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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 notes: Their (R’ Ila’s and R’ Chanina’s) difference extends only so far that one master (R’ Ila) maintains that a change (from a lamb or a calf to a ram or an ox) transfers (the animal) ownership (to the thief), and the other master (R’ Chanina) maintains that a change does not transfer ownership, but regarding payment, they both agree that the (twofold, fourfold and fivefold) payments are made on the basis of the original value (at the time of the theft), for the Baraisa states: He must make the twofold payment or fourfold and fivefold payments on the basis of the value at the time of the theft.

The Gemora asks: Are we to say that this Baraisa refutes the view of Rav, for Rav said that the principal will be reckoned as at the time of theft, whereas the twofold payment or fourfold and fivefold payments will be reckoned on the basis of the value when the case comes into court?

Rava said: [Where he pays with] sheep, [he pays] in accordance with the original value, but [where he pays with] money [he pays] in accordance with the present value.

Rabbah said: That a change transfers ownership is indicated in Scripture and taught in a Mishnah.

It is indicated in Scripture in the words: *And he shall return the stolen object which he stole*. What is the point of the words ‘*which he stole*’? It is to imply that if it is still as [it was when] he stole it, he shall return it, but if not, it is only the value of it that he will have to pay.

It is taught [in the Mishnah]: If one steals wood and makes utensils out of it, or wool and makes it into garments, he has to pay in accordance with the value at the time of robbery.

Or as also [taught elsewhere]: If the owner did not manage to give the first of the fleece to the Kohen until it had already been dyed, he is exempt, thus proving that a change transfers ownership.

The Gemora notes: So has despair been declared by the Rabbis to transfer ownership. We, however, do not know whether this rule is derived from the Scripture, or is purely Rabbinical.

[Rabbah explains:] Is it Scriptural, just as the case of one who finds a lost article? For is not the law in the case of a finder of lost property that, if the owner despaired of recovering the article before it came into the hands of the finder the ownership of it is transferred to the finder? So in this case, the thief similarly acquires title to the article as soon as the owner despaired of recovering it. It thus seems that the transfer is of Scriptural origin! Or are we to say that this case is not comparable to that of a lost article? For it is only in the case of a lost article that the law applies, since when it comes into the hands of the finder, it does so permissibly, whereas in the case of the thief into whose hands it entered illegally, the rule therefore might be merely of Rabbinic authority, as the Rabbis might have said that ownership should be transferred by despair in order to make matters easier for repentant robbers. But Rav Yosef said: Despair does not transfer ownership even by Rabbinic ordinance.

Rav Yosef objected to Rabbah’s view [from the following Mishnah:] If a man stole chametz and Pesach passed over it (thus rendering the chametz prohibited for benefit), he (the thief) can say to the owner, “Here is your property before you.” Now, as this owner surely despaired of ever recovering it when the time for prohibiting (chametz) arrived, if you

assume that despair transfers ownership, why should the thief be entitled to say, "Here is your property before you," when he has an obligation to pay the proper value?

He (Rabbah) said to him (Rav Yosef): I stated the ruling only where the owner despairs (of recovering it) at the time when the thief is desirous of acquiring it, whereas in this case, though the owner despaired of ever recovering it, the thief had no desire to acquire it.

Abaye objected to Rabbah's statement [from the following Baraisa]: [The verse says:] *His offering*, [implying] but not one which was stolen. Now, what were the circumstances? If we assume before despair, why do I require a verse, since this is quite obvious (for the thief's consecration does not take effect at all)? Should we therefore not assume that it was after despair, which would show that despair does not transfer ownership?

Rava said to him: According to your reasoning [how are we to explain] that which was taught in the following Baraisa: [The verse says (regarding a zav who touches):] *His couch* (is tamei until evening) [implying] but not one which was stolen? Under what circumstances? That, for instance, wool was stolen and made into a couch? But is there any [accepted] view that a change [in substance] resulting from an action does not transfer ownership? What you have to say is that it refers to a case where the robber stole a fellow's couch. So also here it refers to a case where he stole a fellow's offering.

Abaye objected to Rav Yosef's view [from the following Mishnah]: In the case of hides belonging to a householder, mere thought (*that he plans on using them as a bed or tray, and he does not intend to do any further processing with it*) will render them capable of becoming *tamei*, whereas in the case of those belonging to a tanner, thought would not render them capable of becoming *tamei* (*for there is a good probability that he will decide to sell it, and the buyer will use it to make shoes with*). Regarding those hides in the possession of a robber (*one who steals openly*), thought will

not render them capable of becoming *tamei* (*for the owner, since he knows who stole it, will not despair of getting them back; the robber is therefore not regarded as the owner*), whereas those in the possession of a thief (*a ganav*), thought will render them capable of becoming *tamei*. Rabbi Shimon, however, says that the rulings are to be reversed: Regarding those hides in the possession of a robber, thought will render them capable of becoming *tamei* (*for the owner despairs of ever getting it back; this is because he assumes the robber is very powerful, by the fact that he is so brazen to steal openly*), whereas those in the possession of a thief, thought will not render them capable of becoming *tamei*, because the owners do not despair of getting their items back. Does not this prove that despair (alone) transfers ownership?

He (Rav Yosef) said to him: We are dealing here with a case where for example he had already trimmed the stolen hides [so that some change in substance was effected].

Rabbah the son of Rav Chanan objected to this, saying: Was this not taught here in connection with a tray, and [skins intended to be used as] a tray do not require trimming as we have learned in a Mishnah: Wherever there is no need for [finishing] work to be done, thought will render the article capable of becoming *tamei*, whereas where there is still need for [finishing] work to be done thought will not render it capable of becoming *tamei*, with the exception, however, of a tray!?

Rather, Rava said: This difficulty was pointed out by Rabbah to Rav Yosef for twenty-two years without his obtaining any answer. It was only when Rav Yosef (upon Rabbah's death) occupied the seat as head (of the academy) that he explained it [by suggesting that] a change in name is equivalent [in the eye of the law] to a change in substance; for just as a change in substance has an effect because, for instance, what was previously wood is now utensils, so also a change in name should have an effect, as what was previously called hide is now called a tray.



The Gemora asks: But what about a beam where there is similarly a change in name, as previously it was called a beam and now a ceiling, and we have nevertheless learned in a Mishnah that where a stolen beam has been built into a house, the owner will recover only its value, so as to make matters easier for repentant robbers. The reason is, to make matters easier for repentant robbers, but if not for this, it would have to be restored intact?

Rav Yosef replied: A beam retains its name [even subsequently], as it was taught in a Baraisa: *The tzalos of the Temple*; these are the casings, *and the Ubim*; these are the beams. Rabbi Zeira said: A change which can revert to its original state is, in the case of a change in name, not considered a change. (66a1 – 67a1)

#### INSIGHTS TO THE DAF

##### Returning a Stolen Esrog After Sukkos

Our daf teaches us that if someone steals chametz before Pesach he can return it after Pesach and tell the victim, “Here is what I took from you.” Since it is forbidden to derive benefit from chametz she’avar alav HaPesach [chametz kept by a Jew during Pesach] the stolen item has no monetary value. Nevertheless the thief can claim he has returned the stolen item and is not required to pay for the loss since only “unnoticeable damage” has been caused (Rashi, 66b, s.v. harei shelcha lefanecha).

According to this halachah, if someone were to steal an expensive esrog before Sukkos, he should be allowed to return it after Sukkos and say, “Here is what I took from you.” Even though its value will have dropped tremendously, presumably the owner of the esrog would not be able to demand the pre-Yom Tov price. The Pri Megadim (O.C. §656 in Mishbetzos HaZahav S.K. 1) rules accordingly, but notes that perhaps the thief would have to pay the original price because such a case would be considered garmi.

The difference between stolen chametz and a stolen esrog: However, the Pischei Teshuvah (C.M. 363:1) writes that

based on a dispute among the Rishonim, some poskim distinguish between the two cases. Chametz she’avar alav HaPesach looks the same as chametz baked after Pesach. The fact that there is a prohibition against deriving benefit from it is truly “unnoticeable” and so the thief can say, “Here is what I took from you.” Yet everyone knows that an esrog is worthless after Sukkos, making it fundamentally different from chametz because the loss in value is apparent.

#### DAILY MASHAL

##### The Power of a Leader

Our daf relates that Rav Yosef spent 22 years laboring over a kushiya Rabba once asked him. Only on the day he was appointed as a Rosh Yeshiva was he able to resolve the puzzling question. HaRav Chaim Shmulevitz zt”l, who often revealed insights into the meaning of Chazal’s maxims and their ways, points out several pressing questions. What kind of transformation came over Rav Yosef when he became a Rosh Yeshiva? Did he become wiser? Did he gain new perspectives that enabled him to answer a question that had eluded him for 22 years?

Before HaRav Shmulevitz answers this question he inquires about the Gemara in Sanhedrin (52a), which says that one of the claims against Nadav and Avihu was that referring to Moshe and Aharon, they said, “When will these two old men die and leave you and me to lead the generation?” Since Nadav and Avihu were among the greatest of a generation of Divine knowledge, and as Rashi writes (Vayikra 10:3), they were on an equal spiritual plane with Moshe and Aharon, how could it be said that they hungered for power?

R. Chaim explains that the way of Heaven is to grant leaders spiritual powers to boost their innate leadership abilities. Nadav and Avihu actually yearned for the scepter of leadership in order to achieve a spiritual elevation. Thus Rav Yosef was able to answer the long-standing question when he was appointed as a Rosh Yeshiva because Heaven charged him with sublime powers, which helped him to ascend the rungs of Torah and yirah.