

קרבת is the same as אשם

אשם היינו קרבן -

OVERVIEW

The גמרא sought to refute the ק"ו by arguing that only פיו can be מחייב an אשם, but not עדים; to which the גמרא responded קרבן היינו קרבן, and therefore just as עדים can be מחייב a חטאת, according to ר"מ, they can also be מחייב an אשם. Our תוספות shows that this view is contradicted elsewhere.

explains that the meaning of קרבן היינו קרבן, is -

דלרבי מאיר עדים מחייבין אותו אשם¹ -

That according to ר"מ, the עדים obligate him to bring a קרבן אשם, even if he contradicts the עדים and does not admit.

asks:

תימה דבמתניתין דד' שומרין (שבועות דף מט, א ושם) תנן -

It is astounding! For we have learnt in the משנה in the beginning of פרק ד' -

שומרין, if an owner of an ox said to his watchman, by whom he deposited this ox -

היכן שורי נגנב משביעך אני ואמר אמן והעדים מעידים אותו שאכלו² משלם כפל³ -

'Where is my ox?' and the שומר חנם answered him **'it was stolen'**; the owner said to the ש"ה, **'I am administering an oath to you concerning this ox that it was stolen'**, and the ש"ה answered **אמן⁴**, and then witnesses testified that the ש"ה ate the ox, the ruling is that the ש"ה must pay double to the owner. However if the ש"ה, after he swore that it was stolen, he -

הודה מעצמו משלם קרן וחומש⁵ ואשם⁶ -

Admitted on his own (without any עדים testifying) that he indeed ate it; the ruling is that the ש"ה pays the principal plus a fifth to the owner, and in addition is obligated to bring a קרבן אשם for swearing falsely. It is evident from this משנה that -

אבל על פי עדים אין משלם חומש ואשם -

However if he was forced to pay by the testimony of עדים he does not pay the חומש ואשם (but rather the כפל). The עדים cannot obligate him to bring a קרבן אשם

¹ We cannot therefore refute the ק"ו by arguing אשם שכן מחייבו אשם, for עדים are also מחייבו אשם.

² In our texts the גירסא in the משנה is שגנבו. See however תוס' ד"ה והעדים תוס' that the גירסא is שאכלו.

³ The rule is that if a שומר חנם claims that the פקדון was stolen from him (and therefore) he is פטור; if it turns out that he stole it, then the ש"ה pays כפל. This is referred to as טוען טענת גנב בפקדון.

⁴ He accepted the oath; meaning he swore that it was stolen.

⁵ The fifth is actually a fourth; if he ate an ox worth four זוז he must add one more זוז, paying five זוז. The addition (of one) is a fifth of the entire payment (of five).

⁶ This is known as the אשם גזילות which the תורה states in כ-כו ה, ויקרא.

for the שבועת שקר, since he does not admit to it. This contradicts our גמרא which states that עדים obligate him to bring an אשם according to ר"מ, even if he does not admit.

responds to an anticipated answer that perhaps that משנה in שבועות follows the view of the חכמים who maintain that עדים are not מחייב an אשם:

וכן תנן בפרק הגזול קמא (בבא קמא דף קח,א) ומוקי לה בפרק הגזול קמא⁷ כרבי מאיר⁸ –

And this משנה was similarly cited in פרק הגזול קמא, and it was established in קמא that this משנה is according to ר"מ. The question is how can this follow the view of ר"מ, when ר"מ maintains that עדים obligate him to bring a קרבן אשם?!

answers:

ויש לומר דסוגיא דהכא דלרבי מאיר עדים מחייבין אותו אשם –

And one can say; that the סוגיא of the גמרא here, which maintains that according to ר"מ the עדים do obligate him to bring an אשם –

לא יעמיד ההיא משנה כרבי מאיר –

Will not establish that aforementioned משנה according to ר"מ –

אלא כדבעי לאוקמה התם כשאכלו טריפה⁹ –

But rather as the גמרא there initially wanted to establish it that it is in a case where he ate it when it was a טריפה.

וההיא סוגיא דהתם דסבר דלרבי מאיר עדים לא מחייבי אשם –

And conversely that סוגיא there, which maintains that according to ר"מ the עדים do not obligate him for an אשם, different than a חטאת and that is –

משום דגבי אשם כתיב והתודה¹⁰ –

Because by an אשם the תורה writes [and he will confess]¹¹, that סוגיא there –

לא סבר כסוגיא דהכא דאשם היינו קרבן –

Will not agree to our סוגיא here that אשם is the same as קרבן.

⁷ קוב.

⁸ The גמרא there ask on this משנה why is it that if the עדים testified that he ate it, the ruling is that he (merely) pays ד', since he had to שחט the ox. Initially the גמרא answered that he ate it when it was a נבילה (it died on its own). There was no שחיטה and therefore no ד'. The גמרא asked why are we saying that he ate it as a נבילה; why could we not answer that he ate it when it was a טריפה (where the שחיטה did not enable him to eat it בהיתר) and therefore he is פטור ד'. The גמרא answered that the משנה is according to ר"מ who maintains that a שחיטה שאינה ראויה (an unfit שחיטה, such as the שחיטה of a טריפה) is considered a שחיטה concerning the חיוב ד'. It is evident from that גמרא that this משנה follows the view of ר"מ. See (however) 'Thinking it over' # 1.

⁹ The משנה will disagree with ר"מ and maintain that a שחיטה שאינה ראויה (like a שחיטת טריפה) is שמה שחיטה, and the משנה is discussing a case of שחיטת טריפה, therefore there is no ד'.

¹⁰ The ויקרא ה,ה, והתודה in פסוק (איל אשם) (concerning an אשם) (במדבר [נשא] ה,ז), amends this to ויקרא ה,ה, והתודה in פסוק (איל אשם) (concerning an אשם) (במדבר [נשא] ה,ז), which is a קרבן עולה ויורד and not an אשם.

¹¹ A קרבן אשם cannot, therefore, be brought unless the sinner confesses.

responds to an apparent difficulty. According to the סוגיא there that (even) ר"מ is of the opinion that עדים cannot be מחייב an אשם, then we can refute the ק"ו, by arguing מה לפיו לפיו. תאמר בעדים שאין מחייבין אותו אשם however שכן מחייבו אשם. The answer is -

ויליף במה הצד מפיו ועד אחד כדמסיק הכא:¹²

That סוגיא **will derive** that עדים are מחייב a שבועה **from a הצד** and **פיו** **from מה** **הצד** **as the גמרא concludes here.**

SUMMARY

There is another סוגיא which maintains that even according to ר"מ, only פיו can be מחייב an אשם but not עדים, since by אשם (as opposed to חטאת) the תורה mentions וידוי.

THINKING IT OVER

1. אשם מחייב עדים (of שבועות) משנה proves that the תוספות is according to ר"מ, since we establish it that he ate it when it was a נבילה and not a טריפה.¹³ However this merely proves that the תנא of the משנה agrees with ר"מ concerning ראוייה שאינה; however it does not prove that the עדים מחייבין אותו אשם (וקרבן) ר"מ follows the view of.¹⁴

2. תוספות concludes that the other סוגיא will derive that העדאת עדים is מחייב a שבועה from the same צד השוה as the גמרא here.¹⁵ Seemingly it is not understood why תוספות needs to mention it. Just as according to that סוגיא there can be no ק"ו from פיו since פיו is מחייבו אשם, so too according to our סוגיא there is no ק"ו מפיו because פיו is not susceptible to הכחשה. It is therefore self evident that however we explain our סוגיא here (from the צד השוה), will also explain that סוגיא there! Why does תוספות need to mention it?!

¹² In our גמרא even though ר"מ maintains that אשם היינו קרבן and we cannot refute the ק"ו by saying מה לפיו מה לפיו שכן אינו of פירכא, nevertheless the ק"ו from פיו was eventually refuted by the פירכא. We ultimately derive that עדים are מחייב a שבועה from a צד השוה of פיו וע"א; the same צד השוה applies to explain the ק"ו according to the סוגיא there. See (however) 'Thinking it over' # 2.

¹³ See footnote # 8.

¹⁴ See (ע"ז) in (בסוף המסכת) פורת יוסף.

¹⁵ See footnote # 12.