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Bava Kamma Daf 64

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When Does “Keifel” Apply?

The *Gemora* asks: How do we know that a thief pays the double payment?

The *Gemora* answers: A *braisa* was taught in the *Beis Medrash* of Chizkiyah: Let the Torah just state *an ox and things that were stolen*, and we would know that anything (*which is movable and has intrinsic value*) is included! [*This cannot be.*] If this were so, I would say that just as the specific (*the ox*) is something that is offered on the Altar, so too, only things that are offered on the altar are included. This would mean I would include sheep. However, this cannot be the correct teaching, as the Torah explicitly states sheep. Why, then, did the Torah generally say *things that were stolen*? It must be to include everything.

If so, why didn't the Torah merely say *an ox, sheep, and things that were stolen* and we would know that everything is included? [*This cannot be.*] If this were so, I would say that the specifics only include things whose firstborn are considered holy (*have the status of a korban*), and we would therefore say this includes a donkey (*whose firstborn is holy, although not a korban*). However, the Torah explicitly says donkey. It must be that when it says *things that are stolen*, it includes everything.

If so, why didn't the Torah merely say *an ox, sheep, donkey, and things that were stolen* and we would know that everything is included? [*This cannot be.*] If this were so, I would say that the specifics only include living things,

so too, we should include only living things. However, it explicitly says living things. It must be that when it says things that are stolen, it includes everything.

The *braisa* had stated: Let it say *an ox and things that are stolen*.

The *Gemora* asks: Does it first say *an ox* and then *things that were stolen*? It says *things that were stolen* and then *an ox*. [*This makes a difference regarding how we understand what the Torah is including and excluding.*] If you will tell me that Chizkiyah is merely saying that “if it would say this, it would be understandable,” can this truly be what Chizkiyah meant? He said that just as the specific (*the ox*) is something that is offered on the Altar (*so too, only things that are offered on the altar are included*). If it would have been written in that manner, we would not be able to include things from the ox anymore, as the ox is specific and things that are stolen are general. This tells us that we should simply include everything without learning from the specific! [*This is clearly not what Chizkiyah is saying.*] He must therefore mean in the order that it is written, which is *things that were stolen* and then *an ox*. Can we now say everything is included, or that we learn from the specific? *Things that were stolen* is a general statement while *an ox* is a specific statement. This teaches us that we should only include an ox and nothing else (*which is also not what Chizkiyah is saying*)!

Rava says: The *Tanna* is relying on the word “*living*” to be another general word, and is therefore saying that this is a “*klal u’perat u’klal*” -- “generalization – specification –



generalization” teaching. [*This type of teaching allows us to be inclusive.*]

The *Gemora* asks: The second inclusive word “living” is not like the first “things that were stolen”!? [*This therefore should not be a valid general-specific-general teaching!*]

The *Gemora* answers: This is according to the teaching of the *Beis Medrash* of Rabbi Yishmael, who says that this is a valid method of using this teaching.

The *Gemora* continues: The following question bothered the *braisa* quoted by Chizkiyah. When the verse states, “*If it will be surely found (the theft in his hand),*” why are these words necessary? Let it just say *an ox, things that were stolen, and living things*, and we would know that everything is included!? The *braisa* continues that if it would only say these things, we would think that only things offered on the Altar are included. This would mean that sheep would be included. However, this cannot be the correct teaching, as the Torah explicitly states sheep. Why, then, did the Torah generally say *things that were stolen*? It must be to include everything.

If so, why didn’t the Torah merely say *things that were stolen, an ox, sheep, and things that are alive*, and we would know that everything is included? [*This cannot be.*] If this were so, I would say that the specifics only include things whose firstborn are considered holy (*have the status of a korban*), and we would therefore say this includes a donkey (*whose firstborn is holy, although not a korban*). However, the Torah explicitly says donkey. It must be that when it says *things that were stolen*, it includes everything.

If so, why didn’t the Torah merely say *things that were stolen, an ox, sheep, donkey, and things that are alive* and we would know that everything is included? [*This cannot be.*] If this were so, I would say that the specifics only

include living things, so too, only living things should be included. However, it explicitly says *living things*. It must be that when it says *things that were stolen*, it includes everything. If so, why do we need the verse, “*If it will surely be found?*”

The *Gemora* asks: If so, it seems like the *braisa* ends off in a question!

The *Gemora* answers: There is a question (*an answer*) to this question. How do we know that we should include everything? We know this from the second general term “*living (things)*” (*as that is how the mechanics of a “generalization – specification - generalization” teaching functions; the second generalization is the one that has the expanding effect, for it the Torah would have written this in a generalization – specification format, the teaching would have been greatly limited*). If so, how does calling this a “*klal u’perat u’klal*” help? It is only possible to include living things, as even the “general” aspect of this teaching is limited to “*living (things)*!” This is why the verse, “*If it will surely be found*” is necessary (*as we will explain further*).

The *Gemora* asks: The verse, “*Im himatzei timatzei*” -- “*If it will surely be found*” are two (*himatzei and timatzei*) inclusive words next to each other! How can they be used for this teaching?

Ravina answers: This is according to the following statement said in *Eretz Yisroel*. Whenever you find two general terms that are next to each other, put an exclusive term in between them and derive them as a “*klal u’perat*” -- generalization – specification teaching. Therefore, we can put the word “*shor*” -- “*an ox*” between these words. What does this include? If it is meant to include living things, we already know this from the word “*living!*” Rather, it must include non-living things. The teaching is as follows: Just as an ox is a movable item and has intrinsic value, so too, we can include anything that is



movable and has intrinsic value. In addition, one can insert the word “*chamor*” -- “a donkey” in between these words. What does it teach? If it teaches that even things that are not living are included, we already derived this from “*shor!*” It must be including only something that has an identifying mark). Why, then, is the word “*seh*” -- “sheep” necessary?

This is to teach an “inclusive – exclusive - inclusive” teaching (*and not, as we had assumed previously, a klal u’perat u’klal teaching*). This is as was taught in the *Beis Medrash* of Rabbi Yishmael. The verse says, “in the water” twice (*with respect to which water creatures are permitted to be eaten*). This is not to be used as a “klal u’perat u’klal” -- “generalization – specification - generalization” teaching, but rather a “*ribuy mi’ut v’ribuy*” -- “inclusive – exclusive - inclusive” teaching, which includes everything.

Accordingly, in our case, everything is included. However, if everything is included, why say all of these exclusive words at all?

The *Gemora* answers: One is to exclude land, one is to exclude servants, and one is to exclude documents. The words “*things that were stolen*” and “*living*” are indicating the law of Rav that the thief must return the value of the item to that of when it was stolen (*if the value of the item which was stolen went down, he must pay the value that it was worth at the time of the theft*). (63b – 64b)

Expounding the Verses

The *Gemora* asks: According to the opinion (63b) who holds that one verse teaches us about the thief himself and the other deals with a custodian who alleges that the object he was watching was stolen and we find that he stole it himself, and he derives the law about the thief himself from the verse, “*If the thief will be found,*” what does he derive from the verse, “*If it will be surely found?*”

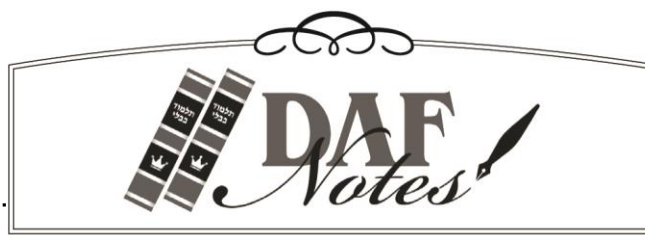
The *Gemora* answers: He understands the verse is required for the teaching of Rava bar Ahilai, for Rava bar Ahilai says: Why does Rav say that if a person admits to a fine (*which a person by Torah law does not have to pay based on his own admission*) and then witnesses come and testify to his guilt that he is still exempt from paying? This is as the verse states, “*If it will surely be found.*” This teaches us that if it was first revealed with witnesses he should then be decided as guilty by the judges. This excludes a case where he admitted his guilt. [*He will be exempt from paying the fine even if witnesses come later.*]

The *Gemora* asks: According to the opinion that both verses are talking about a custodian who claimed the object was stolen, and that the verse, “*If it will surely be found*” is talking about the thief himself, how do we know that if he incriminates himself, he does not have to pay the fine?

The *Gemora* answers: This is derived from the verse, “*That the Beis Din will find guilty,*” excluding someone who confesses his guilt (*regarding a fine such as keifel*).

The *Gemora* asks: According to the opinion that one verse teaches us about the thief himself and the other teaches regarding a guardian who claimed the object he was watching was stolen, and he derives the law about confession from “*If it will surely be found,*” what does he derive from the verse, “*That the Beis Din will find guilty?*”

The *Gemora* answers: He derives from here that someone who admits to owing a fine is not liable. [*Rashi explains that the verse, “That the Beis Din will find guilty,” tells us that a person who confesses to owing a fine does not have to pay the fine. Without an additional verse, we would think this does not apply if witnesses later testified to his guilt. The additional verse, “It will surely be found” teaches that even if witnesses testify after his admission that he is guilty, he does not have to pay the fine.*]



The *Gemora* notes: The opinion who holds that both verses are referring to a custodian who claims that the item was stolen holds that if someone admitted to owing a fine and witnesses later testify to that effect, he is liable for the fine.

The *Gemora* asks: According to the opinion who holds that one verse teaches us about the thief himself and the other teaches us regarding a custodian who alleged that the object he was watching was stolen, it is understandable that the verse, “*If it will surely be found*” is coming to teach us the teaching of Rava bar Ahilai. However, why does the verse need to tell us about all of these specific things (*an ox, sheep, etc.*)? [The verse regarding the swearing of a guardian also mentions specific things that can be used to make the same derivations such as excluding land etc.]

The *Gemora* answers: This is in accordance with the teaching of the *Beis Medrash* of Rabbi Yishmael. The *Beis Medrash* of Rabbi Yishmael taught: Any passage of the Torah that was said once and then repeated again, was said over a second time solely for the new law (*there does not have to be a new law derived from every word*).

The *Gemora* asks: Perhaps we should derive that the thief himself should take an oath (*and only after swearing falsely should he be liable to pay keifel*)!

The *Gemora* answers: One should not think this, as is apparent from the *braisa* quoting Rabbi Yaakov. Rabbi Yaakov taught: “*He must pay twice (keifel)*,” indicates that he does not need to take an oath to be liable. You say the verse means he does not need to take an oath. Perhaps it means he does have to take an oath? This is what you will say? It was not this way.

The *Gemora* asks: What does this last cryptic statement of the *braisa* mean?

Abaye explains: Let the Torah not write that the thief must pay double, and I will derive it anyway from a *kal vachomer* from a custodian who claims that the object he was watching was stolen. If a custodian, who received the object in a permissible fashion, must pay double, then, a thief, who did not receive the object in a permissible fashion, must certainly pay double! If so, why did the Torah bother to write, “*He must pay twice*” regarding a thief? It must be to teach us that he pays double even if he did not take a false oath (*that he did not steal it*).

The *Gemora* asks: How can we use the verse “*If it will surely be found*” for the expositions explained above? Do we not use it for that which we learned in the following *braisa*: It is written: *If the stolen object is found in his hand (he shall pay double)*. This would imply that he would only pay double if it is found in his hand. How do we know that he would be required to pay double if he stole it with his roof, his courtyard or his enclosure? Since the Torah wrote: *being found it will be found*, we learn that he pays double no matter how it was found to be stolen (*even if it wasn't through his hand*).

The *Gemora* answers: The verse could have stated either *being found, being found, or it will surely be found, it will surely be found*. The fact that the Torah varied its expressions enables us to derive both *halachos* from this verse. (64b – 65a)

INSIGHTS TO THE DAF

Exemption when one Admits to a Fine

The *Gemora* asks: According to the opinion (63b) who holds that one verse teaches us about the thief himself and the other deals with a custodian who alleges that the object he was watching was stolen and we find that he stole it himself, and he derives the law about the thief himself from the verse, “*If the thief will be found*,” what does he derive from the verse, “*If it will be surely found*?”



The *Gemora* answers: He understands the verse is required for the teaching of Rava bar Ahilai, for Rava bar Ahilai says: Why does Rav say that if a person admits to a fine (*which a person by Torah law does not have to pay based on his own admission*) and then witnesses come and testify to his guilt that he is still exempt from paying? This is as the verse states, "If it will surely be found." This teaches us that if it was first revealed with witnesses he should then be decided as guilty by the judges. This excludes a case where he admitted his guilt. [*He will be exempt from paying the fine even if witnesses come later.*]

Does this ruling apply only in the *Beis Din* in which the person admitted to the fine, or does it apply even where witnesses testify in a second *Beis Din* against him?

The Ketzos Hachoshen (350:2) writes that when one is exempt from liability after admitting to a fine, it is not as if the obligation is cancelled; rather, the *halachah* is that *Beis Din* cannot obligate him to pay after he has incriminated himself. Therefore, the exemption applies only in the *Beis Din* in which he admits. If, however, he admitted in one *Beis Din* and afterwards he was sued in a second *Beis Din* and witnesses testified against him, the second *Beis Din* may obligate him to pay the fine. And similarly, if witnesses testify against him in one *Beis Din* but they did not complete the judgment, and then he is taken to a second *Beis Din* where he admits to the fine, he will be exempt from paying, since witnesses had not testified in the *Beis Din* where he admitted, and the *Beis Din* where he admitted cannot make him liable, for he incriminated himself.

The Nesivos Hamishpat disagrees and maintains that once a person admits to a fine in one *Beis Din*, he no longer can be obligated to pay even if witnesses testify against him in a different *Beis Din*. He also holds that in a case where witnesses testify against him in one *Beis Din* but they did not complete the judgment, and then he is taken to a

second *Beis Din* where he admits to the fine, the second *Beis Din* cannot obligate him to pay, but it is not because the *halachah* of admitting is dependent upon *Beis Din*. Rather, it is because that as long as a verdict has not been reached, it is still regarded as a fine, and therefore, if he admits before a second *Beis Din*, they cannot obligate him to pay, for he has incriminated himself. However, if witnesses will testify against him in the second *Beis Din*, he will be liable to pay.

The Nesivos evidently holds that once he admits to the fine and is exempt from paying, the debt is completely cancelled and a second *Beis Din* cannot make him liable to pay any longer.

DAILY MASHAL

Confession Precedes the Testimony

Rav say that if a person admits to a fine (*which a person by Torah law does not have to pay based on his own admission*) and then witnesses come and testify to his guilt, he is still exempt from paying.

The Rishonim write that one of the purposes of "viduy" – the confession of one's sins, is because of the rule: One who admits regarding a penalty is exempt from punishment.

It is asked: But this is a confession when there are witnesses, for the *Gemora Chagigah* (16a) states that that the walls of a person's house testify about him at the time of his judgment!?

The answer given is that this judgment and testimony occur after one's death, and the confession while he is still alive precedes that testimony, and Rav rules that if a person admits to a fine and then witnesses come and testify to his guilt, he is still exempt from paying.