

והוזמו על הגניבה וחזרו והוזמו על הטביחה - And they were discredited for the stealing, and they were again discredited for the slaughtering

Overview

The גמרא challenged the view that ע"ז למפרע הוא נפסל, from a ברייתא which stated that if עדים testified on the גניבה and (later on) the טביחה, and they were הוזה on both, the rule is they must pay everything ('ד' וה') to the falsely accused. The question is that if we maintain למפרע הוא נפסל this means that they became פסולים from the time they testified on the גניבה, so their testimony on the טביחה is meaningless (since they were already פסול לעדות), so why do they pay for the טביחה.

asks: תוספות

ואם תאמר אפילו למאן דאמר מכאן ולהבא הוא נפסל תקשה -

And if you will say; but there is a difficulty even according to the one who maintains מכאן ולהבא הוא נפסל (which is רבא) -

דמכל מקום אם אין גניבה אין טביחה ומכירה וכשחזרו והוזמו על הטביחה אמאי משלמין¹ -

For in any case the rule is that if there is no stealing, there is no טביחה ומכירה, so when they were subsequently הוזה on the טביחה, why do they ע"ז pay?!

answers: תוספות

ויש לומר משום דקסבר² הכחשה תחילת הזמה היא:

And one can say because this מ"ד (רבא) maintains that הכחשה is the beginning of הזמה.

Summary

There can be a הזמה after a הכחשה if we maintain היא הזמה.

Thinking it over

How can we differentiate between our case (which תוספות is discussing) and the case of הכחשה תחילת הזמה, so that we can justify תוספות asking this question, even though there is a גמרא, which states clearly that רבא maintains הזמה תחילת הכחשה?!

¹ Let us assume they were הוזה on the גניבה on Monday, and the next day, Tuesday they were הוזה on the ט"מ. However, by then there was no longer a גניבה, since the הזמה for the גניבה had already taken place. Once there is no גניבה, their testimony of ט"מ has been contradicted, since he did not steal the animal, we can say that he was ט"מ his own animal, so their testimony on ט"מ has been מוכחש, so how can there be a הזמה after the הכחשה, since this עדות is not accepted.

² רבא (on the ע"ב) maintains that if עדים were first הוכחש and later הוזה, we carry out the זמם כאשר זמם punishment, for we consider the הכחשה as the beginning of the process of הזמה, not like something separate, so here too even though they were הוכחש first on the ט"מ, since they were הוזה later it is considered as one process of הזמה and they have to pay.