

## **He stole a condemned ox and - 'וה' - slaughtered him, he pays the payments of four and five**

### **Overview**

The גמרא cites a ברייתא, which (also) states that if one stole a הנסקל<sup>1</sup>, and slaughtered him he must (still) pay the payments of ד' וה' <sup>2</sup>.

תוספות asks:

**תימה דתיקשי מהכא לריש לקיש דאמר בפרק מרובה (שם עז,ב ושם) -**

**It is astounding; for we can ask from this ברייתא here on ר"ל who rules in פרק מרובה -**

**כל היכא דליתיה במכירה ליתיה בטביחה<sup>3</sup> והכא שור הנסקל ליתיה במכירה<sup>4</sup> -**

**‘Wherever there is no sale, there is no additional liability for slaughtering’, and here the שור הנסקל cannot be sold, so how can there be ד' וה' - תשלומי ד' וה' -**

תוספות answers:

**ויש לומר דהתם קדשים<sup>5</sup> חמירי דליתנהו כלל במכירה -**

**And one can say that ר"ל there in מרובה is discussing קדשים whose rules are severe for they cannot be sold at all -**

**אבל שור הנסקל אם ימכרנו לעובד כוכבים אין תופס דמיו<sup>6</sup> -**

**However, regarding a שור הנסקל, if he were to sell it (illegally) to a gentile, the money is permissible, therefore a שור הנסקל is considered במכירה -**

An alternate solution:

**ולרבינו תם שאומר<sup>7</sup> דאין שור הנסקל נאסר מחיים ניחא:**

<sup>1</sup> A שור הנסקל is an ox (or any animal) which killed a person, where the law requires that it be put to death by stoning.

<sup>2</sup> The תורה writes (in כא,לז) that if a person steals an ox or a sheep and slaughters it or sells it, he must repay the owner four times as much for a sheep and five times as much for an ox.

<sup>3</sup> ר"ל derives it from the words מכרו או טבחו (see footnote # 2), that there needs to be the option of either selling it or slaughtering it, however regarding a שור (הקדש), which cannot be sold (see footnote # 5), so therefore even if he slaughtered it, he is not liable for ד' וה'.

<sup>4</sup> A שור הנסקל is אסור בהנאה (after he is condemned to die), so he has no monetary value; there can be no sale! According to ר"ל, therefore, there should be no חיוב of ד' וה', but the ברייתא states that he pays ד' וה'.

<sup>5</sup> We are discussing live unblemished קרבנות, which cannot be redeemed or sold; they must be brought on the מזבח.

<sup>6</sup> One is not permitted to sell a שור הנסקל, since it is אסור בהנאה; however, if he sold it to a gentile, the seller may derive benefit from the purchase money, by קדשים however there is no sale at all; the money must be returned. Therefore, ליתיה במכירה is קדשים, ליתיה במכירה שור הנסקל. See 'Thinking it over'.

<sup>7</sup> See ר"ת (on ע,ב). According to the ר"ת, one may plow with the שור who refers us to עא,א גליון הש"ס. שור הנסקל, and /or sell it to someone who can use it for plowing until it is stoned.

**And according to the ר"ת, who maintains that a שור הנסקל is not forbidden** for one to derive benefit from him **while <sup>8</sup>it is still alive, it is understood** that it is permitted to sell a live שור הנסקל therefore it is איתיה במכירה איתיה בטביחה.

### **Summary**

A שור הנסקל can be sold to a gentile, and the monies are not אסור בהנאה, and additionally according to ר"ת a שור הנסקל is not אסור בהנאה while he is alive.

### **Thinking it over**

תוספות writes that the שור הנסקל is במכירה since if he is sold to a נכרי, the rule is אין תופס דמיו.<sup>9</sup> Why was it necessary for תוספות to add אין תופס דמיו, seemingly it would be sufficient to say that he sold it to a נכרי, and it is a valid sale, since the שור (as opposed to a ישראל) is not prohibited from deriving הנאה from the שור?<sup>10</sup>

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<sup>8</sup> He can for instance plow with the ox until it is stoned.

<sup>9</sup> See footnote # 6.

<sup>10</sup> See קובץ שיעורים אות קיז.