רבא אמר מהכא קרבנו ולא הגזול –

Rovo said, from here; 'his *Korbon*', but not a stolen one

Overview

Our גמרא states that רבא maintains that we derive the rule of יאוש אינו קונה from the פסוק of (ולא הגזול) קרבנו. There seems to have been some confusion whether the text should read רבה or רבא. Our תוספות confirms that the text reads רבא.

רבא גרסינן ולא רבה מדקאמר חד מינייהו רב פפא אמר[1] -

The text reads רבא, but not רבה, since the גמרא **concluded, 'רב פפא** (not רבא) **said one of them' -**

ולא היו טועים אלא בין רב פפא לרבא שהיה רבו -

And they would only make a mistake between רב פפא and רבא who was the teacher of ר"פ -

ופעמים כשהיה אומר רב פפא דברים בסתם היו סבורים שדברי רבא הן -

And occasionally when ר"פ would state things anonymously they would assume that these are the statements of רבא, therefore when רב פפא made a statement regarding יאוש it was mistakenly attributed to רבא, even though רבא maintains the exact opposite; this is how the error may have happened -

אבל בין דברי רב פפא לדברי רבה לא היו יכולין לטעות[2] -

However there could not have been a mistake to be confused **between the rulings of ר"פ and the rulings of רבה.**

תוספות continues to clarify the גירסא:

ולעיל (דף סו,ב) **גרס אמר ליה[3] רבא משכבו ולא הגזול כולי -**

And previously the text reads; רבא said to אביי when it states **משכבו ולא הגזול, etc. –**

תוספות anticipates a difficulty with this גירסא:

אף על גב דרבה הוה בר פלוגתיה דרב יוסף ולרבה הקשה אביי -

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[1] The גמרא shortly asks how can רבא state that יאוש is not קונה, when previously (סו,ב) we find that רבא replied to אביי that we can maintain that יאוש is קונה (and the פסוק of קרבנו ולא הגזול is in a case where גזל קרבן דחבריה), indicating that רבא maintains יאוש is קונה. The גמרא answers that one of these two statements (either that יאוש is קונה or is not קונה) was made by רב פפא and the other was made by רבא, and by mistake they were both attributed to רבא. See 'Thinking it over'.

[2] Therefore since the גמרא attributes this mistake, we must conclude that one statement was made by ר"פ and the other by רבא, but not by רבה.

[3] אביי there asked a question on רבה, who maintained יאוש קני, from the ברייתא of קרבנו ולא הגזול. According to תוספות it was רבא (not רבה) who responded to אביי.

And even though that it is רבה (not רבא) **who is the dissenting partner of רב יוסף, and אביי directed his question to רבה,**[4] so how can תוספות state that רבא replied to אביי –

תוספות responds that nevertheless -

צריך לומר דרבה עצמו לא השיב לו כלום אלא רבא השיב לו -

It is necessary to say that רבה himself did not answer anything to אביי, **but rather רבא answered** אביי, we must say this -

מדפריך הכא והא רבא הוא דאמר דגזל קרבן דחבריה וקאמר דחד מינייהו רב פפא אמרה[5] **-**

Since the גמרא **here asks** (on the statement of רבא here that יאוש לא קני), '**but it is רבא who stated that גזל קרבן דחבריה'** to which the גמרא replied **and said that ר"פ made one of these statements;** proving that both here and previously the גירסא is רבא (and not רבה).

תוספות offers an additional proof that the גירסא in the previous גמרא is רבא:

וכן משמע דבכל הספרים גרס לעיל אמר ליה רבא -

And it also seems so (that we are גורס רבא previously), **for all the texts read; '<u>רבא</u> said to him' -**

ואי רבה השיבו הוי ליה למימר אמר ליה ולא היה צריך להזכיר רבה כיון דמקשה לרבה -

And if רבה (not רבא) **replied** to אביי (as the other גירסא claims), the גמרא **should have** merely **stated, '<u>he</u> said to him', for it is not necessary to mention רבה** by name **since אביי was asking רבה** directly; the fact that the גמרא mentions a name, indicates that it was not רבה, (but רבא) who responded to אביי, so it is necessary to say that here too the גירסא is רבא; otherwise there is no contradiction.

תוספות offers an additional proof that the גירסא here is רבא:

וכן משמע בהניזקין (גיטין דף נה,ב ושם) **דרבא אית ליה דיאוש כדי לא קני**[6] **-**

And it also seems in פרק הניזקין that רבא maintains that יאוש alone is not קונה (as it states here) -

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[4] If we assume that the גירסא there (on סו,ב) is רבה (as תוספות is suggesting now), then we will be required to assume that the text here too reads רבה because we are contrasting these two statements; the statement here that יאוש לא קני and the statement previously by the same author which indicates that יאוש קני.

[5] The גמרא cites a contradiction between what was said here (that יאוש לא קני) and what was said previously (on סו,ב) that גזל קרבן דחבריה which indicates that יאוש קני. It is therefore necessary to assume that the same person made both statements; otherwise there is no contradiction. From the fact that the גמרא concludes חד מינייהו ר"פ אמרה indicates that it was רבא who (purportedly) made both statements and since ר"פ may be confused with רבא, one of these two statements was mistakenly attributed to רבא. It cannot be that רבה (purportedly) made these two statements since he would not be confused with ר"פ.

[6] See 'Thinking it over'.

דבעי רבא[7] כי אוקמוה רבנן ברשותיה משעת גניבה או משעת הקדש למאי נפקא מינה[8] כולי -

For רבא queried there; **when the רבנן placed it in his possession,** was it placed there **from the time he stole it or from the time he** made it **הקדש; the difference would be regarding, etc.** This concludes the citation from the גמרא there. תוספות concludes -

ואי יאוש קני לכל הפחות משעת יאוש כבר הוא ברשותיה[9] -

And if יאוש is קונה (according to רבא) so **it is already in the רשות** of the גנב **at least from the time of יאוש** onwards! This proves that רבא maintains יאוש כדי לא קני.

תוספות offers yet another proof that it is רבא who maintains יאוש לא קני:

ובפרק בתרא[10] (דף קיא,ב ושם) קאמר רבא[11] לעולם רשות יורש לאו כרשות לוקח דמי -

And in the last פרק it is **רבא who stated that the domain of an heir is not like the domain of a buyer -**

משמע התם דאית ליה דיאוש לא קני[12] והתם רבא דהוא בר פלוגתיה דרמי בר חמא -

It appears from there that רבא **maintains יאוש לא קני, and there** it is referring to רבא (not רבה) for it is רבא **who is the dissenting adversary of רב"ח** (not רבה who lived in a previous generation)**.**

תוספות anticipates a difficulty:

והא דאמר רבא בפרק אלו מציאות (בבא מציעא דף כו,ב) גבי מציאה -

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[7] The ברייתא there stated if one stole an animal and was then מקדיש it and then he was טבח ומכר he only pays קרן וכפל for the stealing but not ד' וה' for the טביחה ומכירה, for the רבנן placed in his רשות since he was מקדיש it (it is considered הקדש that if he was מקריב it outside the עזרה he is liable for שחוטי חוץ). Since it is in his רשות he is טובח ומוכר his own animal. רבא queried, in the case where he was מקדיש it, at what point did the חכמים place it in the רשות of the גנב; was it retroactively from the time of גניבה, or (later) from the time of הקדש.

[8] The practical difference will be if the animal was shorn or it gave birth between the גניבה and the הקדש. If the חכמים placed it in his רשות from the time of גניבה the גיזות וולדות belong to the גנב, if however if it is in his רשות only from the time of הקדש onwards, he must return the גיזות וולדות to the owner.

[9] What is the relevance of s'רבא query; even if we assume that the חכמים placed it ברשותו from the time of הקדש, nevertheless the גנב will own the גיזות וולדות from the time of יאוש. The owners were certainly מייאש before the גנב was מקדיש it (otherwise it cannot become הקדש), so how can רבא consider that perhaps it belongs to the גנב only from the time of הקדש; if יאוש קני it belongs to him from the time of יאוש which precedes the time of הקדש.

[10] The משנה there states that if someone stole (then died) and he left over the stolen item to his heirs, they are exempt from repaying the original owner. רמי בר חמא derived from this משנה that רשות יורש כרשות לוקח דמי; meaning that just as if a גנב sold something (after יאוש) the buyer acquires it with יאוש and שינוי רשות and is not obligated to return it to the owner. The same applies to the heirs that they acquire it with יאוש ושינוי רשות and are not required to return the stolen item to the owner.

[11] רבא disagrees with רב"ח (see footnote # 10) and maintains that the possession of the יורש is not the same as the possession of the לוקח and the יורשים must return the stolen item (for the item still belongs to the owner since there was no שינוי רשות (for רשות יורש לאו כרשות לוקח) and יאוש alone is not קונה; when the משנה states that they are exempt, it is discussing a case where the יורשים already consumed the item and it does not exist, so they are not required to pay the owners since they did not steal it.

[12] See footnote # 11. If יאוש קני then even if רשות יורש לאו כרשות לוקח דמי they should not be obligated to return it (even if they did not consume it) since they acquired it through יאוש and they did not steal it.

And that which רבא stated in פרק אלו מציאות regarding a found object -

נטלה לפני יאוש על מנת לגזלה עובר בכולן[13] -

If a person **took** the מציאה **before** the owner was **מייאש with the intent to steal it, he transgresses all** of the prohibitions mentioned there -

ואף על גב דאהדריה בתר יאוש מתנה בעלמא הוא דיהיב ליה[14] -

And even if he returned the item to the owner **after יאוש, he is merely giving him a gift,** and it is still considered that he transgressed these איסורים. This (seemingly) indicates that יאוש קני.

תוספות responds that -

אף על גב דיאוש לא קני מכל מקום כיון דהועיל יאוש למוכרה או להקדישה חשיב גזלן:

Even though יאוש לא קני nevertheless he is considered a גזלן since the יאוש was effective to the extent that he **can sell it or be מקדיש it** and it would be an effective מכירה or הקדש. His act of initially stealing it, together with the יאוש has the power to remove it from the owner's possession entirely through מכירה or הקדש, therefore it is not considered returning an object to its owner, since it is somewhat removed from the original owner.[15]

Summary

It is רבא (not רבה) who maintains יאוש לא קני.

Thinking it over

The גמרא stated that one of the statements (either that יאוש קני or לא קני) was made by ר"פ (and the other by רבא);[16] indicating that the גמרא is uncertain whether רבא maintains יאוש קני or not. Later however[17] תוספות proves that רבא maintains יאוש לא קני. How can we reconcile this apparent contradiction?![18]

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[13] רבא enumerates the following prohibitions; לא תגזול, השב תשיבם, לא יוכל להתעלם.

[14] This would be understood if we maintain יאוש קני, so now the items belong to the גזלן (the finder), and he stole it, but he is not returning the lost object to the original owner since now the גזלן is the owner. However if יאוש לא קני and it still belongs to the owner why is he still considered a גזלן (and why did he not fulfill the מצוה of השב תשיבם) since he is returning the article to its lawful owner. See תוספות there ד"ה מתנה.

[15] See נחלת משה and אילת השחר.

[16] See footnote # 1.

[17] See footnote # 6.

[18] See יד דוד and נחלת משה.