

It is like knowing by the secular

כהדיוט מדעת דמי –

OVERVIEW

The גמרא differentiates between הקדש (for which one is מועל even if it was שלא מדעת) and הדיוט. There is a dispute between רש"י and תוספות as to the meaning of מדעת דמי.

פירש הקונטרס¹ דדעת שכינה איכא² -

explained that there is always the awareness of the שכינה, so there can never be הדיוט מדעת and it is considered like הקדש שלא מדעת.

פירש"י asks on תוספות:

וקשה דשלא מדעתו לאו דוקא אלא אורחיה דמילתא נקט³ והוא הדין מדעתו⁴ -

And there is a difficulty with this interpretation, for the expression of הדר בחצר is not exact; rather the גמרא mentioned the usual manner in which one would live בחצר חבירו, but the same rule would apply if he lived there with the knowledge of the owner.⁵

offer his interpretation:

אלא נראה כהדיוט מדעת דמי⁶ כלומר דדעת שכינה איכא שלא יהנה אדם בלא מעילה:

But rather it is the view of תוספות that כהדיוט מדעת דמי means that there is the איסור of דעת שכינה that no one can benefit from הקדש without transgressing the

¹ לעיל כ,ב בסוף העמוד.

² assumes רש"י to mean that by הקדש (since there is always דעת שכינה) it is like if by חצר חבירו the owner was aware that someone else is living there without permission in which case (פרש"י assumes תוספות), he would be liable to pay.

³ Usually if the owner is aware that someone is in his חצר, he will protest and evict him. Therefore the גמרא posed the query in a case where the owner was not aware and the person lived there already; is he liable to pay for his stay.

⁴ תוספות maintains that the query by חצר חבירו applies in both cases, whether the owner was aware or was not aware. See 'Thinking it over' # 1.

⁵ The question on רש"י is what is accomplished by saying מדעת דמי, since even by מדעת דמי (where the owner is aware that someone is living בחצר without permission), there is still the query whether he is obligated to pay for his stay. מדעת דמי is no cause for חיוב (in fact it may be more reason for פטור).

⁶ means just as if by a הדיוט, when the הדיוט explicitly forbids you from taking something of his; if you take it you are liable (and in our case where the owner protested against the squatter for living in his חצר, the squatter would be required to pay the rent), similarly by הקדש it is as if הקדש made an explicit protest, so that whatever you benefit from הקדש constitutes מעילה. It should be noted that there is another view (see שטמ"ק בשם) (נח"ד and הרשב"א) that even if the בעלים were מוחה, nevertheless the query of חצר חבירו still remains, and הדיוט means that the owner allowed the squatter to remain on the condition that the squatter will pay, and הקדש שלא מדעת means that it is as if we agree to pay הקדש the amount of the מעילה. See 'Thinking it over' # 2.

מעילה.

SUMMARY

According to רש"י if the owners knew that the squatter is there the squatter must pay (even if the owner did not protest); while תוספות maintains that even if the owner knew that the squatter was there, the query remains (except where the owner protested [or allowed him to stay on the condition that he will pay]).

THINKING IT OVER

1. If the בעלים are aware that someone is living בהצרו (and did not protest);⁷ is that more reason or less reason that the squatter should pay rent, than if it was שלא מדעת?⁸
2. The two views in footnote # 6 argue whether the squatter is required to pay rent if the owner was מוחה. How can we explain this argument?⁹

⁷ See footnote # 4.

⁸ See נחלת משה.

⁹ See בית לחם יהודה אות צו.