

## קדשים קלים מי שמעת ליה – Did you hear it regarding lesser *Kodshim*

### Overview

אושעיא interpreted the משנה (which states that if one found a cow in ירושלים, if it is a זכר it is (also) an עולה and if it is a נקבה it is a שלמים), according to ר"מ who maintains that if one intends to, he can be מחלל even קדושת הגוף. The גמרא asked perhaps ר"מ stated this rule by קדשי קדשים, but not by קדשים קלים (and in this משנה, this found בהמה may be a שלמים, which is קדשים קלים). Our תוספות explains this question.

אם היא של קדשים קלים<sup>1</sup> מה תקנה נעשה לה -

If this found בהמה is קדשים קלים, how can we remedy it, for -

אפילו נתכוון לגזלה<sup>2</sup> לא תצא לחולין כיון דליכא מעילה בהן<sup>3</sup> -

Even if he intends to steal it, it will not go out and become חולין, since there is no מעילה by קדשים קלים -

דבשלמא קדשי קדשים כגון בדק הבית<sup>4</sup> וחטאת -

For granted that by קדשי קדשים like בדק הבית or a חטאת -

דין הוא שיצאו לחולין על ידי מעילה שמועל בהן -

It is justified that they go out to חולין through מעילה when someone is מועל in them (by intending to steal them), but by קק"ל, where there is no מעילה, how are they יוצא לחולין?! This is the s'גמרא question on אושעיא ר'. What can we do with the found בהמה?!

תוספות asks:

ואם תאמר מאי קשה ליה ולא יוציאנה לחולין<sup>5</sup> אלא יביא בהמה אחרת ויאמר -

And if you will say; what is the s'גמרא difficulty, for indeed he will not remove it to become חולין, but rather he will bring another בהמה, and he will say -

אם זו עולה הרי אני גוזלה וזו תהא עולה תחתיה -

בהמה 'if this found בהמה is an עולה I am stealing it (so it is יוצא לחולין), and this בהמה

<sup>1</sup> If the בהמה is a נקיבה it is certainly קדשים קלים and even if it is a זכר it may also be קדשים קלים. We are however discussing a זכר.

<sup>2</sup> See previous ד"ה אמר אושעיא ר' that the remedy according to אושעיא ר' was that the finder will intend to steal the בהמה, thus removing it הקדש (he will then stipulate that if the original בהמה was an עולה he is bringing another עולה in its stead and if the found בהמה was a שלמים another brought בהמה will be a שלמים). However that remedy will not be effective if the בהמה is קדשים קלים as תוספות continues to explain.

<sup>3</sup> There is no מעילה by קדשים קלים (except for the אימורים after the הדם זריקת הדם), since the בעלים are (partial) owners of the קרבן (they get to eat most of it). Since there is no מעילה, it retains its קדושה, so how will it be מחלל.

<sup>4</sup> Even though קדשי בדק הבית are not קדושת הגוף, but there is מעילה by them since it belongs entirely to הקדש. It is not clear why תוספות mentions חטאת when he could mention עולה (which is what we are discussing here).

<sup>5</sup> He will not be מחלל the found בהמה through גזילה, for it will not become חולין, since it may be קק"ל and there is no מעילה by קק"ל.

which I brought **should be an עולה instead of the found בהמה** -

**ואם היא קדשים קלים כגון שלמים היא עצמה תהא שלמים -**

**And if the found בהמה is like a ק"ק"ל (this found בהמה) shall be offered as a שלמים -**

**ולא יקריב אלא היא ואחרת לעולת נדבה<sup>6</sup> -**

**And he will offer only the found בהמה as a שלמים and the other בהמה (which he brought), will be a donated עולה.**

answers: תוספות

**ויש לומר דאי אפשר למיעבד הכי -**

**And one can say; it is impossible to do this -**

**שהרי יש לספק בבהמה זאת הנמצאת משום חששת בכור<sup>7</sup> ומעשר<sup>8</sup> -**

**For we can also be in doubt regarding this found בהמה that perhaps it is a בכור or a מעשר animal (and not a שלמים at all) -**

**דלא הושוו מתנותיהם ומתנות של שלמים -**

**Where their pouring of the blood (of the בכור ומעשר) are not the same as the pouring of the blood of a שלמים קרבן -**

**דשלמים טעונין שתי מתנות<sup>9</sup> ובכור ומעשר מתנה אחת<sup>10</sup> ולא יכול להקריבה<sup>11</sup> -**

**For a שלמים requires two מתנות דם, while a בכור ומעשר require only one מתנה, so he will not be able to offer the found בהמה -**

**אלא צריך להמתין עד שיתמומם -**

**But rather he will have to wait until it receives a מום –**

anticipates a difficulty: תוספות

**ולא רצה לתרץ שימתין לה עד שיתמומם ואז יאמר<sup>12</sup> אם שלמים תהא מחולל על מעות הללו -**

**And the גמרא did not want to answer that he should wait until the found בהמה**

<sup>6</sup> The found בהמה is offered as a שלמים and the brought בהמה is offered as an עולה. If the found בהמה was an עולה, he was מחלל it (through גזילה) and is offering (on the owner's behalf) the brought בהמה as an עולה. If the found בהמה was a שלמים he is offering it as a שלמים (on behalf of its owner) and the found בהמה is an עולת נדבה. See 'Thinking it over' # 1.

<sup>7</sup> The first born male of a בהמה is to be given to the כהן and he brings it as a קרבן on the מזבח, and it is eaten by כהנים.

<sup>8</sup> Every year the animals are herded into a corral and each tenth animal (מעשר) that passes through the opening is brought to ירושלים as a קרבן and eaten by its owners and any guests he invites.

<sup>9</sup> The blood of the שלמים is poured on the northeast and southwest corners of the מזבח (so when it spreads it is applied to all four sides of the מזבח)..

<sup>10</sup> The blood of a בכור ומעשר can be poured anywhere on the מזבח, provided that it is above the יסוד (which is found [mainly] on the northern and western sides of the מזבח).

<sup>11</sup> See footnote # 6. He cannot offer the found בהמה as a שלמים (which requires שתי מתנות), for perhaps it is a בכור or מעשר (which requires אחת מתנה only). Therefore he did not offer this solution.

<sup>12</sup> This is in addition to the initial stipulation that 'if it is an עולה I intend to steal it and the brought בהמה will be offered as an עולה (on the owner's behalf)'. See 'Thinking it over' # 2.

receives a מום, and then he will say, 'if the found בהמה was a שלמים, it should be exchanged for this money (this exchange will be effective) -

דנהי דקדשים קלים אינם מחוללים היינו כל זמן שהם תמימים -

For granted that ק"ל cannot be deconsecrated, that is true as long as they are unblemished, however once they receive a מום they can (and should be מתחלל on money), so why did not the גמרא offer this solution?!

תוספות responds:

משום דמשמע ליה לרבי אושעיא הא דקתני זכרים עולות ונקבות זבחי שלמים -

For it seemed to ר"א that this which the משנה taught that if the found animals are males they are offered as עולות and if they are females they are offered as שלמים sacrifices, this means -

הוי מיד שמצא הבהמה מצי למיעבד הכי בלא המתנה עד שיתמומם:

That as soon as he finds the בהמה, he can do this (to offer them for their respective sacrifices), without waiting until they receive a מום. Therefore he did not want to answer that wait until it receives a blemish.

### **Summary**

The solution of bringing another animal and stipulating will not be effective since we are not sure if this found בהמה is a שלמים or a מעשר ובכור, and the משנה indicates that the remedy may take place immediately without waiting for a מום.

### **Thinking it over**

1. תוספות solution (of bringing one בהמה) seems compelling,<sup>13</sup> so why did not תוספות introduce this solution initially, instead of mentioning רש"י's solution<sup>14</sup> that he brings two בהמות; why bring two when one is sufficient?!

2. תוספות offered a solution (which he later negated) that he should wait until it receives a מום and stipulate that if it is a שלמים it should be exchanged for these monies.<sup>15</sup> However how can he do this perhaps it is a בכור or מעשר?

<sup>13</sup> See footnote # 6. Obviously we are discussing the question before תוספות refuted it.

<sup>14</sup> See תוס' ד"ה אמר and רש"י ד"ה ורבי מאיר.

<sup>15</sup> See footnote # 12.