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Bava Kamma Daf 63

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

***Kol Includes Everything***

The Gemora had cited a *braisa* which taught us that *kefel* applies to all objects. The *braisa* analyzes the verse (*found in the topic of an unpaid guardian*) describing what items are subject to *kefel*. The verse states that *kefel* is applicable in the case of:

*Al kol dvar pasha – on any criminal item:*

*al shor – on an ox*

*al chamor – on a donkey*

*al seh – on a sheep*

*al salmah – on clothing*

*al kol aveidah – on any lost item*

The Gemora explained that the construct being used is not a *klal*, *prat*, and *klal*, but rather a *mi’ut* and *ribui* – a full inclusion, followed by individual exclusions. Since the first *prat* contains the word “*kol*” - all – this is a full inclusion. [*The Gemora will explain that each instance excludes a specific category, leading to the final rule of movable and intrinsically valuable.*]

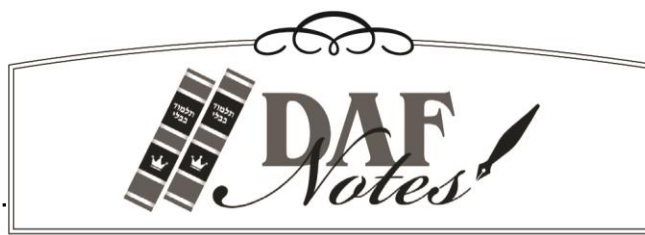
The Gemora asks: The Gemora asks: Does this mean to say that wherever the Torah uses the word *kol* (every), it is an inclusion (and not merely a generalization)? What about by *ma’aser sheini* (a tenth of one’s produce that he brings to Yerushalayim and eats there in the first, second, fourth and fifth years of the Shemita cycle; it can also be redeemed with money and the money is brought up to Yerushalayim, where he purchases animals for korbanos) where the word ‘*kol*’ occurs and we nevertheless expound it as an instance of generalization and specification? For it was taught in a *braisa*: (*And you shall turn that money into whatever your soul desires; cattle,*

*sheep, new wine or old wine, or whatever your soul desires, and you shall eat there before Hashem, your God, and you shall rejoice, you and your household.*) And you shall turn that money into whatever your soul desires is a generalization. *Cattle, sheep, new wine or old wine* is a specification. *Or whatever your soul desires* is a closing generalization. This generalization - specification – generalization teaches us that one may only purchase items with *ma’aser sheini* money that are products of things themselves produced by the earth (*this would include birds, but it would exclude fish, which does not get its nourishment from the ground, and it would also exclude water and salt, which is not produced from other foodstuff*). [*Does this not prove that the expression ‘kol’ is used as a generalization, and not as an inclusion?*]

The Gemora answers: The expression ‘*bechol*’ (in any) is but a generalization, whereas ‘*kol*’ would be an inclusion.

Alternatively, I may say that the term ‘*kol*’ is also a generalization, but in this case, ‘*kol*’ is an inclusion. For let us see: Earlier in the verse, it is written a *klal* (general introductory clause), a *prat* (specific instance), and a *klal* (general summarizing clause). In this verse, the sections are:

Introductory Klal (general)	Prat (instance)	Summarizing Klal (general)
<i>Ki yiten ish el re’ehu (if a man gives his fellow)</i>	<i>Kesef o’ keilim (money or utensils)</i>	<i>lishmor (to watch)</i>



Now, if the words *Al kol dvar pasha* (any criminal item) is also coming for a *klal* and *prat*, the Torah should have written these specifications together with the first set; why is the *al kol dvar pasha* verse necessary? It must be that the 'kol' is an inclusion.

The *Gemora* asks: Now that we know that 'kol' is an inclusion, what is the purpose of all the specifications (*ox, donkey, sheep and clothing*)?

The *Gemora* answers: One (*of the three animals*) is to exclude land. Another is to exclude slaves. The other is to exclude documents. *Clothing* excludes something that does not have an identifying mark. *Al kol aveidah* (*on any lost item*) is necessary to teach us Rabbi Chiya bar Abba's *halachah*, for Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: If a man puts forward a claim of theft (*and he swore to that effect*) regarding an object which had been found by him (*and witnesses testify that he has stolen it himself*), he must pay double payment, since it is written: *Al kol aveidah asher yomar* (*on any lost item which he says*). (63a – 63b)

### **Laws and Sources**

The *Gemora* cites a *Mishna*: If a man says to an unpaid custodian, "Where is my deposit?", and he replies, "It was lost," whereupon the depositor says, "I adjure you to swear (*that indeed it was lost*)," and the custodian says, "Amen," but afterwards witnesses testify against him that he himself had consumed it, he is required to pay only the principal (*but not the kefel, for he did not claim that it was stolen*). If he admits to this himself, he has to pay the principal together with an additional fifth and an *asham* offering.

If a man says to an unpaid custodian, "Where is my deposit?", and he replies, "It was stolen," whereupon the depositor says, "I adjure you to swear (*that indeed it was*

*stolen*)," and the custodian says, "Amen," but afterwards witnesses testify against him that he himself had consumed it, he is required to pay the double payment. If he admits to this himself, he has to pay the principal together with an additional fifth and an *asham* offering.

It emerges from the *Mishna* here that it is only where the custodian falsely alleges theft that he has to make double payment, whereas if he falsely alleges loss, he is not required to pay the double payment. Moreover, even where he falsely alleges theft, it is only where he affirms the allegation by taking an oath that he has to pay the double payment, whereas without an oath, he does not pay the double payment.

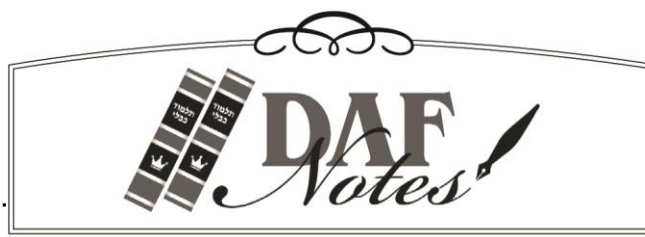
The *Gemora* asks: What are the Scriptural sources for all this?

The *Gemora* cites a *braisa*: *If the thief is found*. This verse deals with a custodian who falsely alleges theft. Or perhaps it is referring to a thief himself? Since it is further stated, *If the thief is not found ...*, we must conclude that the entire verse is discussing a custodian who falsely alleges theft.

Rava (*elaborating on the braisa*) explains the verse as follows: *If it is not found* as he said, but rather, he himself stole it, *he must pay the double payment*.

The *Gemora* asks: How do we know that he is only liable if he takes an oath?

The *Gemora* cites a *braisa*: *And the custodian comes to the Court*. This means that he comes to *Beis Din* to take an oath. Or perhaps it only means that he comes to Court for judgment? Since it is written, *Laying a hand below* (*with respect to a paid custodian*), and it is written here (*in our verse with respect to an unpaid custodian*) *Laying a hand*. Just as there it is referring to one who takes an oath, so too here; it is referring to an oath.



The *Gemora* cites the precise sources to teach us that the obligation to pay the double payment does not apply by a case where the custodian alleges that it was lost. (63b)

## INSIGHTS TO THE DAF

### ***Kefel when there is no Siman***

The *Gemora* asks: Now that we know that ‘*kol*’ is an inclusion, what is the purpose of all the specifications (*ox, donkey, sheep and clothing*)?

The *Gemora* answers (*according to Rashi*): One (*of the three animals*) is to exclude land. Another is to exclude slaves. The other is to exclude documents. *Clothing* excludes something that does not have an identifying mark.

Tosfos asks on Rashi’s explanation: Why would it make a difference if the object has an identifying mark or not? The thief should still be liable to pay the double payment!?

Reb Meir Simcha explains that Rashi holds that with respect to an object that has no identifying mark, the owner gives up hope of getting it back (*yi’ush*) as soon as it is stolen. For although one normally does not give up hope when his item is stolen, that is only when it is stolen from his own house. In that case, he knows who comes in and out of his house and he will be able to investigate as to whom was the thief. However, when his object is in the possession of a custodian, he gives up hope immediately, for he would not know where to begin looking for the culprit. Therefore, as soon as the custodian alleges that it was stolen, the custodian acquires the item, for the owner gives up hope. However, he only gives up hope on the object; not on its value, for he assumes that the custodian will not take a false oath (*even if his intent is to steal it*). It

emerges as follows: When the custodian claims that the deposit he was watching was stolen, if it does not have an identifying mark, the owner gives up hope of getting it back and the custodian acquires it. If after he took an oath that it was stolen, witnesses testify that he himself stole it, he cannot be obligated to pay the double payment, for at the time that he took the oath, he already had acquired the object and he was not swearing on the deposit. However, if the object has an identifying mark, the owner does not give up hope and the custodian is attempting to steal it at the time that he is taking the oath.

## DAILY MASHAL

### ***Gematriya***

Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: If a man puts forward a claim of theft (*and he swore to that effect*) regarding an object which had been found by him (*and witnesses testify that he has stolen it himself*), he must pay double payment, since it is written: *Al kol aveidah asher yomar (on any lost item which he says)*.

The *Gemora* cites the Scriptural source for this *halachah*: Since it states: *If the thief is not found ...*, we conclude that the entire verse is discussing a custodian who falsely alleges theft.

Rava (*elaborating on the braisa*) explains the verse as follows: *If it is not found* as he said, but rather, he himself stole it, *he must pay the double payment*.

The Baal HaTurim notes that the numerical value of the words “*im lo yimatzei ha’ganav*” (*if the thief is not found*) is the same as “*hu atzmo ganav*” (*he himself stole it*).