

## מה טביחה לאלתר אף מכירה לאלתר –

**Just as slaughtering is immediately, so too selling is immediately**

### OVERVIEW

We compare מכירה to טביחה; just as by טביחה it can be immediately after he stole it (and he will be liable for ד' וה'),<sup>1</sup> similarly by מכירה, he is liable for ד' וה' even if he sold it immediately after he stole it, when the owner did not have ample time to declare that he is מתיאש. [This proves that יאוש בעלים is סתם גניבה.] Our תוספות discusses the ramification of such a comparison.

תוספות asks:

**ואם תאמר והא ממש לאלתר קודם ידיעת בעלים אי אפשר להיות דומיא דטביחה<sup>2</sup> -**

**And if you will say; but it is impossible to compare מכירה to טביחה and have him liable for ד' וה' if the מכירה took place virtually immediately after it was stolen even before the owners were aware of the theft, for in that case -**

**דהוי ליה יאוש שלא מדעת<sup>3</sup> וקיימא לן כאביי<sup>4</sup> דלא הוי יאוש<sup>5</sup> -**

**יאוש איך אביי that יאוש שלא מדעת and we have established the ruling like אביי יאוש שלא מדעת is not considered יאוש, so seemingly we cannot compare מכירה to טביחה!**

תוספות answers:

**ויש לומר דטביחה נמי אין דרך לטבוח לאלתר<sup>6</sup> עד שיבוא לביתו -**

**And one can say; that regarding טביחה it is also unusual to slaughter it immediately after he stole it, but rather he waits until he comes home -**

<sup>1</sup> This is obvious; there is no reason to put a time limit as to when the טביחה takes place.

<sup>2</sup> טביחה may take place the moment (after) it was stolen before the owner realized it was stolen, and the גנב will be liable for ד' וה'. The same cannot be said for מכירה as תוספות continues to explain.

<sup>3</sup> יאוש שלא מדעת, literally giving up hope without knowledge, means if a person loses an article, which, if he had known that he lost it, he would certainly give up from ever retrieving it; however at this point he is not aware yet that he lost it. אביי rules (in opposition to רבא) that it is not considered יאוש (and therefore if one finds an article which he may normally keep because the owner was מייאש, nevertheless he may not keep it unless we can assume that the owner is already aware that he lost it [and was מייאש])

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

<sup>5</sup> In our case, if he sells it the moment he stole it, we can assume that the owner is as of yet unaware that it was stolen, so even if we assume יאוש בעלים, סתם גניבה, that is only once he is aware, and here since it is so close to the theft, the owner is certainly not aware of his loss, therefore his יאוש can be considered at most as a יאוש שלא מדעת, which we rule is not a יאוש, and the subsequent מכירה is ineffective and it is לא אהנו מעשיו. It is therefore obvious that we cannot compare מכירה to טביחה, regarding the immediacy of the sale, so the original question remains, how can we prove that יאוש בעלים סתם גניבה perhaps we heard the owner being מייאש.

<sup>6</sup> A person will not want to slaughter an animal in the street and have to carry back a dead animal with him.

**ובתוך כך מסתמא יודעין הבעלים:**

**And in this duration** of time (from stealing to bringing it home), **presumably the owners are aware** of the theft, and it is not a **יאוש שלא מדעת**.<sup>7</sup>

### **SUMMARY**

The immediacy of **טביחה** is usually delayed after sufficient time has lapsed so the owners are aware of the theft.

### **THINKING IT OVER**

question assumes that **ר"א** agrees with **אביי**;<sup>8</sup> but perhaps **ר"א** disagrees and maintains **?!יאוש שלא מדעת הוי יאוש**.<sup>9</sup>

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<sup>7</sup> However, since conceptually the **טביחה** can take place immediately (the limitation is merely a practical one) this prevents us from saying that by the **מכירה** sufficient time elapsed so the owners will vocally be **מתייאש**. Conversely, the practical limitation (of **טביחה**) assures us however that the owners (by **מכירה**) are aware of the theft

<sup>8</sup> See footnote # 4.

<sup>9</sup> See # 63. **אוצר מפרשי התלמוד**.