

His body is not sanctified

גופיה לא קדיש –

OVERVIEW

רב taught if one is his slave (he said, 'my slave should be **הקדש**'), the slave is freed. The גמרא explains the reason is because **גופו לא קדיש** (the body is not sanctified) and **לדמי לא קאמר** (the master did not say that I am him for his value). There is a dispute between רש"י and תוספות how two explain these two reasons.

There are three types of קדושת דמים (which are not brought as a קרבן) which are discussed in this תוספות.

1. **ביהמ"ק** (such as being **מקדיש** stones, wood, etc.) where the item itself is used to repair or improve the **בדק הבית**.
2. **ביהמ"ק**, but the item itself cannot be used directly to repair the **בד"ה**, where the item is sold (a **מום בעלת מום**) and the money is used for **בד"ה**.
3. **דמיו עלי**, where the person says, 'I am donating to the **ביהמ"ק** the value of this item'; the item (which does not necessarily need to belong to the **נודר**), remains in the possession of the owner, but whoever made this **נדר** must pay **הקדש** its value.

פירש בקונטרס¹ שאינו ראוי למזבח ולא לבדק הבית² –

רש"י explained that **גופיה לא קדיש**, for the **עבד** is not fit either for the **מזבח** (to be brought as a קרבן) nor is he fit for the **בדק הבית**; **רש"י** continues explaining the גמרא, we cannot say he meant to give **הקדש** the value of the slave, for –

לדמי לא קאמר דהיה לו לומר דמי עבדי עלי –

He did not say I am obligating myself to pay **הקדש** the value of this slave, for if that was his intention, the master should have said, I am giving to **הקדש** the value of my slave. **רש"י** continues responding to an anticipated question –

ולא דמי למקדיש בהמה טמאה דהתם כיון דליכא למימר למיהוי עם קדוש קאמר –

And the case of **עבד** is not similar to one who is **מקדיש** a טמאה (where the rule is that he has to pay **הקדש** the value of the טמאה; however we do not say this regarding **עבדו**), for there (by טמאה טמאה) **since we cannot say that** the master meant that the טמאה should be part of the **עם קדוש**, therefore –

על כרחך לדמי³ קאמר אף על גב דלא אמר דמיה עלי הרי היא קדושה לימכר קאמר –

¹ בד"ה גופיה, לדמי, ובד"ה דליהוי.

² When one is **מקדיש** wood or stones they can be used to repair the **ביהמ"ק**; however, the **עבד** (himself) cannot be used for the repair or improvement of the **ביהמ"ק**.

³ Seemingly this **לדמי** (regarding a טמאה טמאה), which means קדושה לימכר is not the same as the **לדמי** mentioned

Perforce we must say that he meant to be מקדיש its value, even though he did not say, 'I am giving its value', nevertheless it is understood that he meant, 'the animal is קדושה in order to sell it (and give its value to הקדש) -

אבל הכא דשייכא בגופיה לשון קדושה לא אמרין דלדמי קאמר⁴ -

However here where the קדושה is applicable to the body of the עבד (he can become a part of the קדוש (עם קדוש), we do not assume that he meant to be מקדיש merely the value of the slave, rather he meant the slave should be holy as part of the קדוש עם. This concludes תוספות citation of רש"י.

פירש"י asks on תוספות:

ואם תאמר ואמאי לא קאמר נמי קדוש לימכר לא קאמר כיון דמילתא אחריתא היא⁵ -

And if you will say; but why did not the גמרא also explain that the master did not mean that the עבד is קדוש to be sold; the גמרא should have explained this since this is a different issue -

answers: תוספות

ויש לומר כדפירש בקונטרס בסמוך דאפילו אמר כן בהדיא שיהא קדוש לימכר יצא לחירות -
And one can say; as רש"י explains shortly⁶ **that even if he said so explicitly that the עבד should be קדוש so that he should be sold; the עבד goes free -**

מידי דהוה אמתפיס תמימים לבדק הבית דאין יוצאין מידי מזבח לעולם -

בד"ה **For it is similar to one who designates whole [unblemished] animals for ה**, where the rule is **they never leave the sanctity of the מזבח** (they are to be brought as קרבנות), similarly here since according to רב when he is מקדיש his עבד, the עבד is fit to become part of קדוש (similar to a תמימה בהמה which is למזבח), so even if he says לימכר קדוש (which is similar to תמימים) the עבד becomes free, part of קדוש (just like the תמימים are not לעולם) -

ולהכי לא מוקי ההיא דאין הגזברין כגון דאמר שיהו קדושין לדמיה -

previously regarding לא קאמר (concerning the עבד) which means עלי זה עבד. They are similar in the sense that there is no intrinsic קדושה on the בהמה there is merely a חיוב ממון (either directly from the בהמה [if קדושה], or indirectly [if עלי]).

⁴ When there is no option of saying קדוש קאמר (as by טמאה בהמה), we assume that he meant לדמי (even though he did not say לדמי) in the sense of לימכר קדוש; however when there is the option of קאמר קדוש (as by טמאה בהמה), then we would rather say that he meant קדוש עם (since he did not say לדמי).

⁵ There are actually three issues to be negated in order to assume that יצא לחירות עבדו. There is the issue of מזבח and בד"ה which is negated since the עבד is not ראי (for מזבח and בד"ה), there is the issue of the owner paying the value of the עבד (which is called לדמי), this is negated because the master did not say לדמי; however there is the issue of selling the עבד and the money going to הקדש, why was this issue not mentioned (and negated because he did not say קדוש לימכר [just as we negated לדמי])?

⁶ בד"ה אי. If the גמרא would have negated קדוש לימכר by saying קאמר לא קאמר, that would imply that if the master said קדוש לימכר he would not go free, however in truth even if he said קדוש לימכר the עבד is freed.

And therefore the גמרא does not establish that אין הגזברין of ברייתא in a case where for instance the master said regarding his slaves that they should be קדושין for their value (meaning קדוש לימכר),⁷ for even if he said so, they still go free.

In Summation: לדמי⁸ בד"ה or מזבח עבד is not fit for the גופו לא קדיש interprets רש"י. Therefore⁹ עבד the value of the הקדש the master did not say that he wants to give לא קאמר means the master did not say that he wants to give. Therefore the עבד is freed even if the master said he is קדוש לימכר, for it is similar to לבד"ה¹⁰ מתפס תמימים.

פירש"י has a difficulty with תוספות

ומיהו קשה דאי מדמינן למתפס תמימים –

However there is a difficulty; if we are comparing מקדיש עבדו to מתפס תמימים –
נימא דאף על פי שהעבד יצא לחירות צריך לפדייה ויפלו דמיו לבדק הבית¹¹ –

Let us say that even though the slave is freed, he still requires redemption and the redemption money should be allocated for the בד"ה –

כמו במתפס תמימים שתימכר לצורכי מזבח¹² כדאמרינן בהמנחות והנסכים (מנחות קא, א) –

Just as it is by מתפס תמימים for the בד"ה where the rule is that the animal is sold for usage on the מזבח, as the גמרא states in המנחות והנסכים –

כשהן נפדין אין נפדין אלא למזבח והדמים הם לבדק הבית –

That when they (the תמימים that were לבד"ה) are redeemed they can only be redeemed for use of the מזבח and the money paid for the redemption goes to the בד"ה –

כדאמר בפרק קמא דתמורה (דף ו, א) דאף על פי שהוא בלא תעשה¹³ מה שעשה עשוי –

⁷ The גמרא contradicted רב from the ברייתא of אין הגזברין (and answered that רב תנא ופליג). The גמרא seemingly could have answered that the ברייתא is discussing where he said קדוש לימכר (even though the ברייתא could not answer לדמי [as the גמרא states], nevertheless if it was קדוש לימכר the גזברין are (seemingly) involved in the sale).

⁸ Therefore since the master was מקדיש the עבד, he must have meant קדוש עם למיהוי.

⁹ If the master would have said דמיו עלי the עבד would remain enslaved and the master would pay the הקדש the value of the slave. See following footnote (in parenthesis).

¹⁰ An עבד has the potential of becoming an עבד עם קדוש just as a בהמה תמימה has the potential of being a קדוש הגוף. קרבן – קדושת הגוף (לקרבן) receives קדושת דמים (בד"ה) if one is מקדיש it for a בהמה. Similarly if one is מקדיש the עבד for (קדוש לימכר) the עבד, there is no קדושה at all on the עבד; it is merely a נדר on part of the master that he will give a certain amount. (However, if he merely said דמיו עלי, there is no קדושה at all on the עבד; it is merely a נדר on part of the master that he will give a certain amount.)

¹¹ When the master is מקדיש the עבד the עבד is freed, but there is a monetary obligation to redeem the value of the עבד for the obligation to בד"ה (which the master placed upon him). The freed עבד should be required to give this money (the value of the עבד) to the בד"ה as תוספות continues to explain. See following footnote [in the brackets].

¹² If ראוּבֵן (for instance) was מקדיש a תמימה for הבית the rule is (as mentioned previously) it must be brought as a קרבן. If שמעון (for instance) wants to bring a קרבן he can redeem this בהמה (which ראוּבֵן was לבד"ה) by paying the גזר of בד"ה the value of this בהמה and then bring it as a קרבן. [The עבד is like שמעון in this example.]

¹³ The לא תעשה is derived from the (כב, כג) [אמור] פסוק (ויקרא) where the תורה writes regarding a מום בעל מום that (לבדק הבית) but ולנדר (for a קרבן) it is ירצה, לא ירצה, from this we derive that only a מום בעל מום can be given to בד"ה, but not a תמים and from the (שם, כז) [וי] פסוק in the beginning of that פרשה, which states

As the גמרא states in the first פרק of מסכת תמורה, that even though the one who was transgressed a **לא תעשה**, nevertheless **what is done is done** and פדיון receives the money. Similarly the same should be true here as well that the פדיון money for the עבד should go to בד"ה -

ולכאורה משמע דליהוי עם קדוש קאמר ואינו נותן שום דמים להקדש¹⁴ -

But seemingly it appears from our גמרא **that the master meant that the עבד should be קדוש עם, but no money needs to be given to הקדש.** The question is why is there a difference between מתפס תמימים לבד"ה and מקדיש עבדו, since רש"י maintains they are similar?!

תוספות has an additional question:

ועוד מאי קפריך מאך כל חרם -

And furthermore why does the גמרא ask on רב (who said לחירות יצא) **from the ברייתא of חרם** (where it states that it belongs to הקדש) -

דהתם דאמר בלשון חרם לא שייך לומר דלמיהוי עם קדוש קאמר -

For there (in the case of the ברייתא) **where he used the term of חרם, it is not applicable to say that למיהוי עם קדוש קאמר** (עם קדוש has no connection to חרם) therefore we can say he meant קדוש לימכר (like by a טמאה) but when he is מקדיש עבד where we can say קדוש קאמר, we say that לחירות -

פירש"י continues to ask on תוספות:

ועוד כי משני דאמר לדמי והיינו לפירוש הקונטרס דאמר דמי עבדי ושפחתי עלי¹⁵ -

And in addition when the גמרא answered that the ברייתא of חרם **אך כל חרם** is discussing a case **where the master said לדמי explicitly, which according to פירש"י [must] mean that the master said, I am obligated to give the value of my עבד ושפחה** (only in that case do they not go free); the reason לדמי in this manner is -

דאם הקדישם לדמים יצאו לחירות¹⁶ -

For if he was מקדיש them for their value (הקדישם לימכר) **they would go out free - ואם כן מאי איריא עבדיו ושפחותיו אפילו דחברו נמי -**

So if this is indeed so (that דמיו עלי means merely לדמי) **then why does the ברייתא teach the case by his servants and שפחות, even if they are the עבדים ושפחות of his friend** and he said דמיהם עלי, he is **also** obligated to pay בד"ה their value -

we interpret לאמר as לאמר, meaning there is a לא if one transgresses these rules..

¹⁴ We cannot answer that רב is not discussing a case where he said לימכר קדוש, for then the גמרא should have (also) said קדוש לימכר לא קאמר (for that would justify s'רב ruling [that there is no need for פדיון]).

¹⁵ See רש"י ד"ה דאמר לדמי.

¹⁶ See footnote # 6.

ועוד מאי שנא כנענים אפילו עבדיו ושפחותיו העברים נמי – continues to press his point -

And also why are כנענים different, even by עבדיו ושפחותיו העברים the law is also that he must pay בד"ה This concludes תוספות questions on פירש"י.

In summation: תוספות asks on פירש"י; 1. Why is there no חיוב פדיון on the עבד if he meant/said קדוש עם קדוש as there is by מתפס תמימים 2. How can the גמרא ask from חרם, there it cannot mean קדוש 3. If the ברייתא of חרם אך is in a case of דמיהם עלי then why does it need to be his slave, and 4. why an עבד כנעני it could even be an עבד עברי.

לדמי לא קאמר and גופיה לא קדיש offers his interpretation of תוספות

ונראה לפרש גופיה לא קדיש פירוש¹⁷ ליאסור בהנאה¹⁸ כמו בהמה טמאה שמועלין בה –
And the preferred explanation is that גופיה לא קדיש means that his body will not become בהמה טמאה like אסור בהנאה where one transgresses מעילה if he derives any benefit from her -

וכן בקרקע¹⁹ אם עקר ממנו חוליא ואפילו במחובר איסורא מיהא איכא –
And similarly by one who was מקדיש the ground, if he uprooted a spade full and even if he derived benefit from the קרקע while it is still attached, there still is a prohibition (מדרבנן); however if he was מקדיש an עבד there can be no איסור הנאה.

לדמי לא קאמר²⁰ שיהא גופיה קדוש לימכר²¹ – continues when the גמרא says -

He did not say לדמי; it means the master did not say that the body of the עבד should be קדוש that we sell it.²² תוספות concluded explaining these two expressions (גופו לא) - גמרא and now continues with explaining the גמרא and קאמר (לדמי לא קאמר), and now continues with explaining the גמרא - **והשתא פריך שפיר מכל חרם דמיתפסא בהון קדושה ליאסור בהנאה כמו מחרים שאר נכסים.**
And now it is well understood that the גמרא ask from חרם כל for we see there

¹⁷ This is not like פרש"י that an עבד is not fit to become קדוש (for the מזבח or בד"ה), but rather there can be no איסור גוף העבד on the הנאה.

¹⁸ Even if he said קדוש לימכר there still is no קדושת הגוף regarding איסור הנאה.

¹⁹ Generally by קרקע there is no מעילה; however once he uprooted the earth there is מדאורייתא and even if he derived benefit from the קרקע while it is מחובר there is an איסור (מדרבנן). Regarding עבד however there can be no איסור מעילה.

²⁰ According to תוספות if the master would say that the עבד is קדוש לימכר, the עבד would not be freed.

²¹ This is different from פירש"י who interprets לדמי to mean עבדי עלי.

²² תוספות maintains that since the עבד cannot become בהנאה then we cannot assume that when he was מקדיש the עבד he meant קדוש לימכר, because since there can be no קדושה in the עבד (so if he intended to be מקדיש), he should have clearly stated that he is קדוש לימכר. However by קרקע and בהמה where there is a possibility of תוספות (קדוש לימכר), therefore even if he was מקדיש סתם we may assume that it was קדוש לימכר. See תוספות (who mentions טמאה and קרקע after קאמר 'לדמי לא קאמר').

that **אסור בהנאה**²³ takes hold of the עבדים ושפחות that **they become** like one who is **מחרים** the rest of his assets²⁴ -

ומשני דאמר לדמי שיהיו לימכר ולא מיירי במקדיש בלשון חרם -

And the גמרא answered that he said לדמי meaning that **they should be sold** for **חרם**, but **we are not discussing that he was מקדיש them** using the term **חרם**, rather he was מקדיש them לימכר (which means לדמי)²⁵ -

והשתא ניחא דדוקא עבדיו ושפחותיו הכנענים²⁶ -

And now it is understood that this applies exclusively to **עבדיו ושפחותיו הכנענים** -
ופריך אידך נמי דאמר לדמי²⁷ -

So the גמרא asked let us say that **the other** of הגזברין אין is also discussing a case where he said לדמי (meaning לימכר) -

ומשני אי הכי גזברין מאי עבידתיהו דאותו שהקדישו לדמיו הוא יפדנו ויהיה שלו²⁸:

And the גמרא answered if so (that he was מקדיש them לימכר) **why are the גזברין involved here; whoever was מקדיש the עבדים for דמיו he will redeem them and it will belong to him** (and [only] he will be able to free the עבד).

SUMMARY

י"י maintains he is freed, while תוספות maintains he is not freed.

THINKING IT OVER

According to תוספות that if one merely owns קנין ממון he cannot be משחרר the עבד,²⁹ so regardless of רב, the עבידתיהו of הגזברין אין is difficult, for since they only have a קנין ממון. Why is the גמרא asking on רב?!³⁰

²³ תוספות is answering the question he asked on רש"י (question # 2; see In summation).

²⁴ Why does רב say לא קדיש גופו and יצא לחירות; since a קדושה is תופס by עבדים we can assume that he meant קדוש?! בהמה טמאה, just like לימכר.

²⁵ It does not however state clearly in the ברייתא that they are אסורים בהנאה. Initially when we assumed that חרם meant חרם ממש, then we assumed that they are אסורים בהנאה like all חרם (as תוספות stated נכסיו). However now that he is merely לימכר קדוש there is no need to assume that there is an הנאה.

²⁶ He can only sell (מקדיש לימכר) his own כנעני. This answers questions # 3 & 4.

²⁷ Why is it necessary to say that רב argues (רב תנא הוא ופליג).

²⁸ If the עבד was לימכר קדוש the גזבר may only sell him and take them money for הקדש, but the גזבר cannot free him (so why does the ברייתא state לחירות רשאי להוציאין, when it is obvious). In addition even those that bought the עבד from הקדש cannot redeem the עבד, since they only have a קנין ממון in the עבד (for that is what the original master gave to הקדש) they cannot remove the עבד from דין איסור (that he is בבת חורין וכיו"ב). Why does the ברייתא state that לחירות אותן מוציאין. It is only the original master who can free him if he is פודה the עבד from הקדש, because he now owns the קנין ממון and איסור of the עבד. See מהרש"א. Therefore this ברייתא cannot be discussing קדוש. The only option is that the ברייתא disagrees with רב and maintains that גופו קדוש. See following אין תוס' ד"ה אין.

²⁹ See footnote # 28.

³⁰ See תורת גיטין