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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

### ***Kol Includes Everything***

The *Gemora* had cited a *Baraisa* which taught us that *kefel* applies to all objects. For every matter of liability is a generalization; whether it be for ox, for a donkey, for sheep, for a garment, is a specification; or for any lost article generalizes again. We have thus here a generalization preceding a specification which is in its turn followed by another generalization, and in such cases we include only that which is similar to the specification. Just as the specification here mentions an object which is movable and which has an intrinsic value, there should therefore be included any object which is movable and which has an intrinsic value. Property is thus excluded, not being movable; slaves are similarly excluded as they are on the same footing [in the eye of the law] with property; contracts are similarly excluded, as though they are movable, they have no intrinsic value; sacred property is also excluded as the text speaks of ‘his fellow’. - But since the specification mentions a living thing whose carcass would cause defilement whether by touching or by carrying, [why not say] there should be included any living thing whose carcass similarly causes defilement whether by touching or by carrying, so that birds would not be included? — How can you seriously say this? Isn’t a garment mentioned here? - It may, however, be said that it is only regarding objects possessing life that we have argued. And we meant as follows: Why then not say in the case of objects possessing life that it is on

things whose carcass causes defilement by touching and carrying that is included, whereas a thing whose carcass does not cause defilement by touching and carrying should not be included, as each item in a generalization and specification is expounded by itself, so that birds would not be included? — If so, the Merciful One should have inserted only one item in the specification. – But which item should the Merciful One have inserted? For were the Merciful One to have inserted only ‘ox’ I might have suggested that an animal which was eligible to be sacrificed upon the altar should be included, but one which was not eligible to be sacrificed upon the altar should not be included. If, on the other hand, the Merciful One had inserted only ‘donkey,’ I might have thought that an animal which is subject to the consecration of its firstborn should be included but that one which is not subject to the consecration of its firstborn should not be included. - [Why then still not exclude birds whose carcasses would, unlike those of the ox and the donkey, defile neither by touching nor by carrying?] — It may still be said that if so, the Merciful One would have inserted ‘ox’ and ‘donkey’. - Why then was ‘sheep’ inserted, unless to indicate the inclusion of birds [which would otherwise have been excluded]? - But still why not say that you can [only] include kosher birds, as these in some way resemble sheep in that they defile the garments worn by one who swallows them [after they have become neveilah], whereas non-kosher birds, which carry no defilement and do not cause the

defilement of garments worn by one who swallows them should not be included? — [The term] ‘all’ is an inclusionary term.

[Does this mean to say that] whenever the Merciful One uses [the word] ‘all’ it is an inclusionary term? What about ma’aser [sheini],<sup>1</sup> where ‘all’ occurs, and we nevertheless expounded it as a case of generalization and specification? For it was taught in a Baraisa: And you shall give the [ma’aser sheini] money [in exchange] for all that your soul desires - this is a generalization; for cattle, or for flock, or for wine, or for intoxicating beverage is a specification; or for all that your soul desires is again a generalization. Now, where a generalization precedes a specification which is in its turn followed by another generalization, you include only that which is similar to the specification. As then the specification [here] mentions fruit obtained from fruit which is nourished from the ground, there may also be included all kinds of fruit obtained from fruit which is nourished from the ground.<sup>2</sup> [Does this not prove that the expression ‘all’ was taken as a generalization, and not as an inclusionary term?]

It may, however, be said that [the expression] ‘for all’ is only a generalization, whereas ‘all’ would be an inclusionary term. Or if you wish I may say that [the term] ‘all’ is also a generalization, but in this case ‘all’ is an inclusionary term. For at the very outset we find here a generalization preceding a specification followed in its turn by another generalization, as it is written: *If a man gives his fellow*, which is a generalization, *money or utensils* which is a

specification, *to watch* which generalizes again. Should you assume that this verse for any matter of liability etc. was similarly inserted in order to give us a generalization preceding a specification followed in its turn by another generalization, why did the Merciful One not insert these items of the specification [of the latter verse] along with the items of the former generalization, specification and generalization? Why was the verse for any matter of liability inserted at all, unless to prove that [this ‘all’] was meant as an inclusionary term?

But now that you have decided that the term ‘all’ is an inclusionary term, why do I need all these terms of the specification?— One to exclude property, a second to exclude slaves and the third to exclude contracts; ‘a garment’ to exclude articles which have no specification; ‘or for any lost article’ was meant as a basis for the view of Rabbi Chiya bar Abba, as Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: He who falsely alleges the theft of a lost article [which he is safekeeping; and it emerges that he himself has stolen it] must pay double payment, as it says: for any lost article about which he says... (62b4 – 63b1)

### **Laws and Sources**

The *Gemora* cites a *Mishnah*: If a man says to an unpaid custodian, “Where is my deposit?”, and he replies, “It was lost,” whereupon the depositor says, “I adjure you to swear (*that indeed it was lost*),” and the custodian says, “Amen,” but afterwards witnesses testify against him that he himself had consumed it, he is required to

<sup>1</sup> *A tenth of one’s produce that he brings to Yerushalayim and eats there in the first, second, fourth and fifth years of the Shemitah cycle; it can also be redeemed with money and the money is brought up to Yerushalayim, where he purchases animals for korbanos.*

<sup>2</sup> *This would include birds, but it would exclude fish, which does not get its nourishment from the ground, and it would also exclude water and salt, which is not produced from other foodstuff.*

pay only the principal (*but not the kefel, for he did not claim that it was stolen*). If he admits to this himself, he has to pay the principal together with an additional fifth and an *asham* offering.

If a man says to an unpaid custodian, “Where is my deposit?”, and he replies, “It was stolen,” whereupon the depositor says, “I adjure you to swear (*that indeed it was stolen*),” and the custodian says, “Amen,” but afterwards witnesses testify against him that he himself had consumed it, he is required to pay the double payment. If he admits to this himself, he has to pay the principal together with an additional fifth and an *asham* offering.

It emerges from the *Mishnah* here that it is only where the custodian falsely alleges theft that he has to make double payment, whereas if he falsely alleges loss, he is not required to pay the double payment. Moreover, even where he falsely alleges theft, it is only where he affirms the allegation by taking an oath that he has to pay the double payment, whereas without an oath, he does not pay the double payment.

The *Gemora* asks: What are the Scriptural sources for all this?

The *Gemora* cites a *Baraisa*: *If the thief is found*. This verse deals with a custodian who falsely alleges theft. Or perhaps it is referring to a thief himself? Since it is further stated, *If the thief is not found ...*, we must conclude that the entire verse is discussing a custodian who falsely alleges theft.

Another [Baraisa] teaches: If the thief is found; this verse deals with the thief himself. You say that it deals with the thief himself. Why, however, not say that it is not so, but that it deals with a custodian falsely alleging

theft? — When it further states: *If the thief is not found* this gives us the case of a custodian falsely alleging theft; how then can I explain [the verse]: *If the thief is found* unless on the supposition that this deals with the thief himself!

We see at any rate that all agree that [the verse]: *If the thief is not found* deals with a custodian falsely alleging theft. But how is this implied [in the wording of the text]? — Rava said: [We understand the verse to say that] if it will not be found as he stated, but that he himself had stolen it, he must pay double.

But from where can we conclude that this is so only in the case of an oath [having been falsely taken by the custodian]? — As it was taught in a *Baraisa*: *The householder shall approach the court* - to take an oath. You say to take an oath. Why not say, however, that this is not so, but to stand his trial? — The words ‘shlichus yad’ - ‘laying a hand’ occur in a subsequent section, and the words ‘laying a hand’ occur in this section which precedes the other one; just as there it is associated with an oath, so here also it should be associated with an oath.

Now according to the one who maintains that one verse deals with a thief and the other with [a custodian falsely] alleging theft, we quite understand why there are two verses; but according to the one who holds that both of them deal with a custodian falsely alleging theft, why do I need two verses? — It may be replied that one is to exclude the case of a false allegation of loss [from entailing double payment]. - Now according to the one who maintains that one verse deals with a thief and the other with [a custodian falsely] alleging theft, in which case there will be no superfluous verse [in the text], from where can we derive the exclusion of a false allegation of loss [from entailing double

payment]? — From [the definite article; as instead of] ‘thief’ [it is written] ‘the thief’.

According to the one who maintains that both of the verses deal with [a custodian falsely] alleging theft, in which case Scripture excludes a custodian falsely alleging loss, how could [the fact that instead of] ‘thief’ [it is written] ‘the thief’ be expounded? — He might say to you that it furnishes a basis for that which Rabbi Chiya bar Abba said in the name of Rabbi Yochanan. For Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: One who falsely alleges theft in the case of a deposit must pay double payment, and so also if he slaughtered or sold it he would pay fourfold or fivefold payment.

But according to the one who maintains that one verse deals with a thief and the other with [a custodian falsely] alleging theft, and that [the fact that instead of] ‘thief’, ‘the thief’ [is written] has been used to exclude a false allegation of loss [from entailing double payment], from where could he derive the view of Rabbi Chiya bar Abba? — He might say to you: A thief and a custodian falsely alleging theft are made analogous to one another in Scripture (through a hekeish), and no objections can be entertained against a hekeish.

This is all very well according to the one who holds that one verse deals with a thief and the other with [a custodian falsely] alleging theft. But according to the one who holds that both of them deal with [a custodian falsely] alleging theft, from where can the law of double payment be derived in the case of a thief himself? And should you say that it can be derived by means of a kal vachomer argument from the law of [a custodian falsely] alleging theft, [we may ask from the principle of ‘dayo’ that], it is sufficient for the object to

which the inference is made to be the same as the source law, so that just as there [the penalty is entailed only where there] is false swearing, so here also [it should be entailed only] where there is false swearing? — It could be derived by the reasoning taught at the Academy of Chizkiyah. For it was taught at the Academy of Chizkiyah: Shouldn’t Scripture have mentioned only ‘ox’ and ‘theft’ as everything would thus have been included? — If so, I might say that just as the specification mentions an object which is eligible to be sacrificed upon the altar any [living] object which is eligible to be sacrificed upon the altar should be included. What can you include through this? A sheep [as subject to double payment]. But when the text continues ‘sheep,’ we have sheep explicitly stated. How then am I to explain ‘theft’? To include any object. [If that is so] should Scripture not have mentioned only ‘ox,’ ‘sheep’ and ‘theft,’ since everything would have thus been included? — If so, I might still say that just as the specification mentions an object which is subject to the consecration of its firstborn, so also any object which is subject to the consecration of its firstborn [should be included]. Now what can you include through this? A donkey [as subject to double payment]. - But when the text goes on to mention ‘donkey,’ we have ‘donkey’ explicitly stated. What then do I make of ‘theft’? To include any object. - [If that is so], should Scripture not have mentioned only ‘ox’ ‘donkey,’ ‘sheep’ and ‘theft,’ since everything would have accordingly been included? — If so, I might still say that just as the specification mentions objects possessing life, so also any other objects possessing life [should be included]. What can you include through this? All other objects possessing life. But when the text continues ‘alive,’ we have objects possessing life explicitly stated. How then am I to explain ‘theft’? [It must be] to include any other object whatsoever. (63b1 – 64a1)



## INSIGHTS TO THE DAF

### ***Kefel when there is no Siman***

The *Gemora* asks: Now that we know that 'kol' is an inclusion, what is the purpose of all the specifications (*ox, donkey, sheep and clothing*)?

The *Gemora* answers (*according to Rashi*): One (*of the three animals*) is to exclude land. Another is to exclude slaves. The other is to exclude documents. *Clothing* excludes something that does not have an identifying mark.

Tosfos asks on Rashi's explanation: Why would it make a difference if the object has an identifying mark or not? The thief should still be liable to pay the double payment!?

Reb Meir Simcha explains that Rashi holds that with respect to an object that has no identifying mark, the owner gives up hope of getting it back (*yi'ush*) as soon as it is stolen. For although one normally does not give up hope when his item is stolen, that is only when it is stolen from his own house. In that case, he knows who comes in and out of his house and he will be able to investigate as to whom was the thief. However, when his object is in the possession of a custodian, he gives up hope immediately, for he would not know where to begin looking for the culprit. Therefore, as soon as the custodian alleges that it was stolen, the custodian acquires the item, for the owner gives up hope. However, he only gives up hope on the object; not on its value, for he assumes that the custodian will not take a false oath (*even if his intent is to steal it*). It emerges as follows: When the custodian claims that the deposit he was watching was stolen, if it does not have an identifying mark, the owner gives up hope of

getting it back and the custodian acquires it. If after he took an oath that it was stolen, witnesses testify that he himself stole it, he cannot be obligated to pay the double payment, for at the time that he took the oath, he already had acquired the object and he was not swearing on the deposit. However, if the object has an identifying mark, the owner does not give up hope and the custodian is attempting to steal it at the time that he is taking the oath.

## DAILY MASHAL

### ***Gematriya***

Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: If a man puts forward a claim of theft (*and he swore to that effect*) regarding an object which had been found by him (*and witnesses testify that he has stolen it himself*), he must pay double payment, since it is written: *Al kol aveidah asher yomar (on any lost item which he says)*.

The *Gemora* cites the Scriptural source for this *halachah*: Since it states: *If the thief is not found ...*, we conclude that the entire verse is discussing a custodian who falsely alleges theft.

Rava (*elaborating on the Baraisa*) explains the verse as follows: *If it is not found* as he said, but rather, he himself stole it, *he must pay the double payment*.

The Baal HaTurim notes that the numerical value of the words "*im lo yimatzei ha'ganav*" (*if the thief is not found*) is the same as "*hu atzmo ganav*" (*he himself stole it*).