

## **אמר רב אושעיא בבא לחוב בדמיהן -**

***Rabi Ohshayo said; when he comes to be liable for their value***

### **Overview**

The גמרא cites a משנה which states, 'a cow which is found near ירושלים, if it is a male it is an עולה and if it is a female it is a שלמים.<sup>1</sup> The גמרא asks but a male can be a שלמים as well; how can we offer it as an עולה. רב אושעיא responded that the finder desires to resolve the issue and be liable for any expense involved.<sup>2</sup> There is a dispute between ר' אושעיא and תוספות as to the intent of רש"י.

-----  
**פירש בקונטרס<sup>3</sup> איהי ודאי לא מקרבה ומיירי בבא להתחייב בדמיהם -**

**explained that the male cow is certainly not offered as a קרבן, but it is a case where the person comes to be liable for their expense to resolve this issue -**

**פירוש אדם זה המוצא קבל עליו לתקן כל הספק שעליה ורוצה להוציאה לחולין<sup>4</sup> -**

**Meaning this person who found the cow, accepted upon himself to resolve all the doubts regarding this cow (whether it initially was either an עולה or a שלמים) and he wants to remove it from הקדש to become חולין -**

**והכי קאמר חיישינן שמא עולות ויביא ב' בהמות או ב' דמים -**

**And this is what the משנה meant to say (when it stated עולות, it meant) we are concerned perhaps they are עולות, so this person who wishes לחוב בדמיהן, should bring two cows or two separate piles of money -**

**ויאמר אם זו עולה תהא מחוללת על זו<sup>5</sup> והאחרת תהא שלמי נדבה -**

**And he should stipulate; 'if this found cow is an עולה it should be exchanged on this cow (#1) or on this pile of money,<sup>6</sup> and the other cow (#2) or pile of money should be for נדבה שלמי -**

**ואם היתה זו שלמים תהא מחוללת על זו והאחרת תהא נדבת עולה<sup>7</sup> -**

**But if this found cow was a שלמים, it should be exchanged on this cow (#2) and**

---

<sup>1</sup> Presumably this means that we offer it as a קרבן according to this designation; males are עולות and females are שלמים (an עולה must be a male, while שלמים may be female as well as male).

<sup>2</sup> The גמרא adds that ר' אושעיא is following the view of ר"מ that הקדש מתחלל במזיד.

<sup>3</sup> בד"ה אמר ובד"ה ורבי.

<sup>4</sup> The finder also wants that the initial owner of this cow should fulfill his obligation קרבן.

<sup>5</sup> The initial found cow (the questionable עולה) would become חולין and the cow # 1 would become an עולה in its stead.

<sup>6</sup> The money will receive the קדושת עולה and will be used to purchase a cow for a עולה.

<sup>7</sup> In the end the initial found cow will be חולין, and cow # 1 will be an עולה and cow # 2 will be a שלמים (and the same is with the two piles of money, with one we purchase an עולה and with the other we purchase a שלמים). The found cow will be חולין and be permitted to be eaten (once it receives a מום [for it may have been a בכור or מעשר where there is no מום], see מהרש"א



**And in such a case** (where his intent is to prevent מעילה) **it is permitted** for him to remove it from רשות הקדש, **and after her removed it to become חולין, it entered his mind to be liable for its value, as I explained.**

### **Summary**

According to רש"י the found cow can be מתחלל on חולין (whether cows or money). According to תוספות the found cow can be מתחלל only if the finder intends to steal it, but no one maintains that תמימים נפדין.

### **Thinking it over**

תוספות explains that the finder wants to steal it and remove it מרשות הקדש, so it should become חולין, and this is permitted since his intent is that other people should not be מועל.<sup>13</sup> However what has he accomplished, if he would not steal it, someone else may use it and that person would be מועל, but now the finder is certainly מועל; what difference is there who is the מועל?<sup>14</sup>

---

mentioned above in תוספות (cited from רש"י).

<sup>13</sup> See footnote # 12.

<sup>14</sup> See (אין מועל אחר מועל מועל) # 62 אוצר מפרשי התלמוד (especially regarding מועל).