

16 Elul 5776
Sept. 19, 2016



Bava Kamma Daf 111

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

Tzvi Gershon ben Yoel (Harvey Felsen) o”h

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

All in the right time... and order

If one steals from a convert (who subsequently died with no heirs), falsely swears his innocence, and then admits his theft, he must repay the principle and a fifth (chomesh) to the kohanim, as well as bring an ashram sacrifice, offered by the kohanim. Both elements – the payment and the ashram – are to be given to the kohanim of the current rotation, with the payment being given before the ashram. If the ashram was offered before the principle, the ashram is not valid, and another one must be brought after the principle is paid. The Mishna stated that if one gave the money to the kohanim of the yehoyariv (the first kohanim rotation of the year), and the ashram to yedaya (the last rotation of the year), he has fulfilled his obligation, since he brought the items in the correct order. If he gave the ashram to yehoyariv, and then the money to yedaya, the ashram was brought too early. Therefore, if the ashram has not yet been offered by the kohanim, it should be offered by the yedaya rotation. If it has been offered, the thief must bring a new ashram to the yedaya rotation, since his first ashram was invalid.

The Gemora brings a braisa that indicates that this last case is a dispute between Rabbi Yehuda and the Chachamim. Rabbi Yehuda says that the money is returned to the yehoyariv rotation, while the Chachamim say that the ashram should be returned to the yedaya rotation (as the Mishna stated). The Gemora explains that if the thief gave the ashram and money to the rotations during their respective rotation week, all would agree that no adjustments are made, since each rotation got what was due to them in their allotted time. Rather, Rava explains that the case of the braisa is when both the

ashram and money were given during the yehoyariv rotation week, but the ashram was first given to the yehoyariv kohanim, and then the money was given to the yedaya kohanim. Rabbi Yehuda says that since the yedaya kohanim took something during another rotation week, they are fined, and the item is returned to the rightful rotation kohanim. The Chachamim say that since yehoyariv took the ashram at an invalid point in the process – before the money was paid – we fine them, and take the ashram from them, and give it to the rotation that received the money.

The Gemora brings three braisas in which Rabbi Yehuda Hanasi (Rebbi) discusses Rabbi Yehuda's opinion in variations of the case discussed in the original braisa.

1. In the first braisa, Rebbi says that according to Rabbi Yehuda, if the yehoyariv kohanim sacrificed the ashram before the money was paid, they can keep the ashram, but a new one must be brought, and given to the yedaya rotation. Rava explains that although the original ashram is invalid, and must be destroyed, its skins are kept by the yehoyariv rotation.
2. In the second braisa, Rebbi states that according to Rabbi Yehuda, if the ashram is still extant, it must be given to the yedaya kohanim. Even though Rabbi Yehuda says the opposite in the original braisa, the Gemora explains that Rebbi is referring to a case where the yehoyariv kohanim only claimed the money once their rotation time was over. Since they waited that long, they

already forfeited their claim, and forgave the money to the yedaya family, and must give them the asham.

3. In the final braisa, Rabbi states that Rabbi Yehuda says that the money must be returned to the kohanim who received the asham. The Gemora says that although this seems to be nothing more than what Rabbi Yehuda explicitly stated, Rabbi is including a case where both rotation times have passed without either yehoyariv and yedaya stating a claim. Even though we said that once a rotation time passed, the claim was forfeited, since both rotations passed, we revert back to the basic rule, that the money is given to the rotation which received the asham.

The time line below summarizes the opinion of Rabbi Yehuda.

Rotation week:	Yehoyariv	Yedaya	...
Event:	Asham	Money (Yedaya)		
Halacha:	Money transferred	Asham transferred	Money transferred	

1. Elements of Atonement

The Gemora discusses the basic rule of the Mishna that if one brought the asham before paying the principle, he has not fulfilled his obligation. Rava explains that this is due to the wording of the verse. The Torah says that the thief must pay the principle (the guilt payment – asham) that he returns to the kohain, *milvad ail ha'asham asher yechaper bo alav – beside the ram of the asham sacrifice, with which he will be atoned for*. The Gemora first thought

that the proof was due to the word *milvad – beside*, which implies that the item in the first clause (the money) is primary, and the item in the second clause (the asham sacrifice) is secondary. One of the scholars then challenged Rava, since in the context of festival sacrifices, the braisa states that the musaf of a festival comes after the daily tamid olah, since the verse states that the musaf is brought *milvad olas hatamid - beside the daily olah*. This braisa indicates that the second clause of a *milvad* sentence comes first. Rava explains that his source was not from *milvad*, but rather from the tense of the second clause. The verse refers to the asham sacrifice, that *yechaper – he will be atoned for*, indicating that the asham will only be brought at a time later than the money.

Hekdesh vs. Laymen

The Gemora concludes the perek with a halacha which is parallel to the thief who pays principle and brings an asham sacrifice. When one mistakenly takes hekdesch property (me'ila), he must pay to hekdesch the value of the hekdesch, as well as a fifth (chomesh), and he must bring an asham sacrifice. The Gemora brings a braisa that learns three halachos for the me'ila obligation, all from one verse. The verse states the kohain will atone for the sinner *b'ail ha'asham v'nislach lo – through the ram of the guilt and he will be forgiven*.

1. From the phrase itself, the braisa learns that both the ram and the principle (guilt) must be given, to achieve atonement.
2. Since the verse refers to the ram as the ram of the guilt, the braisa learns that the money (guilt) is primary, and must be given before the ram is brought.
3. Finally, since only these two items are mentioned, the braisa learns that the chomesh is not necessary for atonement.

Since the halachos by taking from hekdesch and stealing from a lay person discussed here are parallel, the Gemora



explains how each realm teaches something about the other. From the verse of a lay person's theft, we learn that the word *asham* refers to the principle payment (as the Gemora discussed on 110a). From the verse of *me'ila*, we learn that the *chomesh* does not preclude atonement.

WE SHALL RETURN TO YOU, HAGOZEL EITZIM

Inheritance

The last chapter in Bava Kamma continues discussing halachos of theft and robbery. The Mishna states that if one robbed an item from someone, fed his children with it, or left the item to them, and then died, the children are not obligated to pay the victim. However, if the item was one with "responsibility", the children must pay. The Gemora will discuss at length the parameters of the Mishna, including what occurred subsequent to the theft, and what responsibility means.

Despair

The Gemora begins with a statement of Rav Chisda. Rav Chisda said that if one robs an item, without the victim despairing of retrieving the item, and then another person robbed the item from the first burglar, the victim may collect from either thief. The Gemora explains that Rav Chisda holds that until the victim despairs of recovering the item, it is in his possession. Therefore, both thieves have stolen it from him, and are liable. The Gemora asks a question on Rav Chisda from our Mishna. The Mishna stated that the children who inherited and ate the stolen item are not liable, indicating that one who seizes a stolen item from a burglar is not liable. Rav Chisda explains that this Mishna is in a case where the victim despaired, and therefore is not the owner at the time that the children received or ate the stolen item.

Rami bar Chama stated that the Mishna indicates that the transfer of ownership accomplished by inheritance is equivalent to the transfer of ownership accomplished through a sale. Rami bar Chama assumes, like Rav Chisda, that the Mishna is a case where the victim despaired. Rami bar Chama holds that despair removes the item

from the legal possession of the victim, only when combined with a change of domain. Therefore, the mechanism in the Mishna whereby the children acquire the stolen item is despair, coupled with the inheritance, which is a bona fide change of domain. Rava disagrees, and says that inheritance is not like a sale. The Mishna is a case where the item was eaten and cannot be returned. Since the children did not steal, they have no further monetary obligation. The Gemora objects to this based on the latter part of the Mishna, where the Mishna stated that if the item was one with responsibility, the children must pay. This indicates that the Mishna is in a case where the item still exists, and even then, only an item with responsibility must be returned. Rava explains that this part of the Mishna means that if the father left the children property that has responsibility, i.e., real estate, they must use this real estate to pay, since the theft put a lien on the estate before the father's death. The Gemora objects to this explanation, based on the lesson Rabbi taught his son Rabbi Shimon. Rabbi told him that the Mishna is not just referring to a theft of land, but rather any item that is recognizable and publicly used. Such an item must be returned, so as not to shame their father when people see them using it. Rava counters that he is accustomed to explaining Mishnayos based on Rav Oshaya, and Rav Oshaya will greet Rava when he passes away, to thank him for that honor. Rava explains this Mishna, as well, based on Rav Oshaya.

Rav Oshaya's version of the Mishna has three statements:

1. If one steals an item and feeds it to his children, and then dies, his children are not liable
2. If one steals an item and left it to this children, they must return the item only if it still exists
3. If the thief left real estate to his children when he died, they must pay for the theft using the real estate.

Rava follows this explanation of the Mishna, as opposed to Rabbi's. This reading of the Mishna is compatible with



Rava's position that inheritance is not like a sale, and does not acquire a stolen item.

The Gemora suggests that Rav Oshaya's second statement, which states that if the item does not exist, the children need not pay, disproves Rav Chisda, since it indicates that the children are not considered thieves. The Gemora explains that Rav Chisda will limit Rav Oshaya to a case where the victim despaired, and therefore lost ownership of the item.

The Gemora suggests that Rav Oshaya's second statement, which states that if the item exists, it must be returned, disproves Rami bar Chama, who said that inheritance is like a sale. The Gemora explains that Rami bar Chama will limit Rav Oshaya to a case where the victim did not despair, and therefore inheritance, like a sale, will not remove ownership.

Interest

Rav Ada bar Ahava learned that Rami bar Chama's statement was made in relation to another source. The braisa states that if one collected interest, and left the money to his children, the children need not pay back the interest. Rami bar Chama said that this indicates that inheritance is like a sale, and therefore, the interest is not their responsibility. Rava said that inheritance is not like a sale, but the children need not repay the interest, since the verse forbids only the lender from taking interest, excluding anyone else, including heirs.

The Gemora explains that Rav Ada bar Ahava, who learned Rami bar Chama's statement on the braisa of interest, would also apply his statement to the Mishna, since it also indicates that inheritance is like a sale, but the original version of Rami bar Chama, on our Mishna, would not apply his statement to the braisa of interest, since there is a special verse excluding heirs.

Possible readings of the Mishna

The ultimate explanation of the Mishna depends on four main issues:

1. The role of despair in removing a stolen item from the original owner's legal possession. Specifically, is despair sufficient, or does it need to be combined with change of domain.
2. The legal status of inheritance, compared to a sale
3. Does the stolen item exist? This depends on what the case of "leaving the item [to the children]" means – did they subsequently eat it, or is it still extant?
4. Any external reason for heirs to return a stolen item – either shame of their father, or a lien

Rav Chisda addresses only the first issue, and his halacha indicates that without despair, legal possession is not impacted at all. He does not directly address whether despair is sufficient. Rami bar Chama and Rava directly address the second issue.

Rav Chisda's position on the first factor necessitates his explaining that the Mishna must be after despair, since otherwise, the children would themselves be burglars, and therefore liable. The Meiri and Tosfos explain that once Rav Chisda explains Rav Oshaya's braisa as being after despair, he must hold like Rava's opinion on the second issue, and therefore if the stolen item exists, it must be returned. Rami bar Chama, however, holds that inheritance is like a sale. Therefore, Rav Oshaya's braisa that says that the children need not pay if they ate the item, disagrees with Rav Chisda's halacha.

Rebbi explains that a recognizable publicly used item must be returned, to avoid shaming the father who stole. Rava, however, based on Rav Oshaya, disagrees, and only requires the children to pay if they inherited real estate, since the theft placed a lien on the estate.

INSIGHTS TO THE DAF

Eating cheese after a large quantity of meat

A Jew was stricken with a severe illness that prevented him from eating normally and he was equipped with an apparatus that introduced food directly into his stomach. He asked the author of Chelkas Yaakov (O.C., 52, 216) if he should say a blessing before the alimentation, though the food would not enter his body orally. To answer this question, we must define the conditions obligating a blessing before eating.

Our sugya explains that a satiated person, who cannot eat any more, is not allowed to observe the mitzvah of eating a portion of a sacrifice. Such an act would be considered “forced eating” (achilah gassah) and not regarded as eating at all Rashi: “Achilah gassah”; see Shaar HaTziyun, O.C. 602:15). This law originates from the Gemara (Yoma 80b) stating that someone who eats achilah gassah on Yom Kippur, such as someone who became sated just before the fast and continued to eat after nightfall, is not regarded as having broken the fast because achilah gassah is not regarded as eating but rather as damage to the body. Such a person is therefore not considered as having violated the fast since he has no benefit from the food. Indeed, according to Mishnah Berurah, no blessing should be pronounced on achilah gassah as it is not considered eating.

Eating lends us two sorts of pleasure: (a) the pleasure felt in the palate and throat while chewing and swallowing and (b) the feeling of satiety and elimination of hunger while the food is in the stomach. We may therefore say that someone must make a berachah only if he feels pleasure in his mouth. Someone who eats achilah gassah will not feel hungry for a long time but is exempt from blessing as his action is not considered eating. Hence, someone who is nourished non-orally is exempt from making a blessing as his throat and palate have no pleasure therefrom. Apparently, since achilah gassah is not regarded as eating, we now consider another case: May someone who has eaten a large quantity of meat –

to the point where he cannot eat any more – eat milk products immediately? According to what we have learnt, his consumption of the dairy products is not considered eating. Still, Mishneh LaMelech (Hilchos Yesodey HaTorah 5:8) rules that he must not eat dairy products as the Torah does not mention the term “eating” in regard to this prohibition. Rather, the Torah says “You must not cook a kid in its mother’s milk” (Shemos 26:9) and therefore we cannot rely on the loophole of achilah gassah. (See Mishneh LaMelech, ibid., as to his doubts regarding the prohibition of eating neveilah by means of achilah gassah).

DAILY MASHAL

Rashi’s Visit to Cracow

In our sugya Rava says he was used to explaining the opinions of his teacher Rabbi Oshaya and was sure that at his death Rabbi Oshaya would come to greet him.

The gaon Rabbi Yehoshua bar Rav Yosef of Cracow, teacher of the Shach, composed a special work to reconcile the objections of the Tosefos to Rashi and even called it Meginey Shlomo (“Shields of Shlomo”, as Shlomo was Rashi’s first name). His grandson wrote in the preface that Rashi appeared before the author and said, “Happy are you in this world and you will enjoy the next. As you save me from the lions, the geniuses of the Tosefos, I shall come to greet you in the World to Come with all my students.”

Indeed, shortly before his demise, Rabbi Yehoshua spoke to the great personalities of Cracow who surrounded his bed and said, “Make way for Rabbi Shelomo Yitzchaki and all his holy students as they have come to show me the way of life as I have always supported him to answer the Tosefos” (Chida, Shem HaGedolim)