

There is no *Moh'ail* after a *Moh'ail*

אין מועל אחר מועל –

Overview

The Tosfos cited a משנה which states; אין מועל אחר מועל בהקדש. Our Tosfos explains when there is מועל אחר מועל and where there is no מועל אחר מועל.

פירש בקונטרס¹ אין מעילה זו אחר זו בקרן אחד של הקדש² -

explained; there is no successive מעילה, one מעילה after another in one principal of הקדש -

דכיון שמעל בה הראשון יוצא לחולין -

For since the first person was מועל in this item of הקדש it becomes deconsecrated, so the item is no longer הקדש and the second person who uses this item is using an item of חולין not an item of הקדש. -

אלא בהמה וכלי שרת בלבד³ -

However an animal designated as a קרבן and the service vessels of the בית המקדש are the **only** exceptions to this rule. By בהמה וכלי שרת even if there was a מעילה, the בהמה וכלי שרת still retain their קדושה, and the next person who uses them for חולין is מועל.

Tosfos asks:

תימה דבתוספתא דמעילה (פרק ב'⁴) תניא קרדום של הקדש -

It is astounding! For we learnt in a ברייתא in the תוספתא of מעילה, regarding an axe of הקדש, that if a person -

ביקע בו ובא חבירו וביקע בו כולן מעלו -

Chopped with this axe and afterwards his friend came and also chopped with this axe, they were all מועל (whoever used this axe for חולין purposes), however if –

נתנו לחבירו וחבירו לחבירו⁵ הוא מעל וחבירו מותר לבקע בו לכתחילה -

He gave the axe to his friend, and his friend gave it to another friend (but no one chopped with it), the rule is that the first one who gave it was מועל, and his friend who received it is fully permitted to chop with this axe. This concludes the citation of the תוספתא.

¹ בד"ה אין.

² If a person was מקדיש an axe to the בית, and then someone used it to chop wood for his personal needs, he is מועל בהקדש (and the axe becomes חולין). Whoever uses it afterwards is not מועל בהקדש.

³ The reason for this exception is that a קרבן and כלי שרת have a קדושת הגוף (and not merely a קדושת דמים like קדשי). [whose קדושה is limited to the monetary value of the item].

⁴ ה"א.

⁵ The words וחבירו לחבירו are seemingly irrelevant, for if the first recipient is לכתחילה לבקע בו, so obviously if he gave it לחבירו he is not מועל. [In our תוספתא the words וחבירו לחבירו do not appear.]

והשתא היכי דמי אי האי קרדום כלי שרת כי נתנו לחבירו אמאי לא מעל חבירו -

But now,⁶ what case are we discussing in the תוספתא, if this axe is a כלי שרת, so when he gave it to his friend, why is his friend not מועל and is permitted to use it - לכתחילה

הא אמרינן יש מועל אחר מועל בכלי שרת -

Since we said that by כלי שרת there is מועל אחר מועל (for it retains its קדושה) -

ואם אינה כלי שרת אמאי אמר כולן מעלו -

And if the axe is not a כלי שרת why does the תוספתא say they are all מועל (in the first case where ביקע בו ובא חבירו וביקע בו -

הא אין מועל אחר מועל אלא בהמה וכלי שרת בלבד⁷ -

For we say here there is no מועל אחר מועל by בדק הבית; only by כלי שרת בהמה וכלי שרת alone is there מועל אחר מועל?!

answers: תוספות

ויש לומר דלעולם מיירי בקרדום שאינה כלי שרת ולא קשה מידי⁸ -

And one can say that really the תוספתא is discussing an axe which is not a כלי שרת, and nevertheless there is no difficulty at all -

דהא דאמרינן הכא דאין מועל אחר מועל היינו⁹ כשהוא סבור שהכלי של חבירו -

For this which we say here that אין מועל אחר מועל, that is in a case [where he assumes it is his and gives it to his friend, or] he assumes that the utensil belongs to his friend and he uses it; in these two cases there is no מועל אחר מועל -

ואז¹⁰ הוא מתכוין¹¹ לגזלה¹² היכא דנתנו לחבירו כדין שליחות יד בפקדון¹³ -

For then he intends to steal it (where he gave it to his friend), like the law of

⁶ Now that there is no מועל אחר מועל by בדק הבית, but there is מא"מ by כלי שרת, how can we understand the תוספתא.

⁷ The תוספתא gives us two rules; if one person used the axe, the next person to use it is also מועל, however if one person gave the axe away, the giver is מועל and the receiver is מותר to use it לכתחילה. Now if it is not a כלי שרת, why is everyone מועל in the first case where they each used it (since אין מועל אחר מועל), and if it is a כלי שרת, why may the receiver use it in the second case (since by כלי שרת there is a מועל אחר מועל).

⁸ If we are discussing an axe which is not a כלי שרת, so why does the תוספתא rule that all who chopped are מועל, since the rule is that אין מועל אחר מועל (by בדק הבית).

⁹ The היינו כשהוא (instead of היכא דנתנו לחבירו אי נמי כשהוא).

¹⁰ (When he assumes it is his friend's and he uses it, he is intending to steal it for הוא שלא מדעת גזלן הוא.)

¹¹ The אין מועל אחר מועל is when one uses an item of הקדש while mistakenly assuming that it is not הקדש. In the ruling of אין מועל אחר מועל, the מועל mistakenly assumes either that the article is his and gives it to his friend (where he is מוציא מרשותו לרשות חבירו), or he assumes that this article belongs to someone else and he then uses it (where he is מוציא מרשותו לרשותו); in either case his intention is to remove the item from its original domain and either use it himself or give it to a friend, therefore since he intends to change the domain of the item, it is considered that took the entire object out of the רשות of הקדש, and was מועל. After he is מועל there can be no further מעילה.

¹² The הגהות הב"ח amends this to read, לגזלה היכא דנתנו לחבירו כדין (instead of לגזלה כדין).

¹³ If one is given a deposit to hold, he may not use it. If he uses this deposit for his benefit this is called שליחות יד בפקדון.

by a deposit - שליחות יד

דהיכא דמתכוין להוציאו מרשות לרשות נקרא גזלן על כל הפקדון¹⁴ -

That when he intends to take it from the domain of the depositor to another domain, he is considered to be a גזלן on the entire פקדון -

אפילו לא הוציאן אלא מקצתן¹⁵ -

- אין מועל אחר מועל of גמרא Even if he only removed it partially. This is regarding our

אבל האי דתוספתא דקאמר בא חבירו וביקע בו ובא חבירו וביקע בו דכולן מעלו -

However this which was stated in the תוספתא; 'his friend came and chopped with it, and another friend came and chopped with it that all are מועל', the תוספתא -

מיירי דכל חד וחד יסבור שהוא שלו ואינו מתכוין להוציאו מרשות לרשות -

Is discussing a case where each one who chopped thought that the axe was his own, and he had no intention to take it from one domain to another -

אלא ליהנות ולהניחו אחר ההנאה -

But rather he merely wanted to benefit from his axe and leave it after he received his benefit -

ואז כשיהנה לא ימעול אלא כפי טובת הנאה שיש לו במלאכה¹⁶ -

So then his מעילה is limited to the benefit which he received by the work he did -

ומשום הכי אמרינן שלא יצא לחולין ומעלו כולן -

So therefore the תוספתא rules that the axe did not go out to become חולין and all were מועל (this explains the first case of the תוספתא) -

אבל נתנו לחבירו וחבירו לחבירו לא מעל אלא הראשון שהוציאו מרשות לרשות -

However if he gave it to his friend and his friend gave it to another friend, only the first one who was מועל (his friend) was מוציא מרשות (הקדש) to another רשות -

ונהי נמי דסבר שהיא שלו מכל מקום מתכוין הוא להוציאו מרשותו לרשות חבירו¹⁷ -

¹⁴ If the פקדון intends to steal the פקדון, by picking it up, etc., he becomes liable for the entire פקדון as if he stole it entirely, even if his intent was only to steal part of the פקדון. The same here where he assumed it was his friend's axe and he intended to use it (partially), it is considered as if he stole the entire object.

¹⁵ In the case of מועל מועל אחר מועל, the original מועל intended by his action to be מוציא מרשות לרשות (either when he thought it was his and gave it to his friend, or he thought it was his friend's and he used it without permission), therefore this is treated like he stole the item (the שליחות יד by a פקדון). Once an item is stolen it now belongs to thief in a certain respect; for he is now liable for all damages or loss that will occur. Similarly here once he was מוציא מרשות, he becomes the 'owner' so it is no longer הקדש. [He will need to pay the full value of the item.]

¹⁶ Let us assume the axe is worth twenty זוזים; the value of the work he did was merely one זוז (the axe is still intact), therefore the axe did not go out לחולין (he will need to pay the הקדש only one זוז), and the next person who uses the axe is מועל according to his טובת הנאה. See 'Thinking it over' # 1.

¹⁷ מעילה is when someone mistakenly takes an item of הקדש and by using it takes it out of the רשות הקדש to become חולין. When a person assumes that the הקדש item belongs to him and he uses it for himself, there was no change of רשות (in the mind of this person), therefore he is מועל only טובת הנאה (and there is מועל אחר מועל). However when there is a change of רשות in this הקדש item (either if he assumes it's his friend's and he uses it without permission [which is stealing], or he assumes it is his item and he gives it to a friend), the one who is מוציא מרשות לרשות is מועל in the entire הקדש item and it becomes חולין, so no one else can be מועל afterwards. This is all by בדק הבית.

And granted indeed that the first one assumed that it was his (and certainly had no intention to be מוציא מרשות הקדש), nevertheless he intended to be מוציא from his רשות to his friend's רשות, so only the first one is מועל.

גמרא refers back now the משנה cited in our תוספות

ולפיכך¹⁸ צריך לומר בא חבירו ורכב עליו ובא חבירו ורכב עליו כולן מעלו -

And therefore it is necessary to say that when the משנה said, 'his friend came and rode on the קדשים, and his friend came and rode on it, they are all מועל'; it means that they are all מועל -

ואף על גב שנתכוין לגזול¹⁹ ולהוציא מרשות לרשות -

Even though each rider intended to steal the קדשים and to be מוציא מרשות, nevertheless כולן מעלו, לרשות -

דאם לא כן²⁰ מאי איריא בהמה וכלי שרת אפילו בקדשי בדק הבית יש מועל אחר מועל -

For if it is not so (but they did not intend to steal the בהמה), why teach us this rule that מועל אחר there is קדשי בדק הבית, since even by a שרת וכלי שרת, כולן מעלו, מועל, in a case -

היכא דאינו מתכוין להוציא מרשות לרשות אלא ליהנות ממנו ולהניח כדפרישית²¹ -

Where he has no intent to be מוציא מרשות לרשות, his intent is only to derive benefit from it (for he assumes it belongs to him) and leave it, as I explained -

אלא לעולם מיירי שמתכוין לגזלה ואפילו הכי אמרינן דכולן מעלו כדפרישית²² -

Rather we must say that in reality the משנה is discussing a case where each of the riders intended to steal the בהמה and nevertheless מעלו, כולן מעלו, as I explained (for by מעילה through מתחלל it is not קדושת הגוף).

finds support that by בדק הבית there is a difference whether he is מוציא מרשות לרשות or not:

וראיה לחלק בין נהנה מדבר שסבור שהוא שלו לדבר שהיה סבור שהוא של אחרים²³ -

And there is proof to differentiate (by בדק הבית) whether he benefits from something which he assumes is his (and there is no intention to steal it) or whether

¹⁸ Since we are now saying that even by בדק הבית קדושת there can be מועל אחר מועל if each מועל was not מוציא מרשות (they all thought that it belonged to them and they only used it for themselves), it is necessary to clarify the משנה.

¹⁹ They assumed the בהמה belonged to someone else and they rode it without permission which is tantamount to גזילה (where if it were בדק הבית, only the first one would be מועל since it would be יוצא לחולין), nevertheless by קדושת, מועל, it is not יוצא לחולין and מזבח.

²⁰ Seemingly the לשון of וכו' ורכב ובא חבירו ורכב, does not seem to mean that they intended to steal it, but rather they assumed it belonged to them; nevertheless we must say that they intended to steal it.

²¹ See footnote # 15, 16.

²² See footnote # 18.

²³ See footnote # 23.

it is an item which he assumes belongs to others (where by using it, there is the implicit intention of stealing), the proof is -

מההיא דאמרין (מעילה דף כ,א) **גבי נטל אבן או קורה של הקדש לא מעל -**

From that משנה which states regarding one who took a stone or beam of **הקדש**, **he was not מעל**, however if -

נתנה לחבירו הוא מעל וחבירו לא מעל -

He gave the stone or beam to his friend, the giver was **מעל** but the friend (the receiver) was **not מעל** -

ופריך מכדי משקל שקלה מה לי שקלה הוא מה לי שקלה חבירו -

And the גמרא there asks; let us see, in either case **he took it**, what difference is there **whether he took it** and did not give it to a friend (where he is **מעל**) or **whether his friend took it** from him (where he is **מעל**) -

ומוקי רישא דלא מעל באבנים מסורות לגזבר שאינם יוצאים מרשות הקדש -

And the גמרא established the **רישא** where **לא מעל** in a case where the stones were given over to the treasurer of **הקדש** so they did not leave the domain of **הקדש** -

וגם הגזבר לא נתכוון לגזולם אלא ליהנות מהם דסבור שהם שלו -

And even the גזבר when he took the stones **had no intention of stealing them**, but rather only to benefit from them, for he mistakenly assumed they were **his** -

וסיפא דקתני הוא מעל מיירי שנתכוון להוציאם מרשות לרשות -

But the **סיפא** which states that the **גזבר** is **מעל** is where he intended to take out from one **רשות** (his) to another **רשות** (his friend's) -

כדקתני נתנם לחבירו הוא מעל²⁴ -

As the משנה states; he gave them to his friend, the **גזבר** is **מעל**.

ועוד ראייה מההיא דפרק אלו נערות (כתובות לד,ב) דקאמר התם -

And there is another proof from that גמרא in **פרק אלו נערות**, where the גמרא there states -

הניח להם אביהם פרה שאולה -

The father (after passing) **left over to his children a borrowed cow** -

כסבורים הם דשל אביהם היא טבחוה ואכלוה משלמין דמי בשר בזול -

If the children mistakenly assumed that it was their father's cow, so they

²⁴ The stones are **קדשי בדק הבית** (קדושת הגוף) and we see that when the **גזבר** mistakenly assumed they were his stones, so he was not מוציא מרשות לרשות there is no מעילה [there is even no טובת הנאה since he did not use them or derive any benefit from them], however when he gave them away to his friend he is **מעל** completely (his friend is not **מעל** at all), since he was מוציא מרשות לרשות. [It seems that תוספות is proving that there is a difference whether he intended to be מוציא מרשות לרשות or not, but not that there is a difference whether **שלו** or **סבור שהוא שלו** because in this case the **גזבר** was always **שלו**.] as stated (see footnote # 22) תוספות stated (as stated) שהוא של אחרים

slaughtered it and ate it, they pay the owner the cheap price of meat²⁵ (not the regular market price) -

אבל כסבורים שהיא דפקדון וטבחוה ואכלוה משלמין דמי בשר שלם -

However if they assumed it was a פקדון (it did not belong to their father), and they slaughtered it and ate it, they pay the full price of meat -

אם כן מצינו חילוק²⁶ בין סבור שהוא שלו לסבור שהוא של אחרים:

So therefore we find a difference whether one assumes the item is his or whether he assumes that the item belongs to others.

Summary

By קדשי בדק הבית if the users mistakenly assumed the הקדש belonged to them and they merely used it (but were not מוציא מרשות לרשות) the מעילה is according to the יש מועל אחר מועל and טובת הנאה. If they assumed that it belonged to someone else and they either used it or were מוציא מרשות לרשות, the מעילה is for the entire amount of the item and מועל אחר מועל. אין מועל אחר מועל. By קדושת הגוף in all cases there is מועל אחר מועל.

Thinking it over

1. In a case where בקע בו ובא חבירו ובקע בו וכו' where each person assumed the axe was his own (he was not מתכוין to be מוציא מרשות לרשות), we say מעלו²⁷. Let us assume the axe is worth ten זוזים, and each person (by using the axe) was מועל in one זוז of טובת הנאה. After ten people used it (and need to pay a total of ten זוזים for their מעילה), will the eleventh person be מועל if he used this axe?²⁸

2. By the יתומים they pay the full price (when they knew it was a פקדון),²⁹ because they caused the owner that much damage, however by מעילה we wish to say that by just transferring it מרשות לרשות he should also pay the full מעילה; what is the comparison?!³⁰

²⁵ This is a third less; if they ate thirty זוז worth of meat, they pay only twenty זוז. The reason is that the children can argue if we would have known that it does not belong to us we would not have eaten it (so we did not receive thirty זוז worth of benefit). However we can assume that anybody would be willing to eat for a discount of a third

²⁶ By the יתומים when they thought it was theirs, they pay only for the benefit they received (twenty זוז [see footnote # 24]), but not the full value. However when they were aware that it is not theirs, they pay the full price (regardless of the benefit they received). The same is by מעילה; if the מועל assumed it was his, he pays only for the benefit he received (and therefore מועל אחר מועל), however if he knew it was not his, he pays the full value even if he received no benefit at all (and אין מועל אחר מועל). See 'Thinking it over' # 2.

²⁷ See footnote # 15.

²⁸ See נחלת משה.

²⁹ See footnote # 25.

³⁰ See רש"ש.