

אילימא לפני יאוש למה לי קרא פשיטא –

If we say it is before יאוש; why do we need a פסוק; it is obvious

OVERVIEW

אביי cites a ברייתא which derives from the word קרבנו (by a עולה),¹ that גזול is not acceptable.² It is obvious, argues אביי that this exclusion cannot be discussing a case where the original owner was not מתייאש from the stolen animal, for in that case it is obvious that it is not an acceptable קרבן. Our תוספות will explain why it is obvious that a stolen קרבן is not acceptable. Perhaps if one steals an animal and brings it for a קרבן it is acceptable (especially if he later pays the owner for the stolen animal).

דאפילו קדשינהו אינו קדוש³ דגזל⁴ ולא נתייאשו הבעלים שניהן אין יכולין להקדיש:

For even if the thief (or the owner) was מקדיש these animals, they are not קדוש, for the rule is that if one stole an item and the owners were not מתייאש, then both the גזלן and the גזול cannot be מקדיש the stolen item. A קרבן must be קדוש; otherwise he is שוחט חולין בעזרה which is prohibited.

SUMMARY

A stolen item (before יאוש) cannot be brought as a קרבן since neither the owner nor the thief can be מקדיש it.

THINKING IT OVER

1. The תוספות states that before יאוש the thief cannot be מקדיש the animal.⁵ What is the ruling if the owner was מתייאש (after it was stolen) and the גזלן was מקדיש it, does it become קדוש (if we assume that יאוש בגזילה is not מדאורייתא)?⁶

2. The rule that the גזול cannot be מקדיש if there was no יאוש; is that (also) a פשיטא?⁷

¹ ויקרא א,ג.

² This (also) means that if he was obligated to bring a קרבן and he brought a גזול, he did not fulfill his obligation.

³ If the animal cannot retain any קדושה; it remains חולין, then obviously it is not an acceptable קרבן.

⁴ See סט,א (סח,ב). לקמן. The גזלן cannot be מקדיש the item for it is not his (the owner was not מתייאש), and the owner cannot be מקדיש the item since it is not in his possession. See 'Thinking it over' # 1

⁵ See footnote # 4.

⁶ See מהרש"א.

⁷ See מהוד"ב להמהרש"א.