

And now it is *Shimon's ox*

והשתא תורא דשמעון -

Overview

The גמרא differentiated between selling the ox (where there is a liability of ד' וה'), and being מקדיש the ox (where there is no ד' וה'). When selling, it was originally s' ראובן ox and now it is s' שמעון ox. However, by הקדש, even after the הקדש, people still refer to it as s' ראובן (ox) [קרבן].¹ Our תוספות resolves an apparent contradiction.

anticipates a difficulty:

והא דאמר לקמן גנב והקדיש חייב ד' וה' דהוי כמוכרו להדיא -

And regarding this which the ברייתא states later, 'if he stole and was מקדיש it, he is liable for ד' וה'', as the גמרא there explains that being מקדיש is like selling it to a plain person. This seemingly contradicts what we learnt here that by הקדש there is no ד' וה' payments (because it is still called דראובן) –

answers; that גמרא later -

היינו בקדשי בדק הבית³ דלא מיקרו על שם בעלים⁴ -

Is discussing the קדשים which are used for the maintenance of the בית המקדש, for these קדשים are not called by the name of the original owners, therefore it is considered a valid transfer like a sale and he is liable for ד' וה' –

comments:

וקדשי מזבח אומר רבינו יצחק אף על גב דמיקרו על שם בעלים ולא הוי הקדש כמכירה -

And the ר"י says regarding קדשי מזבח, even though they are called by the owner's name and therefore the הקדש is not considered like a sale, regarding ד' וה' -

מכל מקום למאן דאמר יאוש⁵ לא קני חשיב כיאוש ושינוי רשות⁶ -

Nevertheless, according to the one who maintains that יאוש alone is not קונה,

¹ See רש"י ד"ה מכרו.

² The עט"א וע"ש בתוד"ה גנב refers us to הגהות הב"ח.

³ קדשי בדק הבית refer to things that are donated for the upkeep of the ביהמ"ק, which the גבאי usually sell, and use the proceeds to maintain the ביהמ"ק.

⁴ However, by קדשי מזבח, the קרבן is called קרבן. for it is being offered for his sake, and is a forgiveness for his sins. Therefore, it is not considered a real 'sale'.

⁵ יאוש means giving up hope from ever retrieving an article which was lost or stolen from you. There is a dispute in the גמרא (לעיל ס"א) whether יאוש is קונה (so the thief may keep the article, even though he still needs to pay for it), or whether יאוש alone לא קני (and the owner can demand that thief return the article to him).

⁶ This means that even though regarding the payments of ד' וה', it is not considered as if the הקדש was transferred out of the domain of the מקדיש (and therefore no ד' וה'), nevertheless regarding the effectiveness of this הקדש, it is considered a transfer and together with יאוש it will make the הקדש valid. See 'Thinking it over'.

- יאוש ושינוי רשות is considered as יאוש and however

לענין דחל הקדש אחר יאוש כדמשמע לעיל (דף סו, ב) -

Regarding that the הקדש is effective after the יאוש, as it is indicated previously -
דבעי לאוכוחי אביי לרבה דיאוש לא קני מקרבנו ולא הגזול⁷ -

Where קרבנו רבה that יאוש is not קונה, from the word קרבנו, which is expounded to mean but not something which is stolen -

ואפילו הכי⁸ אמר שם דחל הקדש אף על גב דאכתי לא אסיק אדעתיה דהוי יאוש ושינוי השם -

And nevertheless, he says there⁹ that the הקדש is effective after יאוש, even though that as of yet, it did not enter their minds that when he is מקדיש after יאוש it is considered יאוש and a name change, which is also קונה¹⁰, but they did not consider the idea of שינוי השם yet, and nevertheless it is הקדש -

אלא משום דהוי יאוש ושינוי רשות:

Rather we must say the reason it is הקדש because it is considered יאוש ושינוי רשות.

Summary

By הקדש למזבח and nevertheless קדשי מזבח, but not by ד' וה' there is קדשי בדק הבית By הקדש together with יאוש is considered שינוי רשות regarding the effectiveness of the הקדש.

Thinking it over

It seems that the ר"י is trying to prove that the הקדש after יאוש is considered a שינוי רשות, regarding the effectiveness of the הקדש.¹¹ From our entire גמרא it seems like a forgone conclusion that the הקדש is חל, why is the ר"י searching elsewhere for proof?¹²

⁷ The ברייתא there stated that since the פסוק writes (ויקרא א, ג) (in קרבנו – קרבן, this teaches us that a stolen קרבן is invalid, for it is not his. אביי derived from this that יאוש alone is not קונה, for if יאוש alone is קונה, so why is it not considered קרבנו, he acquired it through יאוש. It now belongs to him, and even though he still is required to pay the owner, but the animal is his; the owner cannot demand it back (if יאוש alone is קונה). see following footnote # 8.

⁸ See previous footnote # 7. The question can be asked if יאוש is not קונה (as אביי proved), why indeed do we require קרבנו to exclude גזול, it is obviously excluded for everyone understands that one cannot be מקדיש something which is not his. Therefore, we must conclude that since here there was יאוש and שינוי רשות (the act of being מקדיש), therefore the הקדש is חל, and nevertheless the תורה excludes this הקדש from being offered (because it is a מצוה הבאה בעבירה). In any event there was יאוש ושינוי רשות through הקדש, and the owner cannot demand his animal back.

⁹ It does not appear explicitly there, but we must assume that as explained in footnote # 6.

¹⁰ If הקדש is considered שינוי השם and that is why it is effective together with יאוש, then תוספות cannot prove that הקדש is considered יאוש ושינוי רשות, since the reason the הקדש is valid is because השינוי השם.

¹¹ See footnote # 6.

¹² See ביאור ראובן להרב ראובן אגושביץ.