

## מעיקרא חוליין והשתא הקדש –

## Initially it was secular and now it is sanctified

## OVERVIEW

The גמרא explains that the reason that חל by גזול (even) according to ר' יוסף who maintains לא קני (יאוש השם) is because there is a שינוי השם; initially it was called חולין and now it is called הקדש. Our תוספות will explain that by certain הקדשות there is no need for the reason of שינוי השם in order for the הקדש to be חל.

תוספות anticipates a difficulty:

בַּקִּדְשִׁים שֶׁאֵין חַיִּיב בְּאַחֲרֵיּוֹת<sup>1</sup> לֹא הוּא צָרִיךְ לִיתֵּן טַעַם זֶה דִּישׁ כֹּאן שִׁינוּי רְשׁוֹת<sup>2</sup> -

**Concerning sanctified items for which he is not responsible for their loss, it was not necessary** for the גמרא **to offer this reason** of שינוי השם, for there is another reason why it is הקדש, **since there is a change of possession here.** It is unnecessary to mention שינוי השם when there is שינוי רשות.<sup>3</sup> Why then did the גמרא mention שינוי השם?

- שינוי השם responds that he mentions תוספות

**אלא בעי לאוקומי אפילו בחטאת ובאשם<sup>4</sup> -**

**only because he wants to establish this** **ברייטא** **even by a** **קרבן חטאת ואשם** **where he**  
**is חייב באחריות** -

ואף<sup>5</sup> על גב דמעיקרא<sup>6</sup> תורא דראובן והשתא תורא דראובן -

<sup>1</sup> There are two types of קרבנות חובה (such as a חטאת ואשם) and the other קרבנות רשות (like an עולה or שלמים). In קרבנות רשות there are (also) two types; a נדר (where one pledges initially to bring a קרבן [whether a עולה or שלמים] and later designates a specific animal for the קרבן [this is referred to as הרי עלי]) and a נדבה (where he initially donates a specific animal for a קרבן [this is referred to as הרי זה]). By קרבנות חובה and by a נדר if the designated animal is lost or stolen he is obligated to bring another (he did not fulfill his obligation, whether it is the חובה of a חטאת, or his נדר to bring a קרבן). These קרבנות are referred to as חייב באחריותן. However by a נדבה if it is lost or stolen he is not obligated to bring another קרבן. He donated specifically this animal and it is here no longer. נדבות are referred to as אין חייב באחריותן.

<sup>2</sup> Having responsibility denotes (a certain degree of) ownership. When one loses an item that he owns he suffers a loss; similarly when he loses something for which he has אחריות. When something is lost which is not yours there is no loss; similarly as to losing something for which you have no אחריות. When he makes a נדבה it belongs to הקדש; the original owner retains no interest in this קרבן for he carries no אחריות on this קרבן. It is in the הקדש רשות. Therefore by designating it as a קרבן there is a שינוי רשות; initially it was the owner's and now it belongs to הקדש. See 'Thinking it over' # 1.

<sup>3</sup> Everyone agrees that יאוש ושינוי רשות is קונה.

<sup>4</sup> See 'Thinking it over' # 2.

<sup>5</sup> Others maintain that this line; וְאֵלֶּיךָ – דְּרָאוּבֵן should appear before the previous line; וּבְאֵשׁם – אֵלֶּא. It is referring (according to them) to קְדָשִׁים שֶׁאֵין חַיִּיב בַּהֲחִרְיוֹתָיִם. See (however) 154 חֵלִי ר"נ אֶת קָטָן and אִמְ"ה הֵעֵרָה 154.

<sup>6</sup> This expression מעיקרא תורא דראובן והשתא תורא דראובן is mentioned later in the עא,גמרא concerning the עד,ב משנה where it states that if מכירה was for no reason "כ טבח ומכר וכו' אינו משלם ד' וה' מעיקרא תורא וכו'". This

**That even though initially** (before the הקדש) **it was s'ראובן's** (the thief's) **ox, and now** (after he was מקדיש it for a חטאת ואשם) **it is still s'ראובן's ox;**<sup>7</sup> there was no שינוי (for he is באחריותן), so why is it הקדש?!

**מכל מקום שינוי השם יש כאן:**

**Nevertheless since there is השם שינוי here** (for originally it was חולין and now it is חל), therefore the קונה is גנב and the הקדש is חל.

## SUMMARY

Being שינוי רשות is considered a חייב באחריותן for which one is מקדיש קרבנות.

## THINKING IT OVER

1. Generally by לוקח (who buys the stolen object from the גזול) is קונה through יאוש and שינוי רשות (the owner was מייאש and the object was physically transferred into the possession of the לוקח). In the case of תוספות when the גזול was transferred into the possession of the לוקח; how can the גזול have the power to make it שינוי (which would be considered a רשות) when at this point there was no שינוי yet?!<sup>8</sup>

2. Why did תוספות limit his answer to חטאת ואשם,<sup>10</sup> he should have also mentioned that שינוי is necessary for נדרים where he is חייב באחריותן (so there is no שינוי)?<sup>11</sup>

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ד"ה והשתא there תוספות. See שינוי רשות dos not create a מקדיש. indicates that being

<sup>7</sup> Since it is באחריות הגנב (for if נגנבו he is obligated to provide another קרבן), it is considered as if he owns it.

<sup>8</sup> By שינוי השם it can perhaps be argued that it is being called הקדש (at least by the גזול) and that allows him to be קונה and it becomes הקדש; however how is there any שינוי רשות (before it becomes הקדש).

<sup>9</sup> See חי' ר"נ אות קו.

<sup>10</sup> See footnote # 4.

<sup>11</sup> See אמ"ה הערה 157.