

מעיקרא חולין והשתא הקדש –

Initially it was secular and now it is sanctified

Overview

The גמרא explains that the reason that חל is by a גזלן ([even] according to יוסף ר' who maintains לא קני) 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 חל to be הקדש.

anticipates a difficulty: תוספות

בקדשים שאין חייב באחריות¹ לא הוה צריך ליתן טעם זה דיש כאן שינוי רשות² –

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 רשות³. Why then did the גמרא mention שינוי השם?

– שינוי השם תוספות responds that he mentions

אלא בעי לאוקומי אפילו בחטאת ובאשם⁴ –

only because he wants to establish this ברייתא even by a ואשם קרבן חטאת where he is חייב באחריות –

ואף⁵ על גב דמעיקרא⁶ תורא דראובן והשתא תורא דראובן⁷ –

¹ 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 באחריות. 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 חייב באחריות.

² 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 רשות of הקדש. 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.

³ Everyone agrees that יאוש ושינוי רשות is קונה.

⁴ See 'Thinking it over' # 2.

⁵ Others maintain that this line; דראובן – דראובן should appear before the previous line; ובאשם – אלא. It is referring (according to them) to קדשים שאין חייב באחריותן to אמ"ה הערה 154 (however) חי' ר"נ אות קטז and א"ה הערה 154.

⁶ This expression מעיקרא תורא דראובן והשתא תורא דראובן is mentioned later in the גמרא concerning the מכירה, for since there was no גנב והקדיש ואח"כ טבח ומכר וכו' אינו משלם ד' וה' where it states that if משנה עד, מכירה תורא וכו'. This indicates that being מקדיש does not create a שינוי רשות. See תוספות there והשתא.

⁷ Since it is חייב באחריות הגנב (for if he is obligated to provide another קרבן), it is considered as if he owns it.

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

מכל מקום שינוי השם יש כאן:

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

Summary

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

Thinking it over

1. Generally by the לוקח (who buys the stolen object from the גזולן) is 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 גזולן was מקדיש the גזילה there was only יאוש; how can the גזולן have the power to make it הקדש (which would be considered a שינוי רשות) when at this point there was no שינוי רשות⁸ yet?!

2. Why did תוספות limit his answer to ואשם, he should have also mentioned that שינוי השם is necessary for נדרים where he is באחריותן (so there is no שינוי רשות)?¹⁰

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

⁹ See חי' ר"נ אות קו.

¹⁰ See אמ"ה הערה 157.