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Bava Kamma Daf 65

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***The Way a Thief Pays***

It was stated above: Rav said: A thief must pay the principle according to the value of the stolen object at the time that it was stolen. He pays the double payment and the fourfold and fivefold payments according to the value of the object at the time that he was sued in *Beis Din*.

The *Gemora* explains Rav’s reasoning: It is written: *that which was stolen and living*. Rav understands this to mean that the thief should “revive” the principle, by paying what the object was worth at the time that he stole it (*and therefore, if it went down in value, he would still be obligated to pay the original price*).

Rav Sheishes said: It would seem that Rav said that when he was dozing off (*for otherwise, he would never have said it*). For we learned in a *braisa*: If a thief stole a lean animal and he fattened it, he pays the double payment and the fourfold and fivefold payments according to the value of the animal at the time that it was stolen. [*This braisa directly contradicts Rav!?*]

The *Gemora* answers: This is because the thief can say, “I fattened it and you shall take the payment for it?” [*It is different if it would have increased in value or if it became fat naturally; then, the thief would be obligated to pay for that as well.*]

The *Gemora* challenges Rav from the following *braisa*: If a thief stole a fat animal and he caused it to become lean, he pays the double payment and the fourfold and fivefold payments according to the value of the animal at the time that it was stolen.

The *Gemora* answers: It is because we can say to the owner, “What difference does it make if he killed the animal completely (*by slaughtering it, and then he would pay by what it was worth at that time*) or if he killed it halfway (*and the weakening of the animal should be regarded as the beginning of the slaughtering*)?” Rav ruled that the payment is made according to the value that it was worth at the time that he was sued in *Beis Din* is only when the value of the animal went up or down.

The *Gemora* analyzes the case: If Rav was referring to a case where the stolen object was worth one *zuz* at the time it was stolen and four *zuzim* at the end, and Rav ruled that the thief must pay the principle according to its value at the time that it was stolen, would then Rav be arguing on Rabbah? For Rabbah ruled: If someone stole a barrel of wine from his fellow and it was worth one *zuz* at the time it was stolen and four *zuzim* at the end (*when it was destroyed*), the *halachah* is as follows: If he broke the barrel or drank the wine, he would pay four (*for up until the time of destruction, it belongs to the owner; the thief would have been obligated to return the barrel which was worth four zuzim; if he*



directly destroys it, it is considered as if he is stealing it again and therefore, he pays four). If it broke by itself, he pays one (for that is what it was worth at the time it was stolen). [This disputes Rav, for Rav ruled that if he slaughters it, which is tantamount to breaking the barrel, he pays for the principal only one zuz!?!]

The *Gemora* answers: Rav issued his ruling only in the following case: The stolen object was worth four *zuzim* at the time it was stolen and one *zuz* at the end. The thief must pay the principle according to its value at the time that it was stolen and he pays the double payment and the fourfold and fivefold payments according to the value of the object at the time that he was sued in *Beis Din*.

The *Gemora* brings a *braisa* from Rabbi Chanina which supports Rav: If an unpaid custodian advanced a claim of theft regarding a deposit and he took an oath to that effect, but subsequently admitted (that he himself took it) and witnesses testified (that he stole it himself), the *halachah* is as follows: If he admitted before the witnesses came, he pays the principal together with a fifth and an *asham* offering; but if he admitted after the witnesses came, he must pay double payment together with an *asham* offering; the one-fifth payment, however, is included in the double payment (he is obligated to pay the fifth because he admitted that he swore falsely; if the one-fifth payment is identical in amount to the double payment, he is not obligated to pay both; however, if the payments are different, even if the one-fifth payment is less than the double payment, he must pay them both, for the payment of the fifth serves as atonement and it can only be paid in the amount of a fifth); these are the words of Rabbi Yaakov. But the *Chachamim* say: It is written: *in its principal amount and its fifth*. If he pays (only) a principle, he adds a fifth; if he does not pay (only) a

principle (such as a case where he must pay double), he does not pay the fifth. Rabbi Shimon ben Yochai says that the fifth and the *asham* offering are not paid when there is a double payment.

Let us analyze the circumstances of Rabbi Yaakov's ruling (where the penalty of the fifth is identical in amount to that of the double payment): If the object was originally worth four *zuzim* and it was worth four *zuzim* at the end, are the two payments identical? The double payment is four *zuzim* and the one-fifth is a *zuz*!?! Rather, it must be that the object was originally worth four *zuzim* and it was worth one *zuz* at the end, the double payment would be one *zuz* and the fifth would be a *zuz*. This proves that the principal is paid according to worth of the object at the time it was stolen (for the one-fifth payment is based upon the principal), and the double, fourfold and fivefold payments are based upon the worth of the object at the time that he was sued in *Beis Din*. [This is precisely how Rav rules!]

Rava rejects the proof: The *braisa* is discussing a case where the object was originally worth four *zuzim* and it was worth four *zuzim* at the end, and that which was asked that the double payment is four *zuzim* and the one-fifth is a *zuz*, we can answer that the *braisa* is discussing a case where he swore falsely four times, and then he admitted. Since the Torah used the term "fifths" (in a plural form), it included many fifths with respect to one principal.

The *Gemora* explains the aforementioned *braisa*: The *Chachamim* said: It is written: *in its principal amount and its fifth*. If he pays (only) a principle, he adds a fifth; if he does not pay (only) a principle (such as a case where he must pay double), he does not pay the fifth.

The *Gemora*, based upon the Scriptural verse, explains why the *Chachamim* hold that he does not pay the addition fifth, but he does bring the *asham* offering, and why Rabbi Shimon ben Yochai holds that he does not pay either. (65a – 65b)

### **Change in Name**

Rabbi Il'a said: If one stole a lamb and it grows into a ram (*at thirteen months and one day*), or a calf and it grows into an ox (*at two years and one day*), since it has undergone a change while in his possession, he acquires it (*the object becomes his and he must compensate the owner with money*). Therefore, if he slaughters or sells it, he is slaughtering his own animal; he is selling his own animal (*and he is not obligated to pay the fourfold or fivefold payments*).

Rabbi Chanina objected to R. Il'a's ruling from the following *braisa*: If one stole a lamb and it grows into a ram, or a calf and it grows into an ox, he pays the double payment and the fourfold and fivefold payments according to the value of the animal at the time that it was stolen. Now, if you assume that he acquires possession of it by the change, why should he be obligated to pay at all? Is it not his animal which he is slaughtering or selling?

Rabbi Il'a replied: And according to you that a change does not transfer ownership, why then does he pay on the basis of the value at the time that it was stolen and not at its present value (*for the slaughtering or selling is what makes him liable*)?

Rabbi Chanina replied: The reason that he does not pay in accordance with the present value is because he can say to him, "Did I steal an ox from you; did I steal a ram from you?"

Rabbi Il'a said to him: May the Merciful One save us from such a thought!

Rabbi Chanina retorted: May the Merciful One save us from your thinking!

Rabbi Zeira asked: Why should the thief not acquire possession to it through the change in name (*for before it was a lamb and now it is referred to as a ram*)?

Rava answered: An ox one day old is already called an ox, and a ram one day old is already called a ram.

The *Gemora* returns to its original challenge to Rabbi Il'a from the *braisa* which stated that the thief is obligated to pay the fourfold or fivefold payments for the ram or the ox.

Rav Sheishes said: The *braisa* is following the view of Beis Shamai, who holds that a change leaves the object in its place and the thief will accordingly not acquire it, as was taught in the following *braisa*: If a man gave a harlot wheat as her payment (*which cannot be used for a korban*), and she made them into flour, or olives and she made them into oil, or grapes and she made them into wine, it was taught in one *braisa* that the produce is still forbidden to be used as an offering, whereas it was taught in a different *braisa* that it is permitted. And Rav Yosef said: Guryon of Aspurk learned: Beis Shamai is the one who prohibit the produce (*for a change remains in its place*), whereas Beis Hillel permits it.

The *Gemora* cites the Scriptural sources for both of their opinions. (65b – 66a)

### **INSIGHTS TO THE DAF**



### ***Paying for its Worth at the Beginning***

Rav said: A thief must pay the principle according to the value of the stolen object at the time that it was stolen. He pays the double payment and the fourfold and fivefold payments according to the value of the object at the time that he was sued in *Beis Din*.

Tosfos asks: What is the novelty of Rav's ruling that a thief must pay the principle according to the value of the stolen object at the time that it was stolen? This is an explicit *Mishna* below that a thief pays according to the object's value at the time that it was stolen!?

They answer: This, in fact, is not a novelty at all. Rav is teaching us that the double payment and the fourfold and fivefold payments are paid according to the value of the object at the time that he was sued in *Beis Din*.

The Shitah Mekubetzes writes that the thief pays the double payment and the fourfold and fivefold payments according to the value of the object at the time that he was sued in *Beis Din* is completely logical, for since the thief is not immediately liable in these payments, for if he wishes, he can admit and be exempt from paying. He therefore pays according to its value at the time that he was sued in *Beis Din*.

The Rosh seems to be uncertain if this, in fact, is a logical argument, or if this is something which may be derived only based upon a Scriptural verse.

The Machaneh Efraim discusses the following case: If one damages an object belonging to another; at the time of the damage, it was worth five, but at the time of the payment it was only worth four – how much is the damager required to pay? Perhaps the *halachah*

that one pays according to the value that the object was worth at the time that it was stolen applies only to a thief, for that is where the Torah teaches us the *halachah*; however, by a damager, perhaps he is only required to return a similar object to the one which he damaged, even if now it is worth less?

He concludes that this would be dependent upon the Rishonim in our sugya. If the *halachah* that a thief pays according to what the object is worth at the time it was stolen is purely logical, then it stands to reason that this should apply to a damager as well. However, if it is something that is derived from a Scriptural verse, perhaps it only applies by a thief, and not by a damager.

### **Tosfos Elucidated**

By: Reb Chaim Smulowitz

The *Gemora* challenges Rav from the following *braisa*: If a thief stole a fat animal and he caused it to become lean, he pays the double payment and the fourfold and fivefold payments according to the value of the animal at the time that it was stolen.

The *Gemora* answers: It is because we can say to the owner, "What difference does it make if he killed the animal completely (*by slaughtering it, and then he would pay by what it was worth at that time*) or if he killed it halfway (*and the weakening of the animal should be regarded as the beginning of the slaughtering*)?" Rav ruled that the payment is made according to the value that it was worth at the time that he was sued in *Beis Din* is only when the value of the animal went up or down.

Tosfos asks: If he would have killed it in the same manner that he weakened it (*without a proper*



*shechitah*), he wouldn't pay the fourfold or fivefold payments, so how can we say that the weakening of the animal is the beginning of the slaughtering?

Rather, Tosfos explains the *Gemora* to mean that if he would kill it, he would pay for what it was worth before it died due to the change of the object. After a change in a stolen object, the owner doesn't own it anymore. The ownership gets transferred to the thief. Therefore you cannot assess the price for the owner at a time that he doesn't own it anymore. So too, if he weakens the animal, it makes a change in the animal and transfers the ownership from the owner to the thief. Therefore, we can only assess the worth from before it was weakened, at a time when the animal still belonged to the owner.

Alternatively, just like when the animal is slaughtered, logic dictates that he should pay four or five times the amount that the animal was worth before the slaughtering, and not afterwards (*even if one is liable only for the conclusion of the slaughtering*). [*If he damages it, he shouldn't gain by assessing him with a lower worth that he caused.*] So too, when he weakens it, he should pay according to its worth before it was weakened.

The practical difference between the two explanations is if the animal becomes weaker on its own and wasn't weakened by the thief. If it's because the change in the animal transfers the ownership, then even changes that were not caused by the thief transfers ownership. But if it's because the weakening is compared to slaughtering, it's only logical that he should pay for how much it was worth before the damage if he damaged it. However, if the damage happened by itself, then he should not.

## DAILY MASHAL

### Talking in His Sleep

Our daf contains a phrase that appears often in the Gemara when Rav Sheshes wants to refute Rav's remarks: "Rav was asleep when he said this Torah teaching," i.e. he was talking in his sleep. But even what Rav says in a dream has great significance.

Why does Rav Sheshes challenge his remarks using this formulation?

The Gemara (Berachos 54a) teaches us that dreams reflect one's waking thoughts. When the Kaiser demanded that R. Yehoshua ben Chanina reveal to him what he would dream that night, R. Yehoshua told him that he would have a terrible nightmare. After the Kaiser spent the day mulling over the dreadful dream awaiting him, the prediction came true.

Why did Rav Sheshes reject what Rav said in his dreams? He knew that the dreams were a replication of Rav's daytime thoughts and assumed that if he chose not to say them aloud in the beis medrash, it could be taken as a sign that Rav himself had not yet decided the halacha, in which case they could be questioned.