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Testimony after an Admission

It was stated: If one admits to a fine and witnesses testify to the same effect, Rav says that he is still exempt, and Shmuel says that he is liable.

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*.]

Shmuel will say that the verse is coming to teach us that a thief pays *kefel*.

Rav challenged Shmuel from the following *braisa*: If a thief saw that witnesses are preparing themselves to testify against him and he confesses and says, "I have stolen, but I did not slaughter it nor did I sell it," he would only be required to pay the principal. [*This contradicts Shmuel's ruling!?*]

Shmuel replied: The *braisa* is dealing with a case where the witnesses turned around and refrained from giving any testimony in the matter.

The *Gemora* asks from the end of the *braisa*, which states: Rabbi Elozar the son of Rabbi Shimon said that the witnesses should still come forward and testify (*and he will then be liable to pay the fine*), must we not conclude that the first *Tanna* holds otherwise?

Samuel said to him: Is there at least not Rabbi Elozar the son of Rabbi Shimon who concurs with me? I follow his opinion.

The *Gemora* notes: According to Shmuel, it is certainly a matter of *Tannaic* dispute (*if witnesses testify after his own admission to a fine, if he is liable or not*); what about according to Rav?

Rav could answer that he can follow Rabbi Elozar the son of Rabbi Shimon's opinion as well, for the only reason that Rabbi Elozar the son of Rabbi Shimon held that he is liable to pay (*when the witnesses testify after his admission*) is because he admitted only due to his fear of the impending witnesses, but in a case where the thief admits on his own, he would maintain that he will be exempt from paying (*even if witnesses testify later*). (75a)

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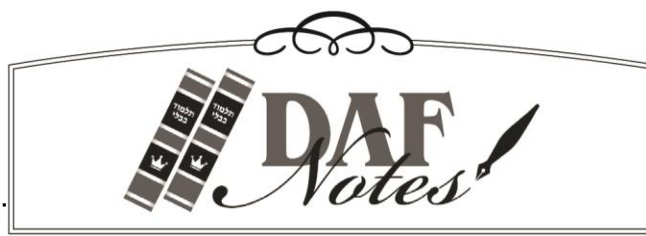

A Bona Fide Admission

Rav Hamnuna said: It stands to reason that Rav said his *halachah* (*that he will be exempt from paying the fine*) in the case when the thief said, "I have stolen," and witnesses then came and testified that he had indeed committed the theft, in which case he is exempt, as he had (*through his confession*) made himself liable at least for the principal. But, if he first said, "I did not steal," but when witnesses testified that he did in fact commit the theft, he turned around and said, "I slaughtered (*the stolen sheep or ox*) or sold it," and witnesses subsequently came and testified that he had indeed slaughtered it or sold it, he would be liable to pay the fourfold or fivefold payments, as (*through his confession*) he was trying to exempt himself from all liability.

Rava said: I bested the elders of the *Beis Medrash* of Rav (*Rav Hamnuna*), for Rabban Gamliel (*by confessing that he blinded his slave's eye*) was exempting himself from all liability, and yet when Rav Chisda stated this case as a proof against Rav Huna and Rav Huna did not answered thus (*that Rav's halachah does not apply here because he wasn't obligating himself to pay anything; this proves that Rav's halachah applies in all cases*).

The *Gemora* cites support for Rav Hamnuna's viewpoint: Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: If the thief said, "I have stolen," and witnesses then came and testified that he had indeed committed the theft, he is exempt, as he had (*through his confession*) made himself liable at least for the principal. But, if he first said, "I did not steal," but when witnesses testified that he did in fact commit the theft, he turned around and said, "I slaughtered (*the stolen sheep or ox*) or sold it," and witnesses subsequently came and testified that he had indeed slaughtered it or sold it, he would be liable to pay the fourfold or fivefold payments, as (*through his confession*) he was trying to exempt himself from all liability.

Rav Ashi said that our *Mishna* and a *braisa* seem to support Rav Hamnuna, for our *Mishna* stated: If two witnesses said that he stole, and only one said that he slaughtered or sold (*the ox or sheep*), or if he admitted to this, he only pays *kefel*, not the fourfold or fivefold payments. Now, why did the *Mishna* find it necessary to state that he stole based upon the testimony of two witnesses? Let the *Mishna* state the following: If one witness testified that he stole and slaughtered or sold the animal or he admitted to this himself, he only pays the principal!? Rather, it would seem that the purpose of stating it in that manner was to indicate to us that it was only where the theft was established by two witnesses and the slaughter by one or by the thief himself, in which case, it was not his confession that made him liable for the principal, this is where we say that the confession by the thief himself is analogous to the testimony of one witness: Just as in the case of a testimony by one witness, as soon as another witness appears and joins him, the thief would become liable (*for the extra payments*), so too also in the case of confession by the thief himself, if witnesses subsequently testify to the same effect, he would become liable. If, however, the theft and slaughter or sale were established by the testimony of one witness or by the thief himself, in which case, the confession made him liable at least for the

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principal, we would not say that the confession by the thief himself should be analogous to the testimony of one witness (*and he would be exempt from paying, even if witnesses come later; this is because his admission obligated him to pay the principal*).

Rav Ashi now cites the *braisa* which supports Rav Hamnuna: If a thief saw that witnesses are preparing themselves to testify against him and he confesses and says, "I have stolen, but I did not slaughter it nor did I sell it," he would only be required to pay the principal. Now, why did the *braisa* find it necessary to state, "I have stolen, but I did not slaughter it nor did I sell it"? Let the *braisa* state the following: "I have stolen," or, "I have slaughtered it or sold it"? Rather, it would seem that the purpose of stating it in that manner was to indicate to us that it was only where the thief confessed that he stole it, where the confession made him liable at least for the principal, that he would be exempt from the fine, whereas if he would have said, "I did not steal it," and when witnesses testified that he did in fact commit the theft, he turned around and said, "I slaughtered (*the stolen sheep or ox*) or sold it," and witnesses subsequently came and testified that he had indeed slaughtered it or sold it, he would be liable to pay the fourfold or fivefold payments, as (*through his confession*) he was trying to exempt himself from all liability. This proves to us that an admission merely regarding the slaughtering should not be considered an admission (*and when witnesses come later, he will, in fact, be liable*).

The *Gemora* disagrees with the proof from the *braisa*: It may, however, be said that this is not so, as the purpose of the *braisa's* wording might have been to indicate to us the very ruling that since he confessed that he had stolen it, even though he still said that he did not slaughter or sell it, and witnesses testified that he did slaughter or sell it, he would nevertheless be exempt from any fine (*including the fourfold or fivefold payment*). The reason is because the Torah said: *Fourfold or fivefold payment*, but not "fourfold or threefold payment."

The *Gemora* attempts to prove that this matter is a *Tannaic* dispute, but this interpretation in the *braisa* is ultimately rejected. (75a – 75b)

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