

That he stole his friend's קרבן

דגול קרבן דחבריה –

OVERVIEW

מאמרים maintains that the פסוק of גזול ולא קרבנו is excluding a case where he stole an actual קרבן and therefore it does not contradict his opinion that יאוש קני. מאמרים offers two explanations; the first is that the exclusion is teaching that even the original owners do not fulfill their obligation through this קרבן which was brought by the גזול. The second explanation is that the גזול offered the קרבן on his own behalf and even though there was יאוש it is not accepted, for since it is הקדש it always in the 'treasury of השם' and cannot be acquired by anyone else. תוספות (seemingly) rejects the first interpretation.¹ However תוספות has difficulty in understanding the need for any exclusion (according to the second interpretation) at all.

תימה למה לי קרא -

It is astounding! Why is a פסוק necessary to teach that a stolen קרבן is unacceptable? -

דאי בחטאת הא אפילו הוא עצמו אם אכל חלב אתמול והפריש קרבן -

For if we are discussing a קרבן חטאת, **then even** concerning the person himself who set aside the חטאת; the rule is that **if he ate חלב yesterday and set aside a קרבן** then -

אין מתכפר באותו קרבן על חלב שאכל היום² -

He is not forgiven with that קרבן which he set aside yesterday **for חלב which he ate today** (even if the קרבן was brought after he ate the חלב today). It certainly follows that the גזול cannot be forgiven for any עבירה which he did, with this קרבן חטאת which was set aside by the owner for the עבירה which the owner did. A חטאת is מכפר only for the עבירה for which it was set aside (and for the person who set it aside).

תוספות considers another option and rejects it:

ואי בעולה ושלמים הא אמרינן בפסחים (דף פט,ב) -

And if we are discussing that he stole **an עולה or a שלמים**, for those we also do not need a פסוק to teach us that it is not acceptable as a קרבן for the גזול, **for we learnt** in a ברייתא **in מסכת פסחים** -

המוכר עולתו ושלמיו לא עשה ולא כלום -

One who sells his עולה or קרבנות שלמים accomplished nothing; the animals remain in the custody of the initial owner and the buyer cannot use them for his קרבנות obligations. It is

¹ See 'ואין לומר' towards the end of this תוספות (and the פרץ (תוספות רבינו פרץ).

² See the משנה in בבבא כריתות where this is derived from the (ויקרא ד,כג) פסוק which states קרבנו על חטאתו.

obvious that if (even) buying a קרבן is meaningless (it does not belong to the buyer) then a stolen קרבן can obviously not be offered by the גזול. The question remains why a פסוק is necessary to teach that קרבנו ולא הגזול.

תוספות offers a solution:

והיה נראה לאוקמי בפסח שיכול למנות אחרים עמו על פסחו ולמוכרו כדמוכח התם -
And it would seem that we can establish this פסוק of קרבנו ולא הגזול concerning a קרבן, where the owner can 'count in' others with him to join him for his פסח, and the owner is also permitted to sell portions of this קרבן as is evident there in the גמרא. In a case where the גזול stole the קרבן פסח and wants to be מקריב it for himself, one may have thought that just as he can buy his share, the same will be if he stole his share (especially (if) [since] the owners were מתייאש [and יאוש קני]). Therefore the פסוק teaches us קרבנו³. קרבן פסח since it was a stolen פסח, קרבן פסח that it is not accepted for his פסח, קרבן פסח.

תוספות has a difficulty with the idea that this פסוק is referring to a קרבן פסח:

אבל קשה דהאי קרא בעולה כתיב⁴ -
However it is difficult to establish the exclusion of קרבנו ולא הגזול by a קרבן פסח, since this פסוק of קרבנו is written concerning a קרבן עולה!

תוספות offers a solution: We cannot understand this לימוד -

אם לא שיעמיד בפסח באם אינו ענין⁵ -
unless this פסוק will be established concerning a קרבן פסח through the process of ענין. Since the לימוד of קרבנו ולא הגזול is not necessary for an עולה we will apply it to a קרבן פסח.

תוספות anticipates an alternate solution (the first explanation of רש"י). Perhaps the פסוק is excluding a case when the גזול offers the קרבן on behalf of the original owner. קרבנו ולא הגזול teaches us that it is not acceptable (even) for the original owner. תוספות rejects this interpretation: **ואין לומר⁶ שבא הכתוב לפסול הקרבן⁷ -**

And one cannot say that the פסוק of קרבנו is coming to disqualify the קרבן for the original owner even if the גזול brought it on his behalf -

דהא אמרינן לקמן (דף עו,א) גבי גנב שאם שחט תמימים לפניו לשם בעלים -

³ See previous שמע ד"ה תוספות. See 'Thinking it over'.

⁴ In א.א.ק. reads קרבנו פסוק the ויקרא א.ג.

⁵ There is a rule that if we find a דרשה in a פסוק which is not necessary or not applicable to that פסוק, we may apply it to another area where it is applicable. לזה תנהו לזה. אם אינו ענין לזה תנהו לזה. if it is not appropriate for this concept, apply it to another concept.

⁶ See footnote # 1.

⁷ (פסול קרבן). See לקמן (but not that the קרבן is disqualified). means that the owner did not fulfill his obligation with this קרבן (פסול קרבן). See מהר"ם מפני.

For the גמרא states later concerning a thief that if he slaughtered unblemished inside the עזרה for the sake of the original owners the ruling is that it is accepted and it is considered as if the thief -

יחזרו⁸ קרן לבעלים:

returned the principal to the owners. The owners suffer no loss, for their קרבנות are accepted. Therefore קרבנו ולא הגזול is not teaching that the קרבן is לבעלים.

SUMMARY

The exclusion of קרבנו ולא הגזול is referring to a stolen פסח קרבן. All other קרבנות cannot be transferred (even) though a sale. A קרבן which is offered by a thief on behalf of its original owner is acceptable.

THINKING IT OVER

establishes the exclusion of קרבנו ולא הגזול in the case where the גזלן stole a קרבן פסח.⁹ Is the intention of the גזלן to offer this פסח solely for himself, or does he wish to include the original owner (ומנויים) as well?

⁸ The רש"י amends this to read 'חזרה'.

⁹ See footnote # 3.