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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

The Mishna had stated: One who steals from a thief [what he has already stolen] does not need to pay double etc.

Rav said: This Mishna’s ruling applies only where the theft took place before despair; for if after despair, the first thief would have acquired title to the article and the second thief would need to pay double to the first thief.

Rav Sheishes said: I am inclined to say that it was only when he was drifting into sleep that Rav could have enunciated this ruling. For it was taught in a braisa: Rabbi Akiva said: Why has the Torah stated that where the thief slaughtered or sold [the sheep or ox] he would have to make fourfold and five-fold payments [respectively]? It is because he became rooted in sin. Now, when could this be said of him? If before despair, could he then be called ‘rooted in sin’ [since the sale is of no validity]? It must therefore be after despair. But if you assume that despair transfers ownership, why should he make four-fold and five-fold payments, when it is his that he slaughters and his that he sells?

They said: It may, however, be as Rava stated elsewhere, that it means ‘because he doubled his sin,’ so likewise here it means, ‘because he doubled his sin’ (even though the sale was not effective).

Come and hear (against Rava from the following braisa): *He slaughtered it or sold it*; just as the slaughter cannot be undone so the sale cannot be undone. Now, when could this be so? If before despair, why can it not be undone? It must surely therefore be after despair. But if you assume

that despair transfers ownership, why should he pay fourfold and five-fold when it is his that he slaughters and his that he sells?

The Gemora answers: As Rav Nachman stated elsewhere, that it means to exclude a case where he transferred the animal for thirty days, so also here it means to exclude a case where he transferred the animal for thirty days.

An objection was raised [against Rav from the following braisa]: If a man steals an article and another comes and steals it from him, the first thief has to make double payment, whereas the second will not pay [anything] but the principal alone. If, however, one stole [a sheep or an ox] and sold it, after which another one came and stole it, the first thief has to make four-fold and five-fold payments [respectively], while the second has to make double payment. If one stole [a sheep or an ox] and slaughtered it, and another one came and stole it, the first thief will make four-fold and five-fold payments [respectively], whereas the second does not make double payment but needs to repay the principal alone.

Now, it has been taught in the middle clause: If however, one stole [a sheep or an ox] and sold it, after which another came and stole it, the first thief has to make four-fold and five-fold payments [respectively], while the second has to make double payment. But when could this be? If before despair, why should the second make double payment? Is there anyone who maintains that a change in possession without despair transfers ownership? It must therefore be after despair. But if you



assume that despair transfers ownership, why then must he make four-fold and five-fold payments, seeing that it is his which he sold? And furthermore, it was taught in the opening clause: If a man steals an article and another comes and steals it from him, the first thief has to make double payment, but the second will not pay [anything] but the principal. Now, since it is the time after despair with which we are dealing, if you assume that despair transfers ownership, why should the second 'not pay anything but the principal'? Does not this show that despair does not transfer ownership, in contradiction to the view of Rav?

Rava said: Do you really think that the text of this teaching is correct? For was it not taught in the concluding clause: If one stole [a sheep or an ox] and slaughtered it and another came and stole it, the first thief will make fourfold and five-fold payments [respectively], whereas the second does not make double payment but needs to repay the principal alone? Now, is there anyone who maintains that a physical change (such as the slaughtering of the animal) does not transfer ownership? It must therefore surely still be said that the whole teaching refers to the time before despair, but we have to transpose the ruling of the concluding clause to the case in the middle clause, and the ruling of the middle clause to the case in the concluding clause and read as follows: If one stole [a sheep or an ox] and sold it, and another came and stole it, the first thief has to make four-fold and five-fold payments [respectively], but the second one does not need to pay anything but the principal, as a change in possession without despair transfers no ownership. If, however, one stole [a sheep or an ox] and slaughtered it and another came and stole it, the first thief makes four-fold and five-fold payments [respectively], and the second one makes double payment, as ownership was transferred [to the first thief] by the physical change.

Rav Pappa, however, said: You do not need to transpose [the rulings], since [we may say that] the concluding

clause is in accordance with Beis Shammai, who maintain that a change leaves the article in its previous status.

The Gemora asks: But if so [that it was after despair], will not the opening clause and middle clause be in contradiction to the view of Rav?

Rav Zevid therefore said: The entire text could still refer to the time before despair, as we are dealing here with a case where the owner despaired [of regaining the stolen object] when it was already in the possession of the buyer, but had not despaired while it was still in the possession of the thief, so that [so far as the buyer was concerned] there was despair [as well as a change in possession].

The Gemora notes: You should, however, not think [that this is so] because we need both despair and a change in possession for the purpose of transferring ownership, as even despair alone would also transfer ownership to the thief. It is, however, impossible to find a case in which both the first thief and the second thief should simultaneously pay except in this way.

It was stated: If the thief sells before despair, Rav Nachman said that he is liable, while Rav Sheishes said that he is exempt.

Rav Nachman who said that he would be liable held that since the Merciful One states: '*and he sold it*' and as the thief [in this case] did sell it, it makes no difference whether it was before despair or after despair, while Rav Sheishes, who said that he would be exempt, held that the liability was only where he sold it after despair, where his actions are effective, whereas before despair, where his actions are ineffective, there could be no liability, as selling is compared to slaughter where it is necessary that his actions are effective.



Rav Sheishes said: On what basis do I say it? It was taught in a braisa: Rabbi Akiva said: Why does the Torah say that where the thief slaughtered and sold the stolen [sheep or ox] he should make four-fold and five-fold payments respectively? It is because he became rooted in sin. Now, when could this be said of him? If before despair, could he then be called 'rooted in sin' [since the sale is ineffective]? Must it therefore not be after despair? Rava said: It only means, because he doubled his sin.

Come and hear (against Rav Nachman from the following braisa): *And he slaughtered it or sold it*; just as slaughter cannot be undone, so the sale [must be one] which cannot be undone. Now, when could this be so? If before despair, why can it not be undone? Must it therefore not be after despair, thus proving that the liability is only if it is sold after despair?

Rav Nachman answered: This can be interpreted as follows: It is merely to exclude a case where he transferred the animal for thirty days.

The Gemora notes: Also Rabbi Elozar maintained that the liability would be only after despair, as Rabbi Elozar stated: You may know that in the ordinary run of thefts there is despair on the part of the owner; since the Torah said that where the thief slaughtered or sold [the stolen sheep or ox] he should pay fourfold or five-fold payments [respectively]. For is there not a possibility that the owner had not abandoned hope? We must therefore say that in the ordinary run of thefts there is despair on the part of the owner.

The Gemora asks: But why should the liability (of the four-fold and five-fold payments) not apply even where hope was not abandoned (and the sale was ineffective)?

They said: This should not enter your mind, for selling is similar to slaughtering: just as in the case of slaughtering, his action was effective, so also in the case of selling his

action should be of practical validity; and if it takes place before despair, what would be the legal validity?

The Gemora asks: But again can it not be [that the liability is confined to cases] where we actually heard the owner abandoning hope?

They said: This should not enter your mind, for selling is similar to slaughtering, and just as slaughtering involves liability [if carried out] immediately [after the theft], so would selling similarly involve liability soon after the theft.

Rabbi Yochanan said to him: The law in the case of kidnapping could prove that even where there is no despair on the part of the owner there will be liability.

The Gemora notes: This statement seems to show that Rabbi Yochanan held that selling before despair involves liability. What then about selling after despair?

Rabbi Yochanan said that the thief is liable, but Rish Lakish said he is exempt.

The Gemora explains: Rabbi Yochanan who said that he would be liable held that the liability was both before despair and after despair. But Rish Lakish, who said that he would be exempt, maintained that the liability was only before despair, whereas after despair he would have already acquired the animal, and it was his that he slaughtered and his that he sold.

Rabbi Yochanan objected to Rish Lakish's view [from the following Mishnah:] If a man stole an animal and consecrated it and then slaughtered and sold it, he pays a twofold restitution to the owner, but not four and fivefold. [*Usually, if a thief slaughters or sells an ox or a sheep, he pays four or five; since here, at the time of the slaughtering or selling, it already belonged to hekdesch, and these payments do not apply to hekdesch, he is not*



liable for this extra fine.] Now, when could this be? If before despair, how does the animal become consecrated? Doesn't the Merciful One say: *And when a man shall sanctify his house to be holy*, [implying that] just as his house is his, so also anything he consecrates must be his? Obviously, it must apply to the time after despair. Now the reason that he does not make four-fold and five-fold payments is because he consecrated it, and when he slaughtered the animal it was a consecrated animal that he slaughtered; had he not, however, consecrated it, he would have had to make four-fold and five-fold payments if he would have slaughtered it. Now, if you assume that despair transfers ownership, why should he pay, since it was his that he slaughtered and his that he sold?

He (Rish Lakish) said to him: We are dealing here with a case where, for instance, the owner consecrated the animal while it was in the possession of the thief.

The Gemora asks: But will it in that case become consecrated? Didn't Rabbi Yochanan say that where a robber stole an article and the owner has not abandoned hope of recovering it, neither of them is able to consecrate it: the one because it is not his, the other because it is not in his possession?

They said: He (Rish Lakish) had in mind the practice of the virtuous, as we have learned in a Mishna: The virtuous used to set aside money and to declare that whatever has been gleaned [by passers-by] from this [vineyard] shall be redeemed by this money.

The Gemora asks: But [if the owner consecrated the animal], hasn't the principal thus been restored to the owner? [Why then should a thief pay double on it?]

The Gemora answers: We assume a case where the consecration took place after the case came into court [and evidence had already been given against the thief].

The Gemora asks: What were the circumstances? If the judges had already ordered him to go and pay the owner, why should exemption be only where he consecrated the animal? Why even where the owner did not consecrate it should the thief be liable? For didn't Rava say that if [after the judges said], "Go forth and pay him," the thief slaughtered or sold the animal, he would be exempt, the reason being that since the judges had given their final sentence on the matter, when he sold or slaughtered the animal, he became [in the eye of the law] a 'robber,' and a 'robber' does not pay four-fold and five-fold payments, but if they merely said to him, "You are liable to pay him," and after that he slaughtered or sold the animal, he would be liable to pay four-fold or five-fold payment, the reason being that since they have not pronounced final sentence upon the matter he is still a thief?

The Gemora answers: No, its application is necessary where they have as yet merely said to him, "You are liable to pay him."

The Gemara states that when a thief effects a change in the item he stole, he acquires it thereby. The Torah teaches us that he must return it, if it is as it was when he stole it; if it was changed, he must pay money, since the change means he acquired it.

#### INSIGHTS TO THE DAF

##### Change

The Gemara describes a Machlokes between Beis Shammai and Beis Hillel regarding a change made to a harlot's payment or something switched for a dog, which is normally forbidden to be offered as a Korban. According to Beis Shammai, if she received wheat and she turned it into flour, it is still forbidden to be offered. However, Beis Hillel maintains that only the original payment is forbidden, but not any changes to them.

Tosafos asks why we need both expositions to teach that a change acquires, and answers that the novelty of the verse is to establish that even a temporary, reversible change also acquires.

However, the Rambam rules that a reversible change does not acquire. Why then do we need two expositions?

The Gemara also states that if one stole a lamb and while in the thief's possession, it aged and became a ram "on its own," that change also acquires it into the thief's ownership, known as a "change by itself." The Rambam rules accordingly. The Minchas Chinuch asks, if so, why does the Rambam state that a change from wheat grain to flour permits it to be offered, if a case of "change by itself" would be a greater novelty?

The Minchas Mordechai suggests that the Rambam in fact does not hold that "change by itself" is a valid change by a case of korban. He considers it a change only in the case of a stolen item. Therefore, we need two expositions.

#### DAILY MASHAL

A wealthy man had four sons learning in Yeshiva, for whom he was paying full tuition, and 3 sons-in-law learning in Kollel, who were being fully supported by him. He asked the Satmar Rebbe ZT"l if, in light of this, would he still be obligated to give Tzedaka to Yeshivos and to the poor. The Rebbe replied that the Posuk: You shall rejoice in your holidays is followed by: Your son, your daughter, your servant, your maidservant, the Levi, the convert, the orphan and widow in your gates, which lists the 8 people under the mitzvah of rejoicing on Yom Tov. It would seem that if one causes these eight to rejoice on Yom Tov, he has fulfilled the mitzvah of vesamachta. However, Rashi says: My (Hashem's) 4 opposite your 4. If you rejoice Mine (the Levi, Ger, orphan and widow) then I will rejoice yours (son, daughter, slave and maid). Rashi's point is that when one supports one's own family, there is suspicion that he

does it out of his feelings for them, rather than for the mitzvah. Rashi explains the "crime" of returning a lost item to a non-Jew the same way – that it shows how he returns lost items for personal, ethical reasons, and not for the mitzvah. So too with regard to support. Hashem says that without you taking care of mine, the Mekatreg argues that your support of yours is not for the sake of the mitzvah. If you take care of mine, then they are all deemed for the sake of Heaven.