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Bava Metzia Daf 34

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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 Gemora asks: Why must the Tanna (in the Mishna) state both animal and utensils?

The Gemora answers: They are necessary. For if animal [alone] were stated, I might have said that only in the case of an animal does he [the owner] make the double payment to him (the shomer) because it requires considerable attention - to be led in and out [of its stable]. But as for utensils, which do not require much attention, I might think that he (the owner) does not convey the (future) double payment to him (the shomer). And if utensils [alone] were stated, I might have argued that only in the case of utensils does he [the owner] make the double payment to him, because their multiplication is not great. But in the case of an animal, for which, if slaughtered or sold, he [the thief] must repay fourfold or fivefold, I might think that he (the owner) does not convey the (future) double payment to him (the shomer). Therefore, both are necessary.

Rami bar Chama objected: But one cannot transfer that which has not come into being!? And even according to Rabbi Meir, who maintains that one can transfer that which has not come into being, that is only in the case of, e.g. the (future) fruit of a palm tree, which will likely come [into existence]. But here, who can say that it [the deposit] will be stolen? And should you assume that it will be stolen, who can say that the thief will be found? And even if the thief be found, who can say that he will repay [double]; perhaps he will confess [before his guilt is attested], and thus be exempt?

Rava said: It becomes as though he [the owner] had said to him, “Should this cow be stolen, and you are willing to pay me [for it], then my cow is hereby conveyed to you from this moment [of delivery].”

Rabbi Zeira asks: If so, even its shearings and offsprings too [should belong to the custodian]. Why has it been taught: Except its shearings and offsprings?

Rather, said Rabbi Zeira: It is as though he had said to him, [“Should this cow be stolen, and you are willing to pay me [for it], then my cow is hereby conveyed to you from this moment [of delivery].] except its shearings and offsprings.”

The Gemora asks: And why make this an absolute assumption?

The Gemora answers: It is likely that those improvements which come from elsewhere, one gives over, but those improvements which are internally generated, he does not give over.

Others state, Rava said: It becomes as though he [the owner] had said to him, “Should this cow be stolen, and you are willing to pay me [for it], then my cow is hereby conveyed to you from the moment before the theft.”

The Gemora asks: Where do they [the two versions of Rava's reply] differ?



The Gemora answers: They differ in respect of the difficulty posited by Rabbi Zeira; or if it was standing in the marsh (at the time of the theft). (33b – 34a)

The Mishna had stated: And he [the custodian] paid [for them], and he did not want to swear etc.

Rabi Chiya bar Abba said in the name of Rabbi Yochanan: 'He paid' is not literally meant, but once he said, "I will pay," even if he has not done so, [the law of the Mishna (that the owner conveys to him the double payment) holds good].

The Gemora objects: We learned (in our Mishna): And he [the custodian] paid [for them], and he did not want to swear; [this implies,] only if he actually paid, but if he did not pay (even if he said, "I will pay"), not (the owner does not convey to him the double payment)!?

The Gemora replies: But consider the latter clause: If he swears, and he does not want to pay (the owner does not convey to him the double payment); [which implies] only if he did not consent, but if he consented, even if he had not actually paid [the double payment is his]!

Rather, no inference can be drawn from this.

It has been taught (in a braisa) in accordance with Rabbi Yochanan: If a man rented a cow from his fellow and it was stolen, and the renter said, "I will pay and not swear," and afterwards the thief was found, he pays the double payment to the renter. [*A custodian who says that he will pay acquires the object and therefore the double payment belongs to him.*]

Rav Pappa said: If an unpaid custodian merely says, "I was negligent," he [the custodian] acquires the double payment, since he could have freed himself by [the plea of] theft (and the owner is pleased that he did not do so). If a paid custodian merely says, "It was stolen," he [the

custodian] acquires the double payment, since he could have freed himself by pleading that it either broke or died. But if a borrower says, "I will pay," he [the borrower] does not acquire the double payment, for how could he have freed himself? By [the plea] that it died on account of its work? That is an uncommon occurrence.

Others state, Rav Pappa said: A borrower too, once he says "I will pay," does acquire the double payment, since he could, if he wished, free himself by [the plea] that it died on account of its work.

Rav Zevid said to him: Thus did Abaye say: As for a borrower, [the double payment is not his] unless he has actually paid. Why? Since all the benefit [of the loan] is his, he [the lender] does not convey the double payment to him on the strength of mere words.

It has been taught in accordance with Rav Zevid: If one borrows a cow from his fellow and it is stolen, and the borrower hastens and pays for it, and then the thief is found, he must repay double to the borrower. Now, according to the first version of Rav Pappa's dictum (according to which the borrower does not acquire the double payment by his mere promise to pay), this is certainly not a refutation (since the braisa expressly states that the borrower actually paid), but shall we say that it is a refutation of the second version (which states that the borrower is entitled to the double payment on his mere promise to pay)?

The Gemora answers: Rav Pappa can answer you: Is this stronger than our Mishna, which states, 'he pays,' yet we interpreted it as meaning, he declares [that he will pay]; so here too, it means that he says [that he will pay].

The Gemora asks: How can they be compared? There [in our Mishna] it is not stated that 'he hastens,' while here it says, 'he hastens'!

The Gemora answers: What is the meaning of 'he hastens'? He hastens to promise.

The Gemora disagrees: But since [the teaching] in respect of a renter is stated, 'and he says' [that he will pay], while [that] in respect of a borrower is stated, 'and he hastens'; this proves that it is stated literally [so]!

The Gemora asks: Were they then taught together?

The Gemora answers: The teachers of the braisos in the schools of Rabbi Chiya and Rabbi Oshaya were asked, and they affirmed that they were taught together. (34a)

Now it is obvious that if he [the custodian] declared, "I will not pay," and then said, "I will pay" then he has said, "I will pay" (and he acquires the double payment).

1. But what if he [first] declared, "I will pay" and then declared, "I will not pay": do we say that he has retracted (and therefore he has forfeited his rights to the double payment); or perhaps, he is standing by his word, and he is merely stalling?
2. If he declared, "I will pay," and died, while his sons declared, "We will not pay," what then? Do we say, they have retracted: or perhaps, they are standing by their father's word, but are merely stalling?
3. What if the sons did pay? Can he [the owner] say to them, "I conveyed the double payment to your father only, because he did me favors but not to you": or perhaps, there is no difference?
4. What if he [the custodian] paid to the sons? Can they say to him, "Our father conveyed the double payment to you because you did him favors; but as for ourselves, you have done nothing for us"; or perhaps, there is no difference?
5. What if the heirs [of the custodian] paid to the heirs [of the owner]?

6. What if he paid half? [He consented to pay half; does he acquire half of the double payment?]
7. What if he borrowed two cows and paid for one of them?
8. What if he borrowed from partners and paid one of them?
9. What if partners borrowed and one of them paid?
10. What if one borrowed from a woman and paid her husband?
11. What if a woman borrowed and her husband paid?

The questions stand over.

DAILY MASHAL

Can't Make 'em Pay

A Chazan was hired by a Kehilah for Yomim Noraim, to daven both Shacharis and Musaf. When the Kehilah discovered that the Chazan was also the Baal Tefilah at an earlier "Vasikin" minyan, they refused to pay him, claiming that since they were second, the Chazan was tired and did not daven with the fire and freshness that they were expecting. The Chazan came to the Maharsham and argued that the Gemora (Bava Kamma) states that if a thief stole a cow that had been designated for a Korban, he can repay the theft with a lamb or dove, which are also appropriate for a Korban. "I too am doing an adequate job for the Kehilah. They can't demand of me more than that". The Maharsham replied: It's true that the thief can get away with a dove. But here, you want them to pay. If they are not happy, you can't make them pay.