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DAF Notes
Insights into the Daily Daf
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Bava Kamma Daf 115

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

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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

Yi'ush

[*We learned in our Mishna that if someone bought a stolen article from a thief, he must return it to the owner, but he may collect the money for which he paid for it. The Sages instituted this in order to ensure that people will not refrain from buying from one another*.] It was stated: If someone stole something and sold it, and afterwards the thief was recognized (*by two witnesses*), Rav ruled in the name of Rabbi Chiya that the owner deals with the thief, and not with the purchaser (*he cannot seize the object from the purchaser without compensating him for its value*). Rabbi Yochanan said in the name of Rabbi Yannai that the owner may seize the stolen article from the purchaser (*without paying him for it, and the purchaser may claim his loss from the thief*).

Rav Yosef said that these two *Amoraim* do not actually differ, for Rabbi Yochanan was discussing a case where the purchaser bought it from the thief before the owner despaired about retrieving his article, and therefore the owner can deal directly with the purchaser, whereas Rav is referring to a case where the purchaser bought it from the thief after the owner despaired, and therefore the owner can only deal with the thief. Rav Yosef adds that they both hold in accordance with Rav Chisda (*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; so too in our case, the purchaser is treated as a second thief even though he paid for it*).

Abaye asked Rav Yosef: Do they not argue? But the *Kohanic* gifts (*that were stolen and sold*) which are treated as if they were sold before the owner despaired (*for the Kohanim were not me'ya'esh on them*), and nevertheless, they do argue!? For we learned in a *Mishna*: If one asked a butcher to sell him the inside of a cow in which there were included portions of the *Kohanic* gifts (*the maw*), the buyer would have to give it to a *Kohen* without deducting anything from the purchase price (*for they both knew that the maw belongs to the Kohen*). If he purchased it from him by weight, he would have to give the portions to a *Kohen* and he deducts their value from the purchase price (*for the maw belonged to the Kohen, not the butcher*). And Rav said that the last ruling applies only where the purchaser weighed it for himself, but if the butcher weighed it for him, the *Kohen* can only place a claim against the butcher (*for it is the butcher who stole the maw; and although we are dealing with a case where the butcher sold it before yi'ush, Rav still rules that the Kohen can only sue the butcher and not the purchaser; this refutes Rav Yosef who maintains that Rav agrees with Rav Chisda that the owner can sue them both*)!?

The *Gemora* answers: Let us say that Rav meant that he can ***also*** sue the butcher, for you might have thought that the *Kohanic* gifts are not subject to the law of robbery (*and the Kohen can never sue the butcher, even if he weighed it himself*); Rav teaches us that this is not so.

Rav Zevid said: [*Rav and Rabbi Yochanan agree to Rav Chisda that if the owner was not me'ya'esh, he can sue the purchaser as well*.] They are dealing with a case where the owner despaired of recovering the articles when they were in the hands of the purchaser, but did not despair so long as they were in the hands of the thief, and the point at issue between them was that while Rabbi Yochanan maintained that it was only *yi'ush* followed by a change of possession that transfers ownership, whereas if the change of

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ownership has preceded the *yi'ush*, he does not acquire it. And Rav holds that there is no distinction.

Rav Pappa said: Regarding the garment itself, they all agree that it will have to be returned to the owner. Here they differ as to whether "the benefit of the marketplace" is to be applied to him (*can the purchaser get his money back from the owner, or only from the thief*). Rav in the name of Rabbi Chiya said that the buyer has to sue the thief, as "the benefit of the marketplace" does not apply here (*when the thief has been caught*), whereas Rabbi Yochanan said in the name of Rabbi Yannai that he may sue the owner since "the benefit of the marketplace" does also apply here.

The *Gemora* asks: But does Rav really maintain that "the benefit of the marketplace" should not apply here? Was Rav Huna not a student of Rav, and yet when Chanan the Wicked stole a garment and sold it and was brought before Rav Huna, he said to the owner, "Go and redeem your pledge" *("Pay him for the srticle" – even though the thief was caught we still apply the principle of "the benefit of the marketplace"*)!?

The *Gemora* answers: The case of Chanan the Wicked was different, for since it was impossible to get any payment from him (*for he was extremely powerful*), it was treated as if the thief was not identified at all.

Rava said: If the seller was a notorious thief, "the benefit of the marketplace" would not apply (*for he should have known that the goods were stolen*).

The *Gemora* asks: But wasn't Chanan the Wicked a notorious thief, and yet "the benefit of the marketplace" still applied?

The *Gemora* answers: He was only notorious for wickedness, but not for theft.

It was stated: If a man stole things and paid his debt with them, or if he stole them and paid for things which he received on credit, "the benefit of the marketplace" will not apply, for we are entitled to say (*to the creditor*), "You did not give him anything with the intention of getting these stolen articles."

If a borrower pledged them (*the stolen articles*) for a (*loan valued at a*) hundred, their value being two hundred, "the benefit of the marketplace" would apply (*for the receiver of the pledge is similar to a purchaser*). But if their value was equivalent to the amount of money lent on them, Ameimar said that "the benefit of the marketplace" would not apply (*since this is not the usual case, the lender was probably not intending to keep the pledge; rather, he trusted the borrower that he will be paid back*), whereas Mar Zutra said that "the benefit of the marketplace" should apply.

In the case of a sale, where the money paid was equivalent to the amount of the value of the goods, "the benefit of the marketplace" would certainly apply. But where goods of the value of a hundred were bought for two hundred, Rav Sheishes said that "the benefit of the marketplace" should not apply (*for just like the additional hundred was intended as a gift, so too the first hundred was intended as a gift*), whereas Rava said that "the benefit of the marketplace" should apply.

The *halachah* in all these cases is that "the benefit of the marketplace" should apply, with the exception of the cases where one stole and paid his debt with them, and where one stole and paid for things which he received on credit.

Avimi bar Nazi, the father-in-law of Ravina, was owed four *zuz* from a certain person. The debtor stole a garment and brought it to him and borrowed another four *zuz*. After it became known that he had stolen the garment, the case came before Ravina, who said: Regarding the first four *zuz*, it is a case of a thief stealing articles and paying a debt with them, in which case, the owner is not required to pay the lender anything. However, regarding the other four *zuz*, you can collect your money from the owner and then return the garment (*for here, "the benefit of the marketplace" does apply*).

Rav Kohen asked: But perhaps the garment was given as a pledge for the first four *zuz*, so that it would be a case of a thief stealing articles and paying a debt with them, or stealing articles and paying for things which he received on credit, whereas the loan of the last four *zuz* was a matter of mere trust, just as he trusted him at the very outset?

The matter rolled on until it reached the notice of Rav Avahu, who said that the *halachah* is in accordance with Rav Kohen.

A Narshean stole a book and sold it to a Papunian for eighty *zuz*, and this Papunian went and sold it to a Mechozean for a hundred and twenty *zuz*. As the thief was eventually caught, Abaye said that the owner of the book could go and pay the Mechozean eighty *zuz* (*for that was the amount that the thief would have been required to pay*) and get his book back, and the Mechozean can go and recover the other forty *zuz* from the Papunian.

Rava asked: If in the case when it was bought from the thief himself, "the benefit of the marketplace" applies, should this certainly not apply in the case of a purchase from a purchaser?

Rava therefore said: The owner of the book could go and pay the Mechozean a hundred and twenty *zuz* and get his book back, and the owner of the book may then go and recover forty *zuz* from the Papunian and eighty *zuz* from the Narshean. (115a)

Mishna

Someone was approaching with his barrel of wine and the other with his jug of honey. If a crack developed in the barrel of honey and the other person spilled out his wine and saved the honey, he only receives his wages (*for his work, and for his jug*). But if he said, "I will save yours, but you must pay me the value of mine," he is obligated to pay him.

A river swept away his donkey and the donkey of his fellow. His was worth a *maneh* (*one hundred zuz*) and that of his fellow was worth two hundred *zuz*. If he let his go, and saved that of his fellow, he only receives his wages. But if he said, "I will save yours, but you must pay me the value of mine," he is obligated to pay him. (115a – 115b)

Becoming Lost

[*The Mishna had stated: If a crack developed in the barrel of honey and the other person spilled out his wine and saved the honey, he only receives his wages*.] The *Gemora* asks: Why should this be? Let him tell the owner of the honey, "I have acquired the honey from *hefker* (*a state of ownerlessness; it should therefore all be his*)!? The *Gemora* cites a *braisa* to prove this point.

The *Gemora* answers: The *Mishna* is referring to a case where the netting of the olive press was twined around the barrel (*and therefore it is not regarded as hefker*).

The *braisa* had stated: If a man was carrying jugs of wine and oil and he noticed that they were about to be broken, he may not say, "I declare this *terumah* or *ma'aser* with respect to other produce which I have at home," and if he says so, this designation is meaningless (*for since they will become lost, they are regarded as hefker, and therefore cannot be designated as terumah or ma'aser*).

The *Gemora* asks from a different *braisa*: If a man had money in his possession and he noticed a robber approaching him, he may not say, "The *ma'aser sheini* produce which I have in my house should be deconsecrated upon these coins," and if he says so, the deconsecration is valid. [*Evidently, the coins are still regarded as his, although they are destined to be lost!?*]

The *Gemora* answers: The *braisa* is referring to a case where he can still save the money.

The *Gemora* asks: If so, why is it preferable that he should not use these coins for deconsecration?

The *Gemora* answers: It is referring to a case where it would be somewhat difficult for him to save them (*l'chatchilah he should not do it, but they are his coins and the deconsecration is still valid*).

The *Gemora* asks: And whenever there would likely be a loss, is it preferable not to consecrate it? But we learned in a *braisa*: If a man has ten barrels of *tamei tevel* (*untithed produce*) and he noticed one of them had become broken or uncovered (*which would then be forbidden to drink from, for we are concerned that a snake drank from it and left its venom inside*), he may say, "Let this barrel be the *terumas ma'aser* with respect to the other nine barrels." However, in the case of oil, he should not do so, as he would thereby cause a considerable loss to the *Kohen*.

[*The difference between oil and wine is that, since the produce was already tamei, in the case of wine, the Kohen would in any case be unable to make any use of it, except for sprinkling it around his house to provide a pleasant aroma, whereas in the case of oil, he can use it for the purposes of heating and lighting. Now, assuming that the minor loss involved in the case of the wine is to be compared with a loss that is not certain, does this not prove that where there is only a likelihood of a loss that a declaration of consecration can be made?*]

Rabbi Yirmiyah answered: The *braisa* is referring to a case where the netting of the olive press was twined around the barrel (*and therefore it is not regarded as such a loss*).

The *Gemora* asks: This is a good reason for the case where the barrel broke, as the wine which will be saved is still fit to be used, but in the case where the barrel became uncovered, for what use is the wine fit any more? And if you will answer that it is still fit for sprinkling purposes, was it not taught in a *braisa*: Water which became uncovered should not be poured out in a public area (*for we are concerned that a sharp stone might pierce someone's barefoot foot, and the snake venom will enter his body*), and should not be used for kneading clay (*for the venom might enter his hands*), nor for sprinkling the house (*to prevent the dust from rising*), nor for giving his own animal or his fellow's animal to drink from!?

The *Gemora* answers: He may do it by using a strainer, in accordance with the view of Rabbi Nechemyah, as taught in a *braisa*: A strainer is subject to the law of uncovering. Rabbi Nechemyah, however, says that this is so only where the lower receptacle was uncovered, but if the lower receptacle was covered, it is not subject to the laws of uncovering, even though the strainer on top was uncovered, for the venom of a snake is like a sponge and remains floating in its place.

The *Gemora* asks: But was it not taught in reference to this that Rabbi Shimon said in the name of Rabbi Yehoshua ben Levi that this ruling applies only if it has not been mixed (*after it was uncovered*), but if it had been mixed, it would be forbidden?

The *Gemora* answers: It is possible to rectify matters by placing a cloth on the mouth of the barrel and pour the liquid gently through.

The *Gemora* asks: But if we follow Rabbi Nechemyah, is it permitted to make *tamei* produce *terumah* even with respect to other *tamei* produce? Surely it has been taught in a *braisa*: It is permitted to make *tamei* produce *terumah* with respect to other *tamei* produce, or *tahor* produce with respect to other *tahor* produce, but not *tamei* produce with respect to *tahor* produce. Rabbi Nechemyah said that *tamei* produce is not allowed to be made *terumah* even with respect to *tamei* produce except in the case of *demai* (*produce purchased from an am ha'aretz; we are uncertain if ma'aser was separated*).

The *Gemora* answers: Here also, we are dealing with a case of *demai*.

The *braisa* had stated: However, in the case of oil, he should not do so, as he would thereby cause a considerable loss to the *Kohen*.

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The *Gemora* asks: What is different about oil that it can be used for kindling; wine can also be used for sprinkling around the house (*and therefore there would also be a considerable loss*)?

The *Gemora* answers: The *braisa* is referring to new wine (*which has only a minimal aroma*).

The *Gemora* asks: But it can be aged?

The *Gemora* answers: It is forbidden for the *Kohen* to age the wine, for it might lead to a transgression (*consuming terumah that is tamei*).

The *Gemora* asks: Should we not be concerned for this regarding oil as well?

The *Gemora* answers: It is placed in a disgusting type of utensil (*which prevents him from using it*).

The *Gemora* asks: Why can't this be done by wine as well?

The *Gemora* answers: If he wants it for the aroma, the disgusting utensil will ruin its aroma. (115b)

INSIGHTS TO THE DAF

Ba'al Tashchis

The *Gemora* says that it is forbidden to drink from water that has been left uncovered for there is a concern that a poisonous snake drank from it and left its venom inside. Te *Gemora* rules that one cannot give this water to an animal.

Rashi explains that the rationale is that we are concerned that one may slaughter the animal and it will be dangerous to the person who eats from this animal.

Tosfos points out that Rashi's approach would only apply to a kosher animal, but in truth this *halachah* should apply to a non-kosher animal as well, because there is a violation of *ba'al tashchis* - the killing of an animal for no reason at all.

Tosfos proves this from a *Gemora* in Avoda Zara 30b that it is only permitted to feed it to a cat (*snake eater*) which will not be damaged by the venom. This implies that it would be forbidden to feed it to other non-kosher animals that will be poisoned by the venom.

Reb Avi Lebowitz points out something interesting from Tosfos regarding *ba'al tashchis*. Usually we refer to something as wasteful because it has a function to serve a human and it is being wasted. But in a case where the object provides no direct benefit to a human being, one can argue that it is permitted to waste it without any violation of *ba'al tashchis*. Tosfos says that this is not true, because even a non-kosher animal, similar to a cat that is not designated to assist people in carrying loads or plowing a field, nevertheless, it cannot be killed for any reason and would constitute a violation of *ba'al tashchis*.

It is noteworthy that the Halachah L'Moshe writes that according to Tosfos, who maintains that the prohibition against giving these animals to drink from the uncovered water is because of *ba'al tashchis*, this would apply only to one's own animal and an animal belonging to his fellow. However, it would be permitted to give this water to an ownerless animal, for this prohibition is not applicable to animals which are *hefker*.

The dangers of water that has remained exposed

Our sugya explains that our sages forbade use of water that remained exposed lest a snake drank thereof and left venom in it. The prohibition remains even if someone drank thereof and was unharmed as the specific gravity of one snake's venom differs from another's. Some types of venom sink to the bottom of a vessel while others float above or in the middle. Till all the water is drunk, therefore, we cannot know if it contains venom and danger persists (Tur, Y.D. 116). Even animals should not be given such water, both to

prevent their death and to prevent harm to people who might eat their meat. Cats are the only animals that may be given such water as they are immune to snake venom (Rashi, Shabbos 128b).

Cats ward off snakes: Tosfos (Beitzah 6b, s.v. Vehaidna) remark that we may drink water that has remained exposed where snakes are uncommon. Shulchan Aruch (Y.D. 116:1) agrees and the Levush adds that we may even leave water exposed in the first place. Mizmor LeDavid (cited in Darchei Teshuvah, ibid., S.K. 7) mentions an interesting reason for leniency according to the Gemara (Pesachim 112b) which says that cats tend to kill snakes. We may therefore rely on them to prevent snakes from leaving venom in any water.

We may wonder, however, how we may circumvent the observance of a Talmudic takonah. Only a beis din greater in wisdom and number may cancel a takonah instituted by a previous beis din and we must therefore continue its observance despite the fact that its reason is no longer valid. Which regulations (takonos) may be neglected if their reasons are no longer valid? The Acharonim (Taz, ibid.; Meor HaGolah; Pri Chadash; etc.) explain that we must distinguish between a takonah instituted unconditionally, such as to refrain from work during the afternoon before Pessach, and a takonah dependent on parameters or conditions, such as water that has remained exposed. The takonah concerning the afternoon before Pessach was never limited to any period or era. Even now, when we do not bring the Pessach sacrifice (the reason for the takonah), the takonah remains valid. The takonah concerning uncovered liquids, however, never included every sort of drink. Some were never forbidden as snakes do not drink them. In other words, we are not forbidden to drink any liquid that has remained exposed but only those suspected of containing venom.

Washing our hands in the morning with water that has remained exposed: Shemiras HaGuf VeHaNefesh (Chapter 42) mentions that some Acharonim demand strict avoidance of water left uncovered overnight. Apparently, this halachah should apply to washing our hands in the morning and we should cover the water left next to the bed. However, according to Shaarei Teshuvah (O.C. 4:7), it is only dangerous to drink water that has remained exposed whereas washing therewith is not. Nonetheless, he also quotes those who strictly avoid washing their hands with such water.

Is a refrigerator regarded as a cover? HaRav Shmuel Vozner (Shevet HaLevi VI, 63) remarks that even those who strictly heed the takonah may leave drinks uncovered in a refrigerator as snakes avoid cold places.

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: Can a Jew testify in a Cuthean court against another Jew?

A: If he is the only witness, it is forbidden.

Q: If someone rescues something from bandits and we do not know if the owner abandoned hope, is he allowed to keep it?

A: If the bandits were idolaters – no. If they were Jews – yes.

Q: When is a woman or a minor believed that a swarm of bees came out from this particular place?

A: If the owner was chasing after them and they were talking casually.

DAILY MASHAL

Advice to prevent undesirable thoughts during prayer: The Shaloh (cited in Pischei Teshuvah, Y.D. 116:1) remarks that a heedful person should avoid water that has stayed exposed even where he is not obliged. The Vilna Gaon was extremely mindful thereof and his grandson, Rav Eliahu Landa ztz"l, mentions in his Siach Eliahu that a there is a tradition in the Gaon's name that one who heeds those halachos will not encounter undesirable thoughts during prayer.