Tax Ethics in Rashba's Responsa to Saragossa

By: DOV FISCHER*

Introduction

Consider the following questions on tax ethics and policy:

1. Should the tax code be applied based on its letter or its spirit?
2. Is it ethical for a taxpayer to take advantage of an unintended loophole?
3. Is a taxpayer ethically responsible when another party to a transaction engages in inappropriate tax evasion?

These questions, which are relevant today, were addressed by Rashba (Rabbi Shlomo ben Avraham ibn Aderet, 1235–1310). Rashba is arguably the greatest author of rabbinic responsa in history.[1] Like the Geonim and early Rishonim such as the Rif (Rabbi Isaac ben Jacob Alfasi ha-Cohen, 1013–1103), Rashba answers questions clearly and decisively. Unlike his predecessors, Rashba heralds a new style of responsa which persists to this day. Rashba's responsa frequently explore both sides in the manner of litigants in front of a judge. Rashba explores each argument before reaching his decision. By sharing his reasoning and thought process, Rashba's responsa can teach us much more than just the narrow decision of the case as presented.

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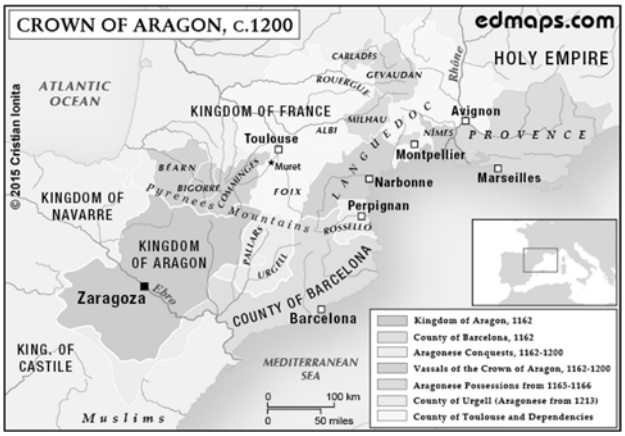
* The author dedicates this article to the continued good health of Shlomo Lev and other members of Cong. Kerem Shlomo (Rabbi Simcha Klahr). Opinions expressed and any errors in the article are those of the author only. This is an academic article and does not constitute tax, legal, or rabbinic advice.

1 In his podcast, Rabbi and historian Dovid Katz says that Rashba's responsa were the first that were consciously collected and intended for publication. ("The 'Rashba'—R' Shlomo ben Aderet (1235–1310): Baal HaBayis, Rosh Yeshiva, Posek and Royal Troubleshooter.") https://anchor.fm/rabbi-dovid-katz/episodes/The-Rashba---R-Shlomo-ben-Adret-1235-1310-Baal-HaBayis--Rosh-Yeshiva--Posek-and-Royal-Trouble-shooter-eppbun/a-a9ka2n)

Dov Fischer is professor and department chair of accounting at Brooklyn College. He attended the Talmudical Yeshiva of Philadelphia, Yeshiva Torah Vodaath, Yeshiva University, and holds a Ph.D. from University of Colorado at Boulder.

Based in the Catalonian city of Barcelona, Rashba responded to thousands of questions from throughout Spain, Provence, North Africa, northern France, Germany, Bohemia, Sicily, Crete, and the Crusader city of Acre in Eretz Yisrael.[2] Among those that came from relatively near were questions from Saragossa, which lies two hundred miles inland from Barcelona.

Outside the confines of Torah scholarship, Rashba and his responsa are most famous for his ban on secular studies before the age of twenty-five. The ban was meant to quell a controversy that erupted in Languedoc and Provence to the east of Barcelona (see map).[3] Such sensational controversies notwithstanding, the majority of Rashba's responsa pertain to ritual observance and commercial disputes between individuals and between individuals and the Jewish community. Our focus is on a responsum pertaining to a tax question and specifically to internal Jewish tax administration to meet fixed levies imposed by the crown. Such responsa pertain to ethical and public-policy questions that are relevant beyond the narrow confines of Jewish law. Rashba himself notes that he does not base his tax rulings on Jewish law but on precedence and equity as seen through his own moral lens (III:412; IV:260).



Map of the Crown of Aragon several decades before Rashba's birth. This map highlights that while both Barcelona and Saragossa (Zaragoza in Spanish) belonged to the Crown of Aragon, Saragossa was in the Kingdom of Aragon proper (unlike Barcelona) and was therefore subject to onerous taxation at the king's whim.

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2 See: *Museu d'Història de Barcelona*, MUHBA. "Salomon ben Aderet, Barcelona 1230–1310: The Triumph of Orthodoxy." http://www.bcn.cat/museuhistoriaciutat/docs/ProgramaSalomoANG.pdf

3 Buchman, A.B., "Avraham and Sarah in Provence," *Ḥakirah* 6.

This essay examines responsum III:406 (Machon Yerushalyim, 1997) addressed to the community of Saragossa, the capital of both the Kingdom of Aragon and the Crown of Aragon. In an interesting political arrangement, the Kingdom of Aragon and the County of Barcelona were united under a single sovereign in the Crown of Aragon. For much of Rashba's early life this Crown was held by James I, who reigned for a remarkable 63 years (born 1208; reigned 1213–1276). James I was an enlightened ruler, who ushered in a golden age for Barcelona and its Jews.[4] In Jewish history, James I is best known for officiating over the Disputation of Barcelona, in which Ramban (Moshe ben Nachman of Girona; Rashba's teacher) represented the Jewish position against an apostate who converted from Judaism to Christianity.[5]

While the Crown of Aragon reigned over both Saragossa and Barcelona, the two were subject to different administrations and institutions. Saragossa was the capital of the Kingdom of Aragon, and as such the king exercised direct powers of taxation (see map). On the other hand, Barcelona and Catalonia in general were given considerable autonomy in the exercise of their internal affairs, a historical anomaly within Spain that persists to this day in the Catalan separatist movement.

Being situated so close to royalty was a mixed blessing for the Jewish community of Saragossa. On the one hand, individual Jews were prominent in the financial administration of the Kingdom and Crown of Aragon.[6] On the other hand, the king was able to levy taxes on the Saragossa Jewish community at will. As with other pre-modern Jewish communities, the Saragossa community levied taxes on its own members to meet the required fixed payments to the king.

This background information explains why the responsa to Saragossa are especially interesting. The Saragossa Jewish community was subject to arbitrary tax levies by the king, and the community in turn had to devise creative ways to not only maximize tax revenue within its borders but also to expand the geographical range of its taxation powers and to prevent capital flight. This background information also sheds light on the nature of the tax questions posed by the Saragossa community to Rashba in Barcelona. Although they shared the same sovereign in the person of James

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4 Assis, Yom Tov. *Golden Age of Aragonese Jewry: Community and Society in the Crown of Aragon, 1213–1327*. 1st edition. The Littman Library of Jewish Civilization in association with Liverpool University Press,1997, p. 3.

5 James I also had a close relationship with the father of the *Menorat Hama'or*, i.e., the father of Rabbi Isaac ben Abraham Aboab (https://www.jewishencyclopedia.com/articles/344-aboab Retrieved April 18, 2021).

6 See *Jewish Encyclopedia*, "Saragossa," by Richard Gottheil and Meyer Kayserling. https://www.jewishencyclopedia.com/articles/13192-saragossa

I and his successors, taxes in Saragossa were more onerous and capricious than in Barcelona. This was even more the case after the reign of James I, whose successors overstretched the treasury by embarking on expensive military campaigns to Sardinia and Greece.

Because of the heavy tax burden imposed on the Saragossa Jewish community, some of its members sought to emigrate. The community imposed a wealth tax which required members to annually self-assess their property values and to pay taxes on the estimated appreciation (III:407). Essentially, this is an unrealized capital-gains tax. The community also imposed a wealth tax on those who sought to emigrate.

Note that the responsum does not touch on the concept of primacy of temporal authority in fiscal matters (*dina d-malkhuta dina*), as the taxes in question were self-imposed by the community. The Crown was not directly involved in the administration of taxes within the community, though it enforced the decisions of community officials. The dispute centered on the fairness of the distribution of a fixed tax burden within the community rather than the overall legitimacy of these taxes.

Responsum III:406—Avoidance of Exit Tax Through Marriage

The Saragossa community instituted the following tax ordinance or *takanah* (III:406):

> A Jewish taxpayer who marries off a daughter or sister **out of the city to any man who is not subject to our taxes**, shall be responsible to pay an exit tax equal to the amount the taxpayer would have owed upon their exit from the city to permanently emigrate to another location, as is written in the emigration document.

The Question

The ordinance stipulates an exit tax for marriages which take place out of the city. The question arose when a father married off his daughter *in Saragossa*, after which the newlyweds emigrated without paying the tax. The father contended that the ordinance applies only if the marriage took place out of the city. Meanwhile the community maintained that the *purpose* of the ordinance was to prevent capital flight through marriage, regardless of the wedding's location.

While the father's argument seems trivial and based on a technicality in the language (see bolded quotes above), precedence supported his argument. The father cited previous instances of weddings which took place in the city before the newlyweds emigrated. In none of these cases was an exit tax levied. In fact, the dowry exit-tax had only been applied once before, and in that case the wedding took place outside the city.

Rashba's Response

Rashba rules in favor of the taxpayer, but not because of the taxpayer's assertion that the technical language of the ordinance supports his position. Rashba makes it clear that absent precedence, he would have disregarded the technical reading of the ordinance. While the technical reading appears to limit the dowry exit-tax to weddings outside the city, Rashba dismisses this as a "silly" argument (דברי הבאי). Rashba considers that the object of the ordinance was to prevent capital flight, regardless of where the wedding actually took place. In the absence of precedence, it would have been silly to differentiate between an in-town wedding versus an out-of-town wedding, so long as the newlyweds emigrated eventually.

Rashba notes that precedence sheds light that seemingly sloppy language of the ordinance was in fact intentional in limiting its application to in-city weddings. Rashba ruled that the father is not responsible to pay the exit tax because the community intended to levy the tax directly on the newlyweds rather than on the father. If the wedding took place in the city, then the exit tax obligation falls on the newlyweds rather than the father.

Rashba concludes that community officials were at fault for not detaining and collecting the exit tax from newlyweds prior to their departure from the city. Rashba's language implies that the father is not only legally blameless but also morally blameless for the evasion of the exit tax by the newlyweds, as the responsibility of enforcement lies elsewhere.

Lessons

1. Letter or spirit?

Rashba ruled in favor of the taxpayer, but at the same time he notes that his ruling is not due to the mere technical reading of the ordinance. Rashba specifically notes that were it not for precedence which corroborated the technical reading, he would have disregarded the technical language and would have supported the community's position. Rashba ruled in favor of the father only because precedence revealed that the dowry-tax ordinance was intentionally drafted to exclude in-town weddings even if the newlyweds subsequently emigrated.

Rashba teaches that the tax ordinances should generally be applied based on their spirit and intent. The question is how to determine that spirit and intent. If the ordinance is new and no precedence exists in its application, then we logically deduce the intent based on the ordinance itself. If, however, the ordinance had been applied differently than its perceived intent, then we deduce the intent based on preceding rulings.

Rashba is explicit that intent is determined first and foremost based on precedence rather than the assumed intent of the authors of the ordinance (III:409).

2. Are unintended loopholes ethical?

While it might appear that the taxpayer (i.e., Reuven, the father) did not act in good faith, Rashba does not condemn his actions. In the opening arguments, the taxpayer did not defend his position in that he expected that the newlyweds will pay the tax, which is the basis for Rashba's ruling in the taxpayer's favor. Rather, the argument was based on a technical reading of the ordinance, and Rashba rejected this argument.

The taxpayer insisted that the technical language of the ordinance exempts him from the tax and that precedence supports his position. Rashba rules in favor of the taxpayer, but only because precedence supports his position. Rashba then creates a new argument in favor of the taxpayer, but not because of the mere technical reading of the ordinance. Rather, Rashba combines the language of the ordinance and precedence to recreate an alternative argument to exempt the taxpayer. Rashba reasons that the ordinance did indeed intend to exempt weddings that take place in the city, as community officials would then have recourse to the newlyweds' finances should they decide to later emigrate. The father did not actually expect the newlyweds to pay the tax, but Rashba does not admonish him for being a party to tax evasion.[7] Instead, Rashba rebukes community officials for failing to exercise their responsibilities to detain the newlyweds until they paid the exit tax.

This lesson, which may come across as somewhat provocative or controversial, is that if an ordinance provides for an exception or exemption, it is ethical for the taxpayer to take advantage of it even in ways that were not originally intended. It is not the taxpayer's responsibility to understand the intent of the ordinance and to arrange his affairs in such a way as to maximize revenue for the community treasury. If the ordinance provides for an intentional exemption, the taxpayer may apply it in any way, even if its application does not conform with original intent of the drafters.

To explain the last statement, Rashba established that the exemption for in-city weddings was intentional. However, the intent was to levy exit taxes on the newlyweds when they leave the city. In this case, the city

7 Rashba would go beyond deciding a case and would add moral instructions to litigants when appropriate. For example, see end of responsum IV:315: "and he must calm his mind to accept what his Jewish colleagues instruct him so as to safeguard the matter and for the sake of heaven."

officials failed to levy the exit tax upon the exit of the newlyweds. Ultimately, the exemption of the dowry tax for the father did not conform with the ultimate expectation that the newlyweds will pay an exit tax. Still, Rashba reserves his admonition to the community officials, not the taxpayer for taking unfair advantage of a valid exemption to the dowry tax.

3. Responsibility if another party to the transaction cheats on taxes

This question builds upon the previous one. Suppose a transaction is structured in such a way that the taxpayer has good reason to believe that a counterparty to the transaction will take advantage of its structure to engage in illegal tax evasion. Does the taxpayer have a responsibility to avoid the transaction? Does the taxpayer have a responsibility to prevent the counterparty from evading taxes?

Before answering these questions, a distinction should be made between two types of transactions. In the first type, a transaction is structured in such a way that its only *conceivable* purpose is for the counterparty to evade taxes. In the second type, the transaction has other legitimate business purpose but also provides an opportunity for the counterparty to evade taxes.[8] Our discussion is reserved for transaction of the second type. In transactions of the first type, it is apparent that the taxpayer is essentially an accessory to the counter-party's tax evasion.[9]

Using the same general reasoning we used to answer the previous (loophole) question, Rashba's position is that the taxpayer is not responsible when a counterparty takes advantage of the structure of a transaction to evade taxes. In our responsum, it is apparent that the taxpayer fully expected that the newlyweds would not pay the required exit tax. In fact, the taxpayer supports his position by citing precedents of such cases.

Rashba implies that there were legitimate reasons for the community to encourage in-city weddings, even if the newlyweds were contemplating a later exit. Rashba states that it is not the father's responsibility to ensure that the newlyweds pay their required taxes after the wedding. The father

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8 Following the IRS on tax ethics, I use avoidance to connote tax minimization within the scope of the law, and evasion to connote illegal tax minimization. Note that in a quote from Judge Learned Hand below, he uses "evade" in the same sense we use "avoid."

9 For more on the distinction between the two transaction types, see
(1) Fischer, D., Friedman, H.H. Tone-at-the-Top Lessons from Abrahamic Justice. *Journal of Business Ethics* 156**,** 209–225 (2019).
(2) Avi-Yonah, R. (2008). Corporate social responsibility and strategic tax behavior. In W. Schön (Ed.), *Tax and corporate governance* (p. 183). Berlin: Springer.

is not responsible for tax compliance by the counterparties to a transaction. In this case, the transaction is the dowry, and the counterparty are the newlyweds.

While such an ethical position may not be consistent with altruistic notions such as *lifnim mishurat ha-din*, it does recognize the realities of financial life. It is unreasonable for tax authorities to expect taxpayers to deduce original intent of complicated tax ordinances. To the contrary, it is the responsibility of the tax authority to draft tax laws in a way that is consistent with their aims and intentions.

Corollaries in U.S. Tax Law—Judge Learned Hand

Learned Hand (1872–1961), is one of the most cited U.S. judges.[10] In his most famous case, *Helvering v. Gregory (1934),* Hand answers our second (loophole) question that it is ethical for a taxpayer to take advantage of an unintended loophole:

> … a transaction ... does not lose its immunity, because it is actuated by a desire to avoid, or, if one choose, to evade, taxation. Anyone may so arrange his affairs that his taxes shall be as low as possible; **he is not bound to choose that pattern which will best pay the Treasury**; there is not even a patriotic duty to increase one's taxes. (Helvering v. Gregory, 69 F.2d 809, 2d Cir. 1934)

Hand's choice of words, bolded in the above quote, also suggests a negative answer to our third question (tax cheating by counterparties): so long as there is a legitimate business purpose for a transaction, the taxpayer need not worry if its structure may lead to a loss of revenue to the Treasury.

In *Helvering v. Gregory*, the taxpayer (Evelyn Gregory) created a corporation to which he transferred appreciated stock. The corporation then sold the appreciated stock, and the taxpayer dissolved the corporation. Based on tax laws at the time, the taxpayer argued that these transactions avoid the capital-gains tax that would have applied if the taxpayer had sold the stock directly. The Internal Revenue Service (IRS) commissioner (Guy Helvering) argued that the law did not intend to exempt such a transaction from capital gains.

Hand echoes his views in a later case:

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[10] Stone, Geoffrey R. *Perilous Times: Free Speech in Wartime from the Sedition Act of 1798 to the War on Terrorism.* New York: Norton, 2004, p. 200.

> Over and over again courts have said that there is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Everybody does so, rich or poor; and all do right, for nobody owes any public duty to pay more than the law demands: taxes are enforced exactions, not voluntary contributions.[11]

Judge Learned Hand apparently shared Rashba's legal philosophy on tax policy and ethics. In *Helvering v. Gregory*, Judge Hand did ultimately rule in favor of the U.S. Treasury because of the tax doctrine of substance over form. In this part of the opinion, Hand echoes Rashba's answer to our first question (letter or spirit) that in the absence of precedence to the contrary, we read the tax code based on its presumed intent rather than its technical wording:

> Nevertheless, it does not follow that Congress meant to cover such a transaction, not even though the facts answer the dictionary definitions of each term used in the statutory definition. ... the meaning of a sentence may be more than that of the separate words, ... and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create. (*Helvering v. Gregory)*

Conclusion

Among Rashba's many responsa, some address questions of community taxation to meet the fixed levies set on the community by the Crown. Due to its proximity to the Crown, the Saragossa Jewish community was subject to high, arbitrary taxes. Consequently, the community was forced to enact draconian tax ordinances to raise revenue from its members and to prevent capital flight to cities with lower tax burdens. These measures included an exit tax on assessed wealth. Furthermore, the community enacted an ordinance to tax dowries if the recipients marry out of the city. The question in responsum III:406 related to a dispute between the community and taxpayer Reuven, whose daughter married an out-of-towner *within* the city but then subsequently emigrated without paying the exit tax. The community sought to recover an exit tax from Reuven, who in turn argued that the technical language of the ordinance exempts weddings that take place in the city even if the newlyweds later departed.

Rashba dismisses the purely technical argument, but ultimately rules in the taxpayer's favor because of precedence in the application of the ordinance. Previously, the community had indeed distinguished between weddings that took place within the city and those that took place out of

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[11] *Commissioner of Internal Revenue v. Newman*, 159 F.2d 848 (2d Cir. 1947).

the city. In the case of in-city weddings the community had not previously levied an exit tax on the father. Rashba thus deduces that the intent of the ordinance was to delay the tax levy until such time as the newlyweds departed. Rashba did not fault the father for the failure of community officials to detain the newlyweds before they left the city.

We derive three lessons on tax ethics and policy. First, the tax code should be applied based on its spirit, as determined by the application of precedence. Second, a taxpayer is blameless for taking advantage of a valid loophole, even if the application of the loophole does not conform with the intent of the drafters of the tax code. Third, a taxpayer is blameless when another party to a transaction engages in inappropriate tax evasion. This is the case even if the structure of the transaction contributed to the evasion so long as the transaction is not purely a tax evasion scheme. In the early 20th century, U.S. Judge Learned Hand reached similar conclusions on tax policy and ethics.

Responsum III:406 (Machon Yerushalyim, 1997) follows.

אותן או מקילין מעליהם זמן כדי שיקבעו דירתן שם, ואדרבה אין עושין כן אלא כדי שיקבע דירתו עמהם ויהיה שותף עמהם לסבול עול המס והתשחורות מאותו זמן ואילך.

סימן תה

סרקוסטה

שאלתם ראובן שמעון לוי ויהודה היו דרים עם קהל סרקוסטה ורצו להעתיק דירתם משם ולדור בקהל אחר, ובאו לחשבון עם הקהל ופרעו כל חלקם בכל המסין וההוצאות והחובות שנתחייבו הקהל עד היום ההוא, ועשו להם הקהל שטר הודאה ופטרו מהכל והלכו להם. ועכשיו נתחדש ענין שצוה המלך לכל עמי הארץ להשיב כל ריבית שלקחו משום אדם, ובכח מצותו הוציאו הקהל סך ממון מיד העכו"ם, ועכשיו באו ראובן ושמעון ותבעו מן הקהל לתת להם חלקם מאותו ריבית שהחזירו להם העכו"ם, לפי שהם פרעו חלקם בו כשהיו דרים עמהם כשהעתיקו[1] עצמם משם. השיבו הקהל שאינם חייבים שזה כענין מציאה הוא, שלא עלה זה על דעת שום אדם. ועוד שמיום שנעתקו בס[2] משם הגיעו לקהל כמה הפסדים והוצאות ורביות מהחובות שנשארו עליהם ונפטרו הם מהם, והואיל ואינם חייבים בנזק אינן זכין בשבח. וראובן ושמעון טענו שמחמת הרבית שפרעו הם כמו שטענו הוציאו הקהל מה שהוציאו, הדין עם מי.

תשובה דברים ברורים אני רואה כאן שהדין עם אותן ראובן ושמעון, שריבית זה בין שהשיבו אותו העכו"ם מדעתם בין שהפיאו[3] בעל כרחם לא מציאה היא זו אלא תשלומי הריבית וכעין השבת גזילה, ולמי משלמין לאשר גזלו ולמקום שנטלו הם מחזירין, ואפילו גבו חובם מן הקהל לגמרי עוד מחשבין עמהם ומחזירין מה שכבר גבו ושכבר נפרע לגמרי, שאילו לא היו חייבין להשיב אלא במה שהיו חייבין הקהל עדיין וינכו להם מן החוב כנגד הריבית, בזה היה כדי לטעות ולומר אין זה אלא כמתחסד עם בעל חובו ומנכה לו ממה שהוא חייב לו, אבל העכו"ם הללו שמתחייבין ושלא מדעתם באו לבית החשבון, ואפילו על ריבית חובות שנפרעו, זה דמהשבת[4] גזלה היא זו, וכל הנגזלין ופורעין בריבית להם מחזירין וכולן נוטלין בו לפי חשבון, וזה נראה לי פשוט.

סימן תו

סרקוסטה

עוד שאלו, לפי שקצת מבני העיר היו מערימין ונעתקים מן העיר לגור במקום אחר ולא היו פורעין בחובות ובכל מה שנתחייבו הקהל קודם לאתם מן העיר, הוצרכו הקהל לעשות תקנה על המעתיק מן העיר שיפרע חלקו קודם העתקתו מן העיר בכל מה שנתחייבו הקהל קודם לכן, לפי שגם הוא מחוייב כאחד מהם, וזה נוסח הפרק ההוא מהתקנה הנזכרת וכו', וכמו כן כתוב פרק אחר בתקנת חיובי פורע המס, וזה לשונו, כל בר ישראל או בת ישראל שישיא חוצה לעיר הזאת בתו או אחותו עם שום אדם שאינו מחוייב לפרוע מס עמנו שיפרע הוא מס על אותו סך שנתן עמה כאלו הוא יצא ונעתק מן העיר לקבוע דירתו במקום אחר, כמו שנכתב במכתב ההעתקה, ע"כ. עכשיו ראובן השיא את בתו בעירו לשמעון ושמעון לא היה בן עיר ראובן ונתן לו סך ממון נדוניא, ולפי שכתוב בתקנה הנזכרת שכל מי שישיא את בתו חוצה לעיר טוען החולק ד"ף[1] דראובן חייב לפרוע מס בעד סך הנדונייא שנתן לבתו לפי שהשיאה למי שאינו חייב לפרוע מס עמנו בכל שנתחייבו הקהל קודם לכן עד עת הנישואין, ואעפ"י שלא היו הנישואין חוץ לעיר וכלשון התקנה, דאחר הכוונה אזלינן, ולפי שלא פרע בזמנו הוא עבריין על החרם ועל קנס אותה התקנה. וראובן אומר דכיון שלא השיאה חוץ לעיר כלשון התקנה אין בכך כלום, דעקר לשון התקנה בנשואין[2] הוא תלוי ואחר לשון התקנה אזלינן. ועוד אמר ראובן שמיום שעשו התקנה הנזכרת שיש לו זמן ארוך השיאו אנשים רבים את בנותיהם בעיר הזאת לאנשים שלא היו מבני העיר שלא פרע אחד המס הנתבע ממנו עכשיו לפי שלא השיאו אותם חוצה, אבל נמצא איש אחד שהשיא את אחותו חוצה לעיר ופרע מס בסך הנדוניא כלשון התקנה, הודיענו הדין עם מי.

תשובה נראה לי שהדין עם ראובן. וכדי שיתבאר הדין יפה לפי דעתי אכתוב לכם קצת בארוכה, ואומר אני שאלו היה הכל תלוי במה שתליתם אותו, דהיינו במה שכתוב בפרק תיקוני החיובין כל בר ישראל שישיא בתו או אחותו חוצה לעיר לשום אדם שאינו מחוייב לפרוע מס עמנו, וזה טוען לא היו הנישואין חוץ לעיר, בזה קרוב בעיני לחייבו על זה, שלשון המשיא חוצה לעיר אין במשמע שיהיו הנישואין ממש כלומר החופה חוץ לעיר, אלא אפילו ישאנה למי שימנה עמו שיוליאנה חוץ לעיר ולהוליכה עמו לעירו, שזה משיאה חוץ לעיר אעפ"י שהחופה בתוך העיר, ואין הכונה בזה למכניסה[3] לחופה בתוך העיר למכניסה חוץ לעיר, שאלו דברי הבאי דמה הקפדה לקהל בזה.

אלא שאני רואה שכונת הענין לד אחר יש לו, והוא שהקהל רצו לחייב עצמם לפרוע כל אחד ואחד חלקו במה שלוו ונתחייבו הקהל וללכת בזה אחר החיוב לא אחר גוביינא, כי גם אנחנו נתהפכנו בזה מצד אל צד עד שחזרנו לצד החיוב

תה. ע"ע להלן תטו. 1 צ"ל וכשהעתיקו. 2 צ"ל הם. 3 צ"ל שהשיבו. 4 נרצ"ל מהשבת.

תו. 1 אולי ר"ל דבר פשוט. 2 אפשר שצריך להוסיף, חוץ לעיר. 3 נרצ"ל לחלק בין מכניסה.

שו"ת ח"ג סימן

וקבענו אותו לחק,י והיוצא חייב בכל מה שחייבין הקהל והנכנס פטור, ולזה היה עקר פרק ההעתקה, וכן עקר פרק תקנת המיוחדין, שכל מי שישיא בתו או אחותו חוצה לעיר ממש שיתחייב במיוחדי המעתיק עצמו, לפי שהמשיאן ממש חוץ לעיר לא נודע לקהל מה נתן ומה יוליך עמו החתן ונמצאו הקהל מפסידין, שאין להם מה שיתפסו ומי שיעכבו. אבל המשיא בתוך העיר הקהל יכולין לעכב ביד החתן המצוי אצלם שלא להעתיק משם סך ממון הנדוניא, דלא עדיף החתן מגברא דאתי מחמתיה, והרי הוא נכנס תחת נותן הנדונייא, והחתן שנכנס י במיוב ויצא הנותן, וממוני הקהל שלא עכבוהו ושלא התפיסו ממון הנידונייא הם הפסידו על נפשם. ועל זה נראה לי שלשון חוץ לעיר דוקא, שהכוונה בודאי נראית כן כמו שאמרת, ועודי את זה מה שטען ראובן אם האמת כמו שטען שמעשים רבים היו במי שהשיאו בתוך העיר ולא חייבוס הקהל ואחד השיא חוץ לעיר וחייבוהו. ועוד שהטוען כנגד ראובן בא להוציא, והמוציא מחבירו בדבר שיש לו שני פנים עליו הראיה.

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