ימצא does not apply to חמץ נוקשה (defective חמץ) or תערובת חמץ (a mixture containing חמץ). Yet, the גמ' (on דף מ"ג ע"א) clearly indicates that בדיקה וביעור must be performed for these items as well!⁶ According to the second explanation of תוס', why is this so; since the תורה is **not** especially stringent with regards to these types of חמץ, then why were the חכמים'?

The ר"ן answers with two words: "לא פלוג" – "the חכמים did not differentiate". Whenever the חכמים make a תקנה, there are two aspects:

"למה תיקנו" – **Why** they made the תקנה.

"איך תיקנו" – **How** they made the תקנה.

In other words, the חכמים' **reason** to institute בדיקה וביעור was because the תורה was especially stringent with regards to **proper** חמץ! However, the **actual** תקנה was applied across the board (in order that the requirement to perform בדיקה וביעור would not need to be determined on a case by case basis).

Another answer to this question may be gleaned from the ר"ן, who states that the whole point of בל יראה ובל ימצא is in order to prevent one from eating חמץ!⁸ The תורה commanded that one should not have חמץ, in order that he won't come to eat it! We might explain that this is also the intent of תוס'; since the תורה itself is especially stringent with regards to חמץ, decreeing that one can't have it in order that one won't eat it, so too, the חכמים went to even greater lengths – even when the תורה allows one to have חמץ (such as when he performed ביטול), the חכמים decreed that he can't have it, in order that he won't eat it. Thus, it makes perfect sense for the חכמים to require בדיקה וביעור for חמץ נוקשה and תערובת חמץ, for the whole point of the תקנת חכמים was that even when the תורה allows one to have the חמץ – such as חמץ נוקשה and תערובת חמץ – the חכמים decreed that he can't have it, in order that he won't eat it!

⁶ elaborates and explains the proof for this. However, the רש"י (in סי' א' א"ש) does not acknowledge this proof, and the תוס' (in אות ח') explains how this proof might be dismissed.

⁷ In fact, this question prompted תוס' רבינו פרץ and תוס' הרשב"א to reject the second explanation of תוס'.

⁸ According to this explanation, the תורה commanded that we keep one מצוה solely for the sake of keeping another מצוה. This is a big חידוש!