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Bava Kamma Daf 79

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### ***Different Types of Selling***

The *Gemora* cites a *braisa*: If someone stole an animal and gave it to his agent, and the agent slaughtered it, or, he stole an animal and gave it to his agent, and the agent sold it, or, he stole an animal and he consecrated it (*to the Temple treasury*), or, he stole an animal and sold it on credit, or, he stole an animal and he exchanged it for another object, or, he stole an animal and he gave it to another as a present, or, he stole an animal and he paid his debt with it, or, he stole an animal and he paid with it for things that he had purchased on credit, or, he stole an animal and he gave it to his father-in-law’s house (*as a bridal gift*), he pays the fourfold and fivefold payment (*in all these cases*). [All these cases are regarded as if the thief sold it.]

The *Gemora* asks: What is the novelty of this *braisa*?

The *Gemora* answers: The first part of the *braisa*, where he stole an animal and gave it to his agent and the agent slaughtered it, teaches us that there is agency for a matter of transgression, for although the general *halachah* in the entire Torah is that there is no agency for a matter of transgression, here there is. What is the reason for this? It is because the verse says, “*And he slaughtered it and sold it.*” Just as the selling involves someone else (*the buyer*), so too with respect to the slaughtering, when it is done with someone else (*if his agent slaughtered it*), the thief will be liable (*for the extra payment*). And the latter part of the *braisa* teaches us that there is no difference if one sells to an ordinary person or if he sells to Heaven (*when he consecrates it*), he will still be liable. (78b – 79a)

If he stole in the domain of the owner and he slaughtered or sold it outside their domain, or if he stole outside their domain and slaughtered or sold it within their domain, or if he stole and slaughtered or sold it outside their domain, the *halachah* in all these cases is that he pays the fourfold or fivefold payment (*because it was regarded as stolen before it was slaughtered*). But if a person stole and slaughtered or sold it in their domain, he is exempt (*for there never was an act of theft*).

If he was pulling it to bring it out (*which does not constitute a kinyan; for the act of “drawing it near” – meshichah does not constitute a kinyan in the owner’s domain*), and it died (*naturally*) in the domain of the owner, he is exempt. [Although a thief is responsible for all mishaps, here, he never committed an act of theft; he is therefore exempt from all payments.] If he lifted it (*known as “hagbahah” – a kinyan which is effective in the owner’s domain*), or brought it out from the domain of the owner and it died, he is liable.

If he gave it to a *Kohen* for redemption for his firstborn son, or to his creditor, or to an unpaid custodian, to a borrower, to a paid custodian, or to a renter, and he (*the Kohen, the creditor or the custodian*) was pulling it, and it died in the owner’s domain, he (*the thief*) is exempt (*for no kinyan was performed*). If he lifted it, or he took it out from the owner’s domain, and it died, he (*the thief*) is liable (*for the other person performed a kinyan on the thief’s behalf – see Tosfos as to why the principle of “ein sh’liach l’dvar aveirah” does not apply here*). (79a)

### ***Meshichah***

### ***Mishna***

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**L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O”H**



Ameimar inquired: Did the Rabbis institute that *meshichah* (*drawing it near*) is an effective *kinyan* (*an act of acquisition*) with respect to custodians, or not?

Rav Yeimar said: Let us bring a proof to this from our *Mishna*: If he gave it to a *Kohen* for redemption for his firstborn son, or to his creditor, or to an unpaid custodian, to a borrower, to a paid custodian, or to a renter, and he (*the Kohen, the creditor or the custodian*) was pulling it, and it died in the owner's domain, he (*the thief*) is exempt (*for no kinyan was performed*). [*But if he pulled it out and then it died, the thief will be liable.*] Now, is the *Mishna* not referring to the custodian (*who made the thief liable by pulling it out*)? This would prove that *meshichah* is effective by a custodian!

Ameimar responded: No! The *Mishna* is referring to the thief (*he pulled it out himself*).

The *Gemora* asks: But the first part of the *Mishna* stated that exact case already!?

The *Gemora* answers: The *Mishna* mentioned a case where the thief pulled it out from the house of the owner, and the *Mishna* also mentioned a case where he pulled it out from the house of the custodian.

Rav Ashi disagrees with this answer, for he says that there is no *halachic* difference between stealing from the owner's house, or stealing from the custodian's house. This would prove that *meshichah* is effective by a custodian!

This is supported by the following statement from Rabbi Elozar: Just as *meshichah* is effective with respect to purchasers, so too, it is effective with respect to custodians.

It was also stated like this in a *braisa*: Just as *meshichah* is effective with respect to purchasers, so too, it is effective with respect to custodians. And just as land can be acquired with money, a document or *chazakah* (*a propriety act*), so too, a rental may be acquired with money, a document or *chazakah*.

The *Gemora* asks: What is he renting? If it is a movable object, how can it be acquired with a document?

Rav Chisda says that it is referring to the rental of land. (79a – 79b)

### ***Waiting in Hiding***

Rabbi Elozar said: If a thief was seen hiding himself in forests (*where flocks pasture*) and he slaughtered or sold (*a sheep or an ox*), he would have to pay the fourfold or fivefold payment.

The *Gemora* asks: But why is this so, seeing that he did not pull the animal?

Rav Chisda answered: He was referring to a case where he struck it with a stick (*and caused it to move; this constitutes a meshichah*).

They asked: Since he was seen doing this publicly, he should be regarded as a *gazlan* (*and not a ganav; he therefore should not be subject to the laws of the fourfold and fivefold payments*)?

The *Gemora* answers: Since he was hiding himself from the public, he is regarded as a *ganav*.

The *Gemora* asks: So, who then would be regarded as a *gazlan*?

Rav Avahu answered: Someone like Benayahu the son of Yehoyada, of whom it is written: *And he robbed the spear out of the Egyptian's hand and slew him with his own spear. [He can be regarded as a robber if he has no fear whatsoever.]*

Rabbi Yochanan said: Like the people of Shechem, as it is written: *And the men of Shechem set ambushes against him*



*on the tops of the mountains, and they robbed all who would pass them on the road.*

The *Gemora* asks: Why did Rav Avahu not give his instance from this last source?

The *Gemora* answers: He could say that since these people were hiding themselves, they could not be called robbers.

The *Gemora* asks: And Rabbi Yochanan (*why does he consider them to be robbers*)?

The *Gemora* answers: He could say that the reason they were hiding themselves was so that people should not notice them and run away from them. (79b)

### **Explanations for the Payments**

Rabban Yochanan ben Zakkai's students asked of him: Why is the Torah stricter on a thief than on a robber. He replied: The robber puts the honor of the servant (*man*) on the same level as the honor of his owner (*Hashem*), whereas the thief does not put the honor of the servant on the same level as the honor of the master (*for by stealing covertly, he is displaying a fear of man, but not Hashem*). He made, as it were, the eye of the one Below (*Hashem*) as if it would not be seeing, and the ear of the one Below as if it would not be hearing, as it says: *Woe to them who hide in depths to conceal their counsel from Hashem, and their deeds are in the dark, and they say, "Who sees us, and who knows of us?"* And it is written: *And they say, "Hashem will not see, neither will the God of Jacob give heed."* And it is written: *For they say, "Hashem has forsaken the earth and Hashem does not see."*

Rabbi Meir said: The following parable is reported in the name of Rabban Gamliel: To what do the thief and the robber resemble? To two people who lived in one town and made a party. One invited the townspeople and did not invite the princes, and the other invited neither the townspeople nor the princes. Which deserves the heavier

punishment? It is surely the one who invited the townspeople, but did not invite the princes.

Rabbi Meir said: Come and see how great is the importance attached to labor, for in the case of an ox (*which was stolen and slaughtered*), where the thief interfered with its labor, he must pay fivefold, while in the case of a sheep, where he did not interfere with its labor (*for a sheep generally does not perform farm work*), he has to pay only fourfold.

Rabban Yochanan ben Zakkai said: Come and see how great is the importance attached to the dignity of humans, for in the case of an ox, which walks (*with the thief*) on its own feet, the payment is fivefold, while in the case of a sheep, which the thief had to carry on his shoulder (*and therefore, he is embarrassed*), he only pays fourfold. (79b)

### **Mishna**

One may not raise small domesticated animals in *Eretz Yisroel* (*because this interferes with the Jewish settlement of the land, since small cattle destroy crops*), but one may raise them in Syria (*the territory of Aram which was conquered by King David as an individual, and not as a national conquest, and therefore, it was not sanctified with the sanctity of Eretz Yisroel*) and in the wildernesses in *Eretz Yisroel*. One may not raise chickens in Yerushalayim because of the *kodoshim* (*sacrificial meat; since chicken normally peck in dungheaps, we are concerned that they may bring the measure of a lentil from a dead sheretz, and transmit tumah to the kodoshim meat which are eaten in Yerushalayim*). Kohanim cannot raise chickens in *Eretz Yisroel* because of ritually pure foods (*eaten there; namely – terumah*). One may not raise swine in any place. A person may not raise a dog unless it is tied on a chain.

One may not set nets for catching doves unless they are thirty *ris* distant from an inhabited place (*for then, we are confident that they do not belong to the townspeople*). (79b)



### **Raising Animals**

The *Gemora* cites a *braisa*: One may not raise small domesticated animals in *Eretz Yisroel*, but they may be raised in the forests of *Eretz Yisroel*, or in Syria, even in inhabited settlements, and needless to say – they may be raised also outside *Eretz Yisroel*.

Another *braisa* taught: One may not raise small domesticated animals in *Eretz Yisroel*. They may, however, be raised in the deserts of Judah and in the desert at the border of Acco. And although the Sages said that one may not raise small domesticated animals, it is nevertheless permitted to raise large domesticated animals, for the Sages did not impose a restriction upon the community unless the majority of the community will be able to stand it (*and large animals were needed for carrying things and for plowing*). Small animals could be imported from outside *Eretz Yisroel*, whereas large animals could not be imported from outside *Eretz Yisroel*.

And although they said that one may not raise small domesticated animals, it is nevertheless permitted to keep them before a festival for thirty days and similarly, before the wedding feast for his son for thirty days. [In these cases, they may be imported from outside *Eretz Yisroel*.] He should, however, not retain the last animal for thirty days (*after the festival or the feast*). For one might have thought that if the festival had already gone, though since from the time he bought the animal until now, thirty days had not yet elapsed, we do not say that for the period of thirty days it is permitted for keeping the animal, but rather, we say that as soon as the festival has gone, he should not retain it any longer.

A butcher may, however, buy and slaughter, or buy and keep them for the market. He may, however, not retain those animals for longer than thirty days. (79b – 80a)

### **INSIGHTS TO THE DAF**

#### ***Desecrating Shabbos***

Rabban Yochanan ben Zakkai's students asked of him: Why is the Torah stricter on a thief than on a robber. He replied: The robber puts the honor of the servant (man) on the same level as the honor of his owner (Hashem), whereas the thief does not put the honor of the servant on the same level as the honor of the master (for by stealing covertly, he is displaying a fear of man, but not Hashem). He made, as it were, the eye of the one Below (Hashem) as if it would not be seeing, and the ear of the one Below as if it would not be hearing, as it says: Woe to them who hide in depths to conceal their counsel from Hashem, and their deeds are in the dark, and they say, "Who sees us, and who knows of us?" And it is written: And they say, "Hashem will not see, neither will the God of Jacob give heed." And it is written: For they say, "Hashem has forsaken the earth and Hashem does not see."

Many years ago (14 Teves 5761), I had a question based on the halachah found in Hilchos Shechita (siman 2) - One who violates Shabbos in public is considered a mumar for the entire Torah tantamount to one who worships avoda zara, and his shechitah is invalid just as the shechitah of an idolater. But, one who violates Shabbos in private, although he is not trusted, so long as there are mashgichim who determine that he shechted properly, his shechitah is valid. Based on the *Gemora's* logic by ganav and gazlan, we should consider one who desecrates Shabbos in private to be worse than one who desecrates Shabbos in public!?

R' Moshe (Igros O.C. 1:33) raises this question and based on it, he is mechadesh an important yesod. It is not clear why one who desecrates Shabbos in public is so severe, but R' Moshe suggests that one who violates Shabbos in public is not just a mumar l'tevon (a heretic out of desire), but the fact that he is doing it in public indicates that he is a mumar l'hachis (a heretic out of spite). Although the concept of the *Gemora* is true, that one who steals in private and hides from



Hashem is worse, that is when both the act in private and the act in public are for the sake of fulfilling his. However, when one violates Shabbos in public, he enters a new realm of being a “mechalel Shabbos l’hachis,” which is certainly worse than merely being motivated by desires. Even if deep down, he is only doing it to satisfy his desires, we do not regard his inner thoughts, and the act is an act of l’hachis.

Based on this, he suggests that this applies only at a time when people understand the severity of Shabbos, so that when one violates Shabbos publicly, it is an indication that he has a complete disregard for the Shabbos, but nowadays, where people no longer take Shabbos seriously, and their desires would bring them to desecrate Shabbos in public just as fast as it would bring them to desecrate Shabbos in private, even one who desecrates Shabbos in public will not have the status of an idolater (and therefore his shechitah is valid and he can be counted for a minyan).

I had an alternate approach to answer this question. Stealing is an aveira between two fellow men that every society recognizes as wrong and destructive. It is part of human nature to consider theft to be bad, and is inherent in human nature to try and hide these actions from others. When one hides these actions from people because he is worried that people will think less of him, or may catch him to punish him, he is outwardly displaying a fear for people that exceeds his fear of Hashem. Since it is part of human nature to hide acts of theft, we assume his intention is to hide it from other people. However, Shabbos is between man and God, and therefore the violation of Shabbos is not considered bad by human nature. When one hides his desecration of Shabbos from others, we assume that it is not because he is afraid of people, because people don't view desecrating Shabbos as inherently bad. So why would he hide his actions from people? We assume his attempt to hide his desecration of Shabbos is out of respect for Hashem, rather than trying to hide from Hashem. But when he is desecrating Shabbos in public, we consider it to be a lack of respect, violating Shabbos in the open showing no regard for it at all.

## DAILY MASHAL

### A Fine Distinction in the Soul of a Thief

Our daf cites Rabban Yochanan ben Zakai who says: “Come and see how important human dignity is.” A person who steals an ox and slaughters or sells it must pay the owner five times its worth, but if he steals a lamb and slaughters or sells it, he must pay the owner only four times its worth. This is because the Torah has mercy on the thief who has already disgraced himself by carrying the lamb on his shoulder while running away from its owner. Meanwhile, someone who steals an ox can drive it before him as he flees.

Citing the Alter of Kelm, HaRav Aharon Kotler zt'l says that while committing the crime the thief probably does not think about anything except for his escape and the money waiting for him. However, our Holy Torah pays attention to the fine threads of sensitivity hidden inside the soul of the lowly thief, even taking into account the loss of dignity the thief himself does not consciously consider.

This halacha contains a lesson about the refined soul of a Jew, and should help us realize that we, too, must be careful not to disgrace others in any way (Mishnas R. Aharon III 152). R. Yitzchak Blazer, a talmid of the Alter of Kelm, says that this saying by R. Yochanan ben Zakai can also teach us about the ways of Heaven regarding sins that come easily versus sins that might be accompanied by an inner sigh.

Mussar teachers extract an important lesson from this observation. Hashem's benevolence far outweighs his wrath. When a person does a mitzvah or a good deed his reward is tremendous. If so, the reward for someone who must toil over studying a daf of Gemara or must make great efforts not to miss a shiur is beyond words. Besides the great reward of his zechuyos for studying the Torah, the Heavenly Court will also weigh the many zechuyos he earned for the difficulties he had to overcome when studying Torah (Alei Shur II p. 440).