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Testimony after an Admission

It was stated: If one admits to a fine and witnesses testify to the same effect, Rav says that he is still exempt, and Shmuel says that he is liable.

Rava bar Ahilai says: Why does Rav say that if a person admits to a fine (*which a person by Torah law does not have to pay based on his own admission*) and then witnesses come and testify to his guilt that he is still exempt from paying? This is as the verse states, “*If it will surely be found.*” This teaches us that if it was first revealed with witnesses he should then be decided as guilty by the judges. This excludes a case where he admitted his guilt. [*He will be exempt from paying the fine even if witnesses come later.*]

Shmuel will say that the verse is coming to teach us regarding an actual thief (that he pays *kefel*), as was taught in the Baraisa of the academy of Chizkiyah.

Rav challenged Shmuel from the following *Baraisa*: If a thief saw that witnesses are preparing themselves to testify against him and he confesses and says, “I have stolen, but I did not slaughter it nor did I sell it,” he would only be required to pay the principal. [*This contradicts Shmuel’s ruling!?*]

Shmuel replied: The *Baraisa* is dealing with a case where the witnesses turned around and refrained from giving any testimony in the matter.

The *Gemora* asks from the end of the *Baraisa*, which states: Rabbi Elozar the son of Rabbi Shimon said that the witnesses should still come forward and testify (*and he will then be*

liable to pay the fine), must we not conclude that the first *Tanna* holds otherwise?

Samuel said to him: Is there at least not Rabbi Elozar the son of Rabbi Shimon who concurs with me? I follow his opinion.

The *Gemora* notes: According to Shmuel, it is certainly a matter of *Tannaic* dispute (*if witnesses testify after his own admission to a fine, if he is liable or not*); what about according to Rav?

Rav could answer that he can follow Rabbi Elozar the son of Rabbi Shimon’s opinion as well, for the only reason that Rabbi Elozar the son of Rabbi Shimon held that he is liable to pay (*when the witnesses testify after his admission*) is because he admitted only due to his fear of the impending witnesses, but in a case where the thief admits on his own, he would maintain that he will be exempt from paying (*even if witnesses testify later*). (75a1 – 75a2)

A Bona Fide Admission

Rav Hamnuna said: It stands to reason that Rav said his *halachah* (*that he will be exempt from paying the fine*) in the case when the thief said, “I have stolen,” and witnesses then came and testified that he had indeed committed the theft, in which case he is exempt, as he had (*through his confession*) made himself liable at least for the principal. But, if he first said, “I did not steal,” but when witnesses testified that he did in fact commit the theft, he turned around and said, “I slaughtered (*the stolen sheep or ox*) or sold it,” and witnesses subsequently came and testified that he had indeed slaughtered it or sold it, he would be liable to pay the

fourfold or fivefold payments, as (*through his confession*) he was trying to exempt himself from all liability.

Rava said: I bested the elders of the academy of Rav (*Rav Hamnuna*), for Rabban Gamliel (*by confessing that he blinded his slave's eye*) was exempting himself from all liability, and yet when Rav Chisda stated this case as a proof against Rav Huna and Rav Huna did not answer thus (*that Rav's halachah does not apply here because he wasn't obligating himself to pay anything; this proves that Rav's halachah applies in all cases*).

It was similarly stated: Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: If the thief said, "I have stolen," and witnesses then came and testified that he had indeed committed the theft, he is exempt, as he had (*through his confession*) made himself liable at least for the principal. But, if he first said, "I did not steal," but when witnesses testified that he did in fact commit the theft, he turned around and said, "I slaughtered (*the stolen sheep or ox*) or sold it," and witnesses subsequently came and testified that he had indeed slaughtered it or sold it, he would be liable to pay the fourfold or fivefold payments, as (*through his confession*) he was trying to exempt himself from all liability.

Rav Ashi said that our *Mishnah* and a *Baraisa* seem to support Rav Hamnuna, for our *Mishnah* stated: If two witnesses said that he stole, and only one said that he slaughtered or sold (*the ox or sheep*), or if he admitted to this, he only pays *kefel*, not the fourfold or fivefold payments. Now, why did the *Mishnah* find it necessary to state that he stole based upon the testimony of two witnesses? Let the *Mishnah* state the following: If one witness testified that he stole and slaughtered or sold the animal or he admitted to this himself, he only pays the principal! Rather, it would seem that the purpose of stating it in that manner was to indicate to us that it was only where the theft was established by two witnesses and the slaughter by one or by the thief himself, in which case, it was not his confession that made him liable for the principal, this is where we say that the confession by the thief himself is

analogous to the testimony of one witness: Just as in the case of a testimony by one witness, as soon as another witness appears and joins him, the thief would become liable (*for the extra payments*), so too also in the case of confession by the thief himself, if witnesses subsequently testify to the same effect, he would become liable. If, however, the theft and slaughter or sale were established by the testimony of one witness or by the thief himself, in which case, the confession made him liable at least for the principal, we would not say that the confession by the thief himself should be analogous to the testimony of one witness (*and he would be exempt from paying, even if witnesses come later; this is because his admission obligated him to pay the principal*).

Rav Ashi now cites the *Baraisa* which supports Rav Hamnuna: If a thief saw that witnesses are preparing themselves to testify against him and he confesses and says, "I have stolen, but I did not slaughter it nor did I sell it," he would only be required to pay the principal. Now, why did the *Baraisa* find it necessary to state, "I have stolen, but I did not slaughter it nor did I sell it"? Let the *Baraisa* state the following: "I have stolen," or, "I have slaughtered it or sold it"? Rather, it would seem that the purpose of stating it in that manner was to indicate to us that it was only where the thief confessed that he stole it, where the confession made him liable at least for the principal, that he would be exempt from the fine, whereas if he would have said, "I did not steal it," and when witnesses testified that he did in fact commit the theft, he turned around and said, "I slaughtered (*the stolen sheep or ox*) or sold it," and witnesses subsequently came and testified that he had indeed slaughtered it or sold it, he would be liable to pay the fourfold or fivefold payments, as (*through his confession*) he was trying to exempt himself from all liability. This proves to us that an admission merely regarding the slaughtering should not be considered an admission (*and when witnesses come later, he will, in fact, be liable*).

The *Gemora* disagrees with the proof from the *Baraisa*: It may, however, be said that this is not so, as the purpose of the *Baraisa's* wording might have been to indicate to us the

very ruling that since he confessed that he had stolen it, even though he still said that he did not slaughter or sell it, and witnesses testified that he did slaughter or sell it, he would nevertheless be exempt from any fine (*including the fourfold or fivefold payment*). The reason is because the Torah said: *Fourfold or fivefold payment*, but not “fourfold or threefold payment.”

Shall we say that the following Tannaim differed on this point? [For it has been taught in a Baraisa:] Where two witnesses testified to a theft [of an ox] and other two witnesses subsequently gave testimony that the thief had slaughtered it or sold it, and the witnesses regarding the theft were proved zomemim, since the testimony became annulled regarding a part of it, it would become annulled regarding the whole of it. But if [only] the witnesses to the slaughter were proved zomemim, he would pay double payment, whereas they would [have to pay him three-fold payment as restitution]. In the name of Sumchos it was, however, stated that they would pay double payment, whereas he would pay three-fold payment for an ox and double payment for a ram. Now, to what did Sumchos refer? It could hardly be to that of the opening clause, for would Sumchos not agree that a testimony becoming annulled regarding a part of it should become annulled regarding the whole of it? If again he referred to the concluding clause, did the Rabbis not state correctly that the thief should make double payment while the false witnesses would be required to make three-fold payment? It must therefore be that there was another point at issue between them, viz., where a pair of witnesses came and said to him, “You have committed the theft [of an ox],” and he said to them, “It is true that I have committed the theft [of an ox] and even slaughtered it or sold it, but it was not in your presence that I committed the theft,” and he in fact brought witnesses who proved an alibi against the first witnesses that it was not in their presence that he committed the theft, while the plaintiff brought further witnesses who gave testimony against the thief that he had committed the theft [of an ox] and slaughtered it or sold it. They would thus differ as to the confession regarding the slaughter, the Rabbis holding that though in regard to

the theft it was certainly because of the witnesses that he confessed, the confession regarding the slaughter should have the usual effect of confession and exempt him from the fine, whereas Sumchos held that since regarding the theft it was because of witnesses that he confessed, the confession of the slaughter should not have the [full] effect of a confession [as it did not tend to establish any civil liability], so that the first witnesses who were found zomemim would be required to pay him double, whereas he would be required to pay three-fold for an ox and double for a ram!

Rav Acha the son of Rav Ika said: No, all might agree that the confession regarding the slaughter would not have the [exempting] effect of a confession, and where they differ here is regarding testimony given by witnesses whom you would be unable to make subject to the law applicable to zomemim, as e.g., where two witnesses came and said to him, “You have committed the theft [of the ox],” and he said to them, “I did commit the theft [of the ox] and even slaughtered it or sold it; it was, however, not in your presence that I committed the theft, but in the presence of so-and-so and so-and-so,” and he in fact brought witnesses who proved an alibi against the first witnesses, that it was not in their presence that he committed the theft, but so-and-so and so-and-so [mentioned by the thief] came and testified against him that he did commit the theft [of the ox] and slaughtered it or sold it. The point at issue in this case would be as follows: The Rabbis maintain that this last testimony was given by witnesses whom you would [of course] be unable to make subject to the law applicable to zomemim [as they were pointed out by the thief himself], and any testimony given by witnesses whom you would be unable to make subject to the law applicable to zomemim could not be considered valid testimony, whereas Sumchos maintained that testimony given by witnesses whom you would be unable to make subject to the law applicable to zomemim would be valid testimony.

The Gemara asks: But is it not an established tradition with us that any testimony given by witnesses whom you would be unable to make subject to the law applicable to zomemim

could not be considered valid testimony? — This is the case only where the witnesses do not know the exact day or the exact hour of the occurrence alleged by them, in which case there is in fact no testimony at all, whereas here [your inability to make them subject to the law applicable to zomemim was only because] the thief himself was in every way corroborating their statements. (75a2 – 75b4)

The master stated: They would pay double payment. - But since in this case the thief admitted that he did commit the theft, so that he would surely be required to pay the principal, [why should the witnesses proved zomemim pay double payment?] — Rabbi Elazar said in the name of Rav: Read: that which completes the twofold payments. (75b4 – 76a1)

DAILY MASHAL

The Gemara below (79b) gives two reasons for the disparity between payment for an ox, 5 times its value, and a sheep, 4 times its value. Rabbi Yochanan ben Zakkai says that the Torah has mercy even upon a thief. Since the thief wants to make a quick get-away, he can carry a sheep. Since this entails some great effort and embarrassment, he only pays quadruple the value of the sheep. An ox is too heavy to carry, so the thief leads it away. He is not subject to the embarrassment of carrying an animal in front of people, and therefore pays more, five times the value of the ox. Rabbi Meir says that one pays only 4 times the value of a sheep because its loss is not that of a working animal. However, when an ox is stolen, not only does the owner endure the financial loss, but also loses a working animal. Therefore, the thief pays 5 times its value.

The Ibn Ezra offers another explanation in the name of Rabbi Y'shu'oh. A sheep can be hidden and stolen. This can be done by anyone. To steal an ox and do this in a concealed manner requires the skills of a professional thief. A professional thief deserves to pay professional prices when caught. The Rambam in Moreh N'vuchim explains that in general people can keep personal items locked and away from thieves. This serves as a deterrent and thus theft of such items is not so

common. The Torah therefore suffices with a double payment from the thief. Cattle must be brought to pasture. This leaves them open to theft without having to break into someone's property. To avoid this becoming widespread the strong deterrent of double double payment is levied. This explains the quadruple payment for the theft and sale/slaughter (so that the thief would not be caught red-handed with the theft in his possession) of a sheep. Why five times the value for an ox? Sheep generally graze together and the shepherd can keep an eye out over his whole flock for theft. Oxen graze in a very spread out area. It is impossible for one guard to keep an eye on all of them, thus raising the ease of opportunity for stealing an ox. This deserves even stricter retribution; hence a payment of five-fold is levied.