

מאן דאמר אשם ודאי¹ לא בעי ידיעה בתחלה - The one who maintains that an *Oh'shom Va'dai* does not require knowledge beforehand

OVERVIEW

There is an opinion that for an אשם ודאי to be מכפר, it is not necessary for the sinner to be aware of his sin before the קרבן is brought. If the אשם is brought (for whatever reason) and then he becomes aware of his sin, the אשם is מכפר (not like by a חטאת where it is not מכפר, unless the sinner became aware of his sin before he offers the חטאת). There is (seemingly) a dispute between רש"י and תוספות as to who is this מ"ד who maintains בתחלה בעי ידיעה בתחלה.

פירוש בקונטרס² דאיכא פלוגתא דרבי עקיבא ורבי טרפון בפרק דם שחיטה בכריתות (דף כב,ב) - פרק דם שחיטה ר"ט and ר"ע explained that there is a dispute between ר"ע and ר"ט in מסכת כריתות -

disagrees: תוספות

וליתא דהא תנן התם³ דדוקא במעילה מרובה⁴ קאמר רבי עקיבא שמביא שתי אשמות - And this is not so, for the משנה teaches there that only by a 'large' מעילה does ר"ע maintain that he brings two אשמות (one אשם תלוי and later when he finds out an אשם - מעילות) -

משום דטוב לו שיביא שתי אשמות -

¹ One is liable to bring a אשם קרבן (which is a male ram worth two סלעים), if he was either מועל בהקדש, stole money and swore falsely that he did not steal, or was בועל חרופה.

² בד"ה למ"ד. The case there is where there were two dishes in front of a person, one of הקדש and the other of חולין, and he ate one of them, but he is unsure which one he ate. ר"ע maintains that he brings an אשם תלוי (as the case would be with other איסורי חומש), because he may have been מועל מהקדש, however he is not obligated to pay the הקדש for this מעילה, unless he finds out that he was certainly מועל. At that point he pays the חומש and brings a (second) אשם מעילות. However ר"ט disagrees, saying; why should he bring two אשמות; rather he should bring the קרבן אשם מעילות and a ram for an אשם, and he should stipulate: 'if I was מועל, I am paying and bringing an אשם מעילות, and if I will never ascertain whether I was מועל, the איל should be for an אשם תלוי and the money is a donation to the הקדש.' It is evident that according to ר"ט, if he realizes later that he was מועל, the אשם that he brought previously is a valid מעילות אשם, even though that at the time when he brought it he was not sure whether he was מועל; there was no אשם ודאי (מעילות) לא בעי ידיעה בתחלה. It is ר"ט who maintains לא בעי ידיעה בתחלה.

³ כב,א.

⁴ A אשם (whether an אשם תלוי or any other אשם) cost (at least) two סלעים. Let us assume that his מעילה (ספק) is worth one hundred סלעים. According to ר"ט (see footnote # 2) he would have to pay the הקדש 125 סלעים (for the קרבן - 100 and חומש - 25) plus two סלעים for an אשם. He is spending 125 סלעים on a ספק, since he may have not been מועל. It is better for him, argues ר"ע that he should bring an אשם now for two סלעים (so he is saving right away 125 סלעים), and (worst case scenario) if he finds out later that he was מועל, he will pay the 125 סלעים plus two סלעים for another אשם. The price of two סלעים is worth the gamble to save 125 סלעים, which he may never have to pay.

For it is better for him that he should bring two אשמות -

- משיביא אשם אחד ויתנה שאם לא יודע לו תהא מעילתו נדבה -

Rather than bringing one אשם and stipulate that if he will never become aware (whether he was מועל or not), his מעילה payment of a וחומש קרן should be a donation -

אבל במעילה מועטת⁵ מודה רבי עקיבא שמביא אשם אחד ויתנה -

However by a 'small' מעילה, even ר"ע agrees to ר"ט that he brings one אשם and stipulates -

ונוח לו שיתן מעילה מועטת על הספק משיביא שתי אשמות -

For it is beneficial for him that he should rather pay a small מעילה payment even on a doubt, than he should bring two אשמות, which are more expensive -

וקאמרינן בגמרא מדברי שניהם נלמד⁶ אשם ודאי לא בעי ידיעה בתחלה -

And (ר"ע ור"ט) we concludes there in the גמרא, 'from both their statement (ט"ז) we can derive that an אשם ודאי does not require a ידיעה בתחלה'.

תוספות asks:

ואם תאמר רבי טרפון דקאמר מה לזה מביא שתי אשמות משמע דעצה טובה קא משמע לן -

And if you will say; ר"ט, by saying, 'why should he bring two אשמות', indicates that he is giving us good advice not to squander money for two אשמות as ר"ע rules, however -

אדרבה כיון דבמעילה מרובה פליגי אם כן טוב לו שיביא שתי אשמות כדאמר רבי עקיבא -

Since ר"ט and ר"ע argue by a 'large' מעילה, so on the contrary, it is better that he should bring two אשמות, as ר"ע maintains -

משיביא אשם אחד ומעילתו ויתנה כדפרישית⁷ -

Rather than bringing one אשם קרבן and his מעילה payment and stipulate like ר"ט maintains, as I explained. How do we understand the 'עצה טובה' of ר"ט?

תוספות answers:

יש לומר דרבי טרפון לאו עצה טובה קאמר אלא לעולם אינו יוצא מידי עבירה בשתי אשמות -
One can say; that ר"ט is not offering an עצה טובה, but rather he is stating that

⁵ Let us assume that the worth of the מעילה (ספק) was one דינר (a quarter of a סלע). In such a case ר"ע agrees with ר"ט that it pays that he should bring an אשם (for 2 סלעים) and the payment of a דינר (and a fifth), and make the aforementioned stipulation since it is possible that he will never find out that he was מועל and even if he finds out, he does not need to bring another אשם; his total expense is 2 סלעים and a quarter (plus) סלעים. However if ר"ע would follow his ruling, he will have to bring another אשם (if he finds out that he was מועל) costing him an additional 2 סלעים extra. It pays to pay upfront the דינר plus, in order to save two סלעים (about 8 times the amount).

⁶ According to תוספות both ר"ע and ר"ט maintain that an ידיעה תחלה לא בעי אשם ודאי לא בעי ידיעה תחלה.

⁷ See footnote # 4.

he will not be relieved of any עבירה by bringing two אשמות;⁸ he will not be atoned for his מעילה through this אשם תלוי –

אלא שיביא אשם ומעילתו ויתנה?⁹ –

Unless he brings the אשם קרבן and the מעילה payment and he stipulates.

תוספות asks:

ואם תאמר ולרבי עקיבא¹⁰ אמאי מביא שתי אשמות במרובה ובמעוטה אשם ומעילה –
And if you will say; but according to ר"ע, why does he bring two אשמות, by a payment – מעילה and the אשם and the מעילה he brings the –
יביא לעולם אשם אחד ויתנה¹¹ וכשיודע אז יביא מעילתו –

Let him always bring one אשם only, and stipulate, and when he will become aware that he was מועל, he will then bring his מעילה payment –

תוספות answers:

ויש לומר משום דאמר¹² המביא אשמו עד שלא הביא מעילתו לא¹³ יצא:
קרוב אשם; because the ברייתא maintains that one who brings his אשם before he paid the מעילה payment, did not fulfill his obligation and the אשם קרבן is not valid; he needs to bring another אשם after his payment.

SUMMARY

According to תוספות, both ר"ע and ר"ט maintain בתחלה לא בעי ידיעה בעי ודאי לא אשם. They argue whether an אשם תלוי is effective when no payment was made (ר"ע) or not (ר"ט). All

⁸ According to ר"ע, if we would follow the advice of ר"ע and bring first one אשם (as an אשם תלוי), it will not be effective as an אשם תלוי since he did not pay the חומש to הקדש. By all other אשמות תלויים there is no monetary issue (it is only a ספק whether he was עובר an איסור), therefore the אשם תלוי is מכפר (temporarily). However here, since he may owe money to הקדש, the אשם תלוי will not be effective (even temporarily), unless he pays the חומש קרן וחומש. [When תוספות writes, 'אשמות בשתי אשמות', he (seemingly) does not mean that if he ultimately brought both אשמות and paid הקדש that he will not be forgiven (for he will be forgiven), rather תוספות means that the approach of two אשמות presented by ר"ע where he does not pay הקדש initially, will not be an effective אשם תלוי. See (שפת אמת)]

⁹ See footnote # 2.

¹⁰ See footnote # 8. ר"ע (presumably) maintains that the אשם תלוי is effective even without paying the חומש. So just like by a מעילה מועטת he brings an אשם תלוי without payment, similarly by a מעילה מרובה let him just bring the אשם (without payment) and stipulate that if I never find out whether I was מועל this should be my אשם תלוי (which is valid without payment according to ר"ע), and if I find out that I was מועל I will bring the payment and this should be my אשם מעילות; why pay upfront?!

¹¹ He should stipulate that if he will never find out whether he was מועל, this should be an אשם תלוי (which does not require payment according to ר"ע), and if he will find out that he was מועל, this should be the אשם מעילות and he will then pay the חומש קרן וחומש.

¹² This is a ברייתא in ב"ק קיא,א.

¹³ It is only by an אשם תלוי that ר"ע maintains that it is effective without payment; however an אשם מעילות is not effective unless it is preceded by paying the (חומש) קרן.

agree that an אשם מעילות is effective only if it is brought after the payment מעילה was made.

THINKING IT OVER

According to תוספות that both ר"ט and ר"ע maintain בתחילה לא בעי ידיעה, what does the גמרא mean by saying, לא בעי ידיעה תחלה, למ"ד אשם ודאי לא בעי ידיעה תחלה, who is the other מ"ד who requires a בתחלה ידיעה?¹⁴

¹⁴ See מהרש"א, מהר"ם.