

כיון דשחט בה פורתא אסרה¹ ואידך כולי -

Once he slaughters it a bit, it is prohibited, and the rest, etc.

Overview

The גמרא is questioning the ruling of ר"מ in a case where one stole an animal and had it slaughtered for עבודה זרה that he is liable for the ד' וה' payment. Seemingly as soon as the animal began to be slaughtered it becomes forbidden to derive benefit from it (it is תקרובת ע"ז) and so it no longer belongs to the owner.² The obligation of ד' וה' is when the animal is completely slaughtered, however at that time it no longer belonged to the owner, so there should not be any ד' וה' payments. תוספות challenges and explains this reasoning.

תוספות asks:

ואם תאמר כל טובח נמי לאו דמריה קא טבח דמכי שחט פורתא קניא בשינוי³ -

And if you will say; by every case of slaughtering, he is also not slaughtering the owner's animal, for as soon as he slaughters it a bit, the thief acquires the animal through 'change', so why is he חייב -

אלא על כרחך בהכי חייב רחמנא⁴ והכא נמי לא שניא -

Rather perforce we must conclude that the תורה obligated the ד' וה' payments in this manner, so here too, by ע"ז, it is no different! What is the גמרא's question?!

תוספות answers:

ואומר רבינו יצחק דלא חשיב שינוי⁵ לקנותה בכך :

And the ר"י says that this bit of שחיטה is not considered sufficient change in order

¹ In our גמרות the text reads, ואידך, פורתא איתסר ליה (instead of אסרה ואידך).

² Since it is אסור בהנאה, he is not considered the owner anymore; he cannot do anything with it.

³ The rule is that if a thief is caught, he must return the item which he stole. However, if he made a significant change to the item, he need only to pay back the value of the item but not the item itself, since the thief 'acquired ownership' of this item through this change. For instance, if one stole planks of wood and made them into a cabinet, he may keep the cabinet, but is required to return the value of the wood which he stole. Here too once the slaughtering process begins, this change in the status of the animal should enable the thief to acquire the animal, and therefore it no longer belongs to the owner when the thief completed the שחיטה (which is when the obligation for ד' וה' payments begin)

⁴ It would seem that as long as by the initial שחיטה the animal belonged to its owner, one is liable for ד' וה', even though that at the end of the שחיטה, it no longer belongs to him (rather it belongs to the thief). Therefore, here too by ע"ז, he is liable for ד' וה', since initially it belongs to the owner. What is the גמרא's question?!

⁵ The animal still belongs to the owner until a complete and proper שחיטה is made. Therefore, the thief is liable for ד' וה'. However, regarding ע"ז, it becomes אסור בהנאה as soon as the שחיטה process begins and therefore at the completion of the שחיטה when the חיוב of ד' וה' becomes effective; it no longer belongs to the owner since it is אסור בהנאה. See 'Thinking it over'.

for the thief **to acquire it in this** manner.

Summary

A limited שחיטה is not considered change so that the thief acquires it.

Thinking it over

How are we to understand this which תוספות says⁶ that a partial שחיטה is not sufficient change to acquire it?⁷

⁶ See footnote # 5.

⁷ See בית יעקב.