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Consecration

The *Mishnah* stated that if one stole an ox or sheep, consecrated it, and then sold or slaughtered it, he is exempt from the fourfold and fivefold payments.

The *Gemora* says that it is logical for the thief not to pay for his subsequent selling or slaughter, since at that point it was owned by *hekdesh*, and not by the original owner. However, why don't we consider the *consecration* itself to be tantamount to selling (*since it transfers the animal to another property, of hekdesh*) and therefore obligating the thief in the fourfold and fivefold payments? [*Tosfos points out that this whole daf's line of reasoning is following Rabbi Yochanan in his dispute with Rish Lakish on 68b, regarding whether the fourfold and fivefold payments is before or after the owner has despaired*.]

[The *Gemora* first suggests that our *Mishnah's* ruling depends on how it was consecrated. If a sacrifice is consecrated in the context of *harai zu – this animal is consecrated*, then, if anything happens to the animal, the owner is not responsible for replacing the animal. However, if it is consecrated to fulfill an existing obligation to bring a sacrifice – *harai alai – I obligate myself*, then the one who accepted the obligation is responsible to bring another animal if anything happens to this one.] The *Mishnah* is referring to a case where it was consecrated with *harai alai,* and is the opinion of Rabbi Shimon, who holds that an item which causes monetary loss is equivalent to money. [Therefore, the thief's responsibility for the animal makes it equivalent to his property, and not truly owned by *hekdesh*. He therefore is not considered to have "sold" the animal to *hekdesh*.] The *Gemora* objects to this, since the conclusion of our *Mishnah* is a statement of Rabbi Shimon, indicating the author of this section is not Rabbi Shimon.

The *Gemora* then suggests that our *Mishnah* may be discussing only cases of *kodshim kalim* – less severe sacrifices, such as *shlamim*. The *Mishnah* is following the opinion of Rabbi Yossi HaGelili (*discussed in the first perek*), who says that such sacrifices are considered the property of the one who consecrated them. - But what would be the law [where the thief consecrated the stolen sheep or ox] for *kodshei kadashim* – the most holy sacrifices? Would he then have to make fourfold or fivefold payment for the act of consecration? If so, why read in the opening clause: If he steals and slaughters and consecrates it, he is required to make fourfold or fivefold payments? Why not make the distinction in stating the very case itself: This ruling applies only in the case of *kodshim kalim*, but where he sanctified it for *kodshei kadashim* he would be required to make fourfold or fivefold payments [for the very act of consecration]?[1] — We must therefore still say that there is no difference whether [the animal was consecrated for] *kodshei kadashim* or merely for *kodshim kalim*, and to the difficulty raised by you: What difference does it make to me whether he disposed of it to a private owner or whether he disposed of

[1] The *Gemora* objects to this by saying that if this were the logic of the *Mishnah*, then the parallel case in the beginning of the *Mishnah* (*where the thief is liable*), should not have been referring to a case where he consecrated the animal after slaughtering it, but simply a case of *kodshei kadashim* – the more severe sacrifices, which everyone agrees are not the property of the one who consecrated them.

it to Heaven, [it might be said in answer that] where he disposed of it to a private owner it was previously the ox of Reuven and has now become the ox of Shimon, whereas where he disposed of it to Heaven it was previously the ox of Reuven and still remains the ox of Reuven.[2] (76a1 – 76a2)

Rabbi Shimon

The *Mishnah* concluded with Rabbi Shimon's statement, limiting the *Mishnah* to a case of *hekdesh* property for which the original owner is liable (*harai alai*), but not for *hekdesh* property for which the original owner is not liable (*harai zu*).

I would here say: Granted that in the opinion of Rabbi Shimon it makes no difference whether he sells it to a private owner or whether he sells it to Heaven, he should have said the opposite: [For consecrating the stolen animals as] sacrifices the loss of which he would have to make good, the thief should be exempt, as they have not yet been removed altogether from his possession, whereas [for consecrating them as] sacrifices the loss of which he would not have to make good, he should be liable, as in this case they have already been removed from his possession?[3]

It may be said that Rabbi Shimon referred to a different case altogether, and the text [of the Mishnah] is to be read thus: If a man misappropriates an article [already stolen] in the hands of a thief he is not required to make fourfold and fivefold payments. So also he who misappropriates a consecrated object from the house of the owner is exempt, the reason being that [the words] 'and it was stolen out of the man's house' imply 'but not from the possession of the sanctuary'. Rabbi Shimon, however, says: In the case of consecrated objects, the loss of which the owner has to make good, the thief is liable to pay, the reason being that to this case [the words of the text] 'and it be stolen out of the man's house' [apply]. But in the case of those the loss of which the owner has not to make good, the thief is exempt, as we cannot apply the words 'and it be stolen out of the man's house'.[4] (76a2 – 76a3)

What is slaughtering

The *Gemora* raises another issue with Rabbi Shimon's statement. Rabbi Shimon holds (*in the Mishnah on 70a*) that slaughtering which does not make the animal's meat edible (*not re'uyah*) is not considered slaughtering. Slaughtering a sacrificial animal outside of the Temple is not allowed, and renders the animal prohibited in eating and benefit. [*Tosfos points out that for the purposes of the prohibition of slaughtering outside of the Temple, any slaughtering is included, since such an act inherently renders the animal's*

[2] The *Gemora* concludes that the *Mishnah* is referring to any case of consecration, and the answer to the original question is a fundamental difference between a sale and consecration. When an ox is sold, it is now called the ox of the buyer, and has lost all relation to the seller. However, when an ox is consecrated, it is still associated with the original owner, albeit now being his *sacrifice* instead of his ox. [*Tosfos points out that even though we consider (earlier on BK 66b) consecration to be a change of ownership (insofar as it relates to the thief acquiring an item, in order to pay money instead), the Gemora here is stating that for the purposes of defining a sale of an animal for the fourfold and fivefold payments, it is not considered a transfer of ownership*.]

[3] The *Gemora* first assumes that Rabbi Shimon is discussing the immediately preceding case, where one slaughtered or sold the ox after consecrating it. The *Gemora* states that logic would then dictate the opposite distinction, given that Rabbi Shimon holds that something that obligates monetary payment if lost is equivalent to money. If the one who consecrated it (*makdish*) is not responsible for the *hekdesh* animal's well-being, then he has transferred it out of its current ownership status - which is tantamount to selling - and he should be liable for *the fourfold and fivefold payments*. However, if the *makdish* is still responsible for the animal, he has not transferred it out of its current status, and should be exempt from *the fourfold and fivefold payments*.

[4] The *Gemora* explains that Rabbi Shimon is responding to a statement that one who steals from another thief, or from *hekdesh*, is not liable for *the fourfold and fivefold payments*, since he has not stolen *"mibais ha'ish" - from the house of the animal's owner*. Rabbi Shimon is stating that this exclusion is limited to a case of *hekdesh* for which the *makdish* is not responsible. In the case where the *makdish* is responsible, the animal is still considered his property, since Rabbi Shimon holds that this item which can cause monetary obligation is tantamount to money.

meat inedible. However, this does not impact other prohibitions related to this slaughtering.] The *Gemora* asks: How can Rabbi Shimon obligate the thief for such an act, since he doesn't consider it slaughtering?

The *Gemora* gives three answers to this question:

1. Rav Dimi, when he came from Eretz Yisroel in the name of Rabbi Yochanan – He slaughtered it in the Temple for the sake of its owner. - If the sacrifice was completed successfully, why would the thief be liable for the fourfold and fivefold payments; has he not returned the original animal to the owner? – Rabbi Yitzchak bar Avin said - the blood was spilled before being splashed on the altar.

2. Ravin, when he came from Eretz Yisroel in the name of Rabbi Yochanan – He slaughtered the animal in the Temple, but not for the sake of the owner. In such a case, the sacrifice is edible, but has not fulfilled the owner's obligation. It therefore is not considered returned to the owner.

3. Rish Lakish – The animal had a blemish, making it unfit as a sacrifice. Therefore, the slaughtering outside of the Temple was allowed, and did not make the animal unusable.

Rabbi Elazar wondered about these answers. In the case of Rav Dimi (*and, according to Rashi, Ravin as well*), the slaughtering itself does not make the animal's meat edible, as the blood must be splashed on the Altar. In the case of Rish Lakish, the slaughtering itself is similarly not sufficient, as it must be redeemed afterwards to be edible. Therefore, in these cases, the slaughtering itself is not usable, and should not be considered slaughtering according to Rabbi Shimon.

The *Gemora* answers that it slipped Rabbi Elazar's mind that Rabbi Shimon's holds that when something is supposed to be followed by one more action, we consider that action as having been done - even beforehand, and even if that action was not subsequently done. Therefore, in all the cases, the actual lack of splashing and redeeming do not invalidate the slaughtering, since at the time of the slaughtering, we consider these subsequent actions to have already been done. [*Rashi points out that the case of Rish Lakish must be that the blemish occurred before the animal was consecrated, because otherwise, once the animal is slaughtered, it cannot be redeemed*.]

The *Gemora* cites two cases from a Baraisa: [Both cases are based on Rabbi Shimon's opinion that food which is prohibited from any benefit cannot become impure.] Whatever is ready to be sprinkled is considered as if it had already been sprinkled — as taught: Rabbi Shimon says: There is nossar which may be subject to tumah in accordance with the law applicable to the tumah of food, but there is also nossar which is not subject to tumah in accordance with the law applicable to the tumah of food. How is this so? If it remains overnight before the sprinkling of the blood, it would not be subject to become tamei in accordance with the law applicable to the tumah of food, but if after the sprinkling of blood, it would be subject to become tamei in accordance with the law applicable to the tumah of food. Now, it is an accepted tradition that the meaning of 'before sprinkling' is 'without it first having become fit to be sprinkled' and of 'after sprinkling,' 'after it became fit for sprinkling'. Hence, 'where it remained overnight without having first become fit for sprinkling' could only be where there was no time during the day to sprinkle it, such as where the sacrifice was slaughtered immediately prior to sunset, in which case it would not be subject to become tamei in accordance with the law applicable to the tumah of food; and 'where it remained overnight after it had already become fit for sprinkling,' [could only be] where there was time during the [previous] day to sprinkle it, in which case it would be subject to become tamei in accordance with the law applicable to the tumah of food. This proves that

whatever is ready to be sprinkled is considered as if it had already been sprinkled.[5]

Whatever is designated for being redeemed is considered as if it had already been redeemed, — as taught: Rabbi Shimon says: The red heifer is subject to become tamei in accordance with the law applicable to the tumah of food, since at one time it had a moment of fitness to be used for food, and Rish Lakish observed that Rabbi Shimon used to say that the red heifer could be redeemed even after [it was slaughtered and] placed upon the wood for burning; thus proving that whatever has the possibility of being redeemed is considered as if it had already been redeemed.[6] (76a3 – 77b1)

INSIGHTS TO THE DAF

Whose Money is it?

The *Gemora* discusses the opinion of Rabbi Shimon, that something that can cause someone monetary loss is tantamount to being that person's money. The Ra'avad rules like Rabbi Shimon, and therefore considers *hekdesh* for which the *makdish* is responsible (*harei alai*) to be the property of the *makdish*. Therefore, according to the Ra'avad, if someone steals such *hekdesh*, he must pay full damages (*including kefel and the fourfold and fivefold payments*) to the *makdish*.

The Rambam (Geneivah 2:1), however, rules like the *Chachamim*, as this is the anonymous *Mishnah's* position. Therefore, in all cases of *hekdesh* articles that are stolen, the thief is not liable to pay any damages to the *makdish*. The Rambam first states that one who steals from *hekdesh* does not pay *kefel*, and quotes the verse *yeshalem shnaim l'reyeyhu' – he should pay double to his peer*, excluding *hekdesh*, which is not his *peer*. Then, the Rambam applies this equally to all *hekdesh* – irrespective of the *makdish*'s responsibility – and quotes the verse of *v'gunav mibeis ha'ish – and it was stolen from the home of the man*, excluding *hekdesh*, which is not a *man*.

Tosfos (63a rayayhu) ask why the *Gemora* on 62b uses *reyeyhu* to exclude *hekdesh*, while our *Gemora* uses the verse of *ha'ish* to exclude *hekdesh*. While Tosfos explains that both are actually being learned from *reyeyhu*, the Lechem Mishnahh states that the Rambam was implicitly addressing this question by quoting the different verses. The verse of *reyeyhu* is the fundamental source for excluding *hekdesh* from theft payments. However, the extra verse of *ha'ish* is the source for our ruling that this applies to all *hekdesh* – whether the *makdish* is responsible for it or not.

The Rishonim and Achronim discuss the exact formulation and rationale behind Rabbi Shimon's opinion. Some of the facets discussed are:

1. At what point is it considered money? Does this begin while it's in the responsible person's property, simply because it can cause him to lose money, or is it only once it's been removed from his property?

2. Is the obligation of one who harms such an item simply because he has caused a monetary loss, or because the holder's responsibility created a status of money in the abstract? Another formulation of

[5] Sprinkling – Rabbi Shimon says that *nossar* – left over sacrificial meat (*which is prohibited from benefit*) can potentially become impure. If there was enough time in the day for the blood to be sprinkled, we consider at that moment as if the blood had already been sprinkled, and therefore the meat was allowed for benefit, and eligible for impurity. However, if there was no time after slaughtering the sacrifice, then there was no point in time when we could consider it sprinkled, and it was never eligible for impurity.

[6] Redeeming – Rabbi Shimon says that a red heifer (*parah adumah*) is eligible for impurity, even though benefit from it is prohibited. This is true because Rabbi Shimon holds that a *parah adumah* can be redeemed even after it's been slaughtered - and *should* be redeemed, if a better *parah* is found. Therefore, as soon as the *parah* was slaughtered, we consider the *parah* to be redeemed even before it is - and even if it never is - and at that point it was eligible for impurity.

this question is – when one pays for damage to such an article, is it because of the damage done (*which now includes monetary loss*), or because the item is considered the property of the holder?

3. The *Gemora* in Pesachim (5b-6a) discusses Rabbi Shimon's opinion in the context of *chametz* on Pesach. The rule established by the *braisa* quoted there is that the *chametz* of a non Jew in a Jew's possession is considered the Jew's only if the Jew is responsible for it. The *Gemora* debates whether this is a function of Rabbi Shimon's opinion, or an exception to the ruling of the *Chachamim*. The exact application of this rule in the case of *Chametz* may depend on this debate. If *chametz* is a function of Rabbi Shimon's opinion, it may be subject to the possible limitations and definitions of Rabbi Shimon's general position on such items. If, however, it is an exception to the ruling of the *Chachamim*, the Torah is telling us a more sweeping statement about how we determine ownership for *chametz* on Pesach. One ramification of this may be how responsible for the *Chametz* a Jew must have in order to be obligated to remove it.

See the Ketzos Hachoshen 386:7 and Afikei Yam 2:10 for more detailed discussion of these topics.

Too late to redeem?

Tosfos (76a shechitah) asks why we consider the slaughtering of a sacrifice outside of the Temple to be unusable. Rabbi Shimon holds that an animal with a blemish can be redeemed as long as it is moving, even after slaughtering. Once the animal is slaughtered, the slit throat is a definite blemish, and should be grounds for redemption.

Tosfos answers that only blemishes that were present before an animal died are grounds for redemption, but that redemption can occur as long as the animal is still moving.

Tahi bah

The Rishonim discuss the exact meaning of this word, used to describe Rabbi Elozar's objection to the cases offered by Rabbi Yochanan and Reish Lakish.

Rashi explains that the word is a borrowed term from wine inspection. The *Gemora* in Bava Basra refers to someone who smelled wine, and uses the same verb *tahi* . Similarly, Rashi explains that Rabbi Elozar was inspecting the statements, and delving into them, to understand them better.

The Shitah Mekubetzes, on the other hand, quotes an opinion that explains this word as a form of the more common *matma* - he was amazed.

Sacrificial slaughtering

Rashi states that Rabbi Elozar was challenging both Rish Lakish, who offered the case of a sacrifice with a blemish, as well as Ravin, who offered the case of a sacrifice that was successfully brought (*including splashing of the blood*), but not for the sake of its owner. Rashi understands Rabbi Elozar's objection to apply even to Ravin, because even in a case where the sacrifice turned out to be valid and edible, the fact remains that as of the time of the slaughtering, it was not yet edible, since the splashing was not done.

Tosfos (76b v'halo zrika) states that Rabbi Elozar was challenging Rish Lakish, but only Rav Dimi's version of Rabbi Yochanan's answer – the case of the sacrifice whose blood was spilled before being splashed. Tosfos explains that their understanding of the *Gemora* in Chulin 80b is that the need for splashing blood can invalidate a slaughtering only if it was not ultimately done. Splashing of blood which was ultimately done will definitely make the slaughtering an edible one, retroactively.

Rashi, on the other hand, has a different text in the *Gemora* in Chulin, and therefore holds that even slaughtering a sacrifice which was successfully completed, including splashing the blood, does not render the slaughtering

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re'uyah since at the time of slaughtering, the animal was not edible.

See Pnei Yehoshua for a discussion of whether Rashi holds that Rabbi Elozar was also challenging Rav Dimi.

Just as if...

The *Gemora* stated that Rabbi Shimon holds a general rule of *kol ha'omed* - anything destined for a specific action is considered as if the action were already done. Tosfos (76b v'halo zrika) narrows the scope of Rabbi Shimon's rule to cases where the subsequent action is mandated – a *mitzvah*. In that case, since the action not just may be performed, but is *supposed* to be performed, we can act as if it's already done.

The *halachah* rules like the *Chachamim*. The Aruch Hashulchan infers from this topic a number of *halachic* conclusions. One of them is in the *halachos* of a *shofar*. The *Gemora* states that a *shofar* that is cracked is unfit. There is debate in the Rishonim on what extent of a crack invalidates a *shofar*, both for vertical and horizontal cracks. The Rosh (R"H 3:6) cites an opinion that any sized vertical crack (*i.e., along the pathway of the air flow*), no matter how small, invalidates the *shofar*, since the more it is blown, the larger the crack will become. The Aruch Hashulchan (O"H 586:15) states that this opinion does not invalidate it from the Torah, since we rule like the *Chachamim*. Rabbi Shimon can hold that a *shofar* that will become fully cracked is considered currently cracked, as part of his general opinion of *kol ha'omed*. The *Chachamim*, however, do not agree with this rule, and therefore would not consider the *shofar* already cracked. Since we do not rule like Rabbi Shimon, the invalidation must be on a Rabbinic level, lest we use a fully cracked *shofar*. [*According to Tosfos's limitation of Rabbi Shimon, it is debatable if Rabbi Shimon would apply kol ha'omed to a cracked shofar. There is no mitzvah of cracking the shofar, per se, but there is a mitzvah to blow in it, which would crack it further*.]

DAILY MASHAL

When a God-fearing Jew buys tefillin, in addition to many other factors, he should verify that the hide used for the tefillin and straps was not from a forbidden bechor. Today the Institute for Agricultural Research According to Halacha, which is backed by leading poskim, is working to reduce this problem as much as possible. Representatives of the Institute contact as many cattlemen as possible and try to convince them to sign a document that transfers to non-Jews ownership of the windpipe and esophagus of their animals that have not yet given birth. Thus the bechorim have no kedushah since they belong to non-Jews.