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**Rava’s Teaching**

The *Gemora* asks: Rava had said that wherever the Torah writes *seh*, it excludes a hybrid. Why is this teaching necessary? If it is to exclude hybrids from being brought as *korbanos*, (*this cannot be as*) the verse already states, “*an ox or a lamb*,” to exclude hybrids from being brought as *korbanos*. If it is to exclude hybrids from being an animal from which *ma’aser beheimah* (*the tithing of animals*) is taken, (*this cannot be as*) we already derive this using a *gezeirah shavah* (*one of the thirteen principles of Biblical hermeneutics; it links two similar words from dissimilar verses in the Torah*) from the word “*tachas*” -- “under,” which is found by both *korbanos* and *ma’aser beheimah*. If it is to teach us that a hybrid does not have the laws of a *bechor* (*firstborn animal; this cannot be as*) we already derive this using a *gezeirah shavah* of “*ha’avara*” -- “passing” from *ma’aser beheimah*. If this is to teach us that a mutant is excluded from being a *bechor*, (*this cannot be as*) the verse states, “*But the firstborn of an ox*,” implying that both it and its firstborn have to be oxen. This would certainly teach us that it cannot be a hybrid!

The *Gemora* answers: Rather, Rava’s teaching was stated with regard to the firstborn of a donkey, as the *Mishnah* states: We do not redeem (*a firstborn donkey*) with a calf or a “*chayah*” -- “undomesticated type of animal,” nor with a slaughtered animal (*once it is slaughtered, it is not called a “seh”*) or a *tereifah*, and not with a hybrid or a *koy* (*a hybrid from a domesticated animal and a non-domesticated animal*). [*Rava’s teaching is the Mishnah’s source for not using a hybrid.*]

The *Gemora* asks: According to Rabbi Elazar who allows the use of a hybrid to redeem the firstborn donkey, why is Rava’s teaching required? As was taught in that very *Mishnah*: Rabbi Elazar permits a crossbreed because it is still called a sheep.

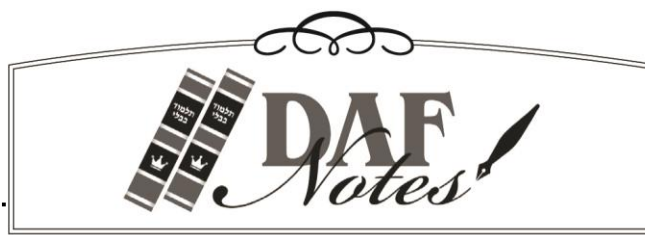
The *Gemora* answers that Rabbi Elazar will say: Rava’s teaching is to exclude a nonkosher animal whose mother is from a kosher species impregnated by a nonkosher animal. [*A horse born from a horse and a cow cannot be eaten.*] This is unlike the position of Rabbi Yehoshua, who derives this from the verse, “*a seh of kesavim (lambs) and a seh of goats*,” implying (*because of the plural lambs and goats*) that the animal’s parents have to both be lambs (*the regular definition of seh*).

The *Gemora* asks: Can a kosher animal conceive from a nonkosher animal?

The *Gemora* answers: Yes. This has been established that a kosher animal can become pregnant from an animal whose hooves are closed, as per the opinion of Rabbi Shimon (*who discusses such a case*). (78a1 – 78b1)

**Replacing an Olah**

Rava inquired: If someone said, “It is incumbent upon me to offer an *olah* sacrifice,” and he therefore designated an ox for this purpose. A thief then stole the animal. Can the thief replace the stolen animal with a sheep according to the Rabbis, or with a bird according to Rabbi Elazar ben Azaryah? For we learned in a *Mishnah*: If someone says, “It is incumbent upon me to offer an *olah* sacrifice,” he may bring a lamb. Rabbi Elazar ben Azaryah says: He may bring a



pigeon or dove. Do we say that the thief must only replace an *olah*, or can the victim claim that he wanted to bring the best type of *olah* (and the thief therefore must give him back an ox)?

After Rava asked the question he answered it himself. He concluded that the thief can replace the stolen animal with a lamb according to the Rabbis, or with a bird according to Rabbi Elazar ben Azaryah.

Rav Acha the son of Rav Ikka taught that Rava said this explicitly. Rava says: Someone said, "It is incumbent upon me to offer an *olah* sacrifice," and he therefore designated an ox for this purpose. A thief then stole the animal. The thief can replace the stolen animal with a lamb according to the Rabbis, or with a bird according to Rabbi Elazar ben Azaryah. (78b1 – 78b2)

### **Mishnah**

If the thief sold the animal besides for one-hundredth of it, or he had a partnership in it, or if he slaughtered it, but it became a *neveilah* (improperly slaughtered), or if he ripped it apart lengthwise, or he uprooted its pipes, he pays *kefel* (the double payment for stealing), but not the fourfold or fivefold payment. (78b2)

### **Exclusions**

The *Gemora* asks: What does it mean that he sold it besides for one-hundredth of it?

Rav says: He kept for himself part of it that becomes permitted when it is slaughtered (i.e. its meat). [If he would keep for himself its horns, he would still be liable.] Levi says: The part left over could even be its shearings. A *Baraisa* also says: The part left over could even be its shearings.

The *Gemora* asks a question on Rav from a *Baraisa*: If he sold it besides for its foreleg, hind leg, horns, or shearings, he does not pay the fourfold or fivefold payment. Rebbe says:

If he sold something whose absence would make the slaughtering invalid (i.e. a *windpipe*), he does not pay the fourfold or fivefold payment. If its absence does not cause the slaughtering to be invalid, he does pay the fourfold or fivefold payment. Rabbi Shimon ben Elazar states: If he sold it without the horn, he does not pay the fourfold or fivefold payment. If he sold it without its shearings, he does pay the fourfold or fivefold payment. Levi is understandable, for he shares the opinion of the *Tanna Kamma*. Who does Rav hold like?

The *Gemora* answers: Rav holds like the *Tanna* in the following *Baraisa*. Rabbi Shimon ben Elazar (a different opinion from what he held above) states: If he sold it besides for its foreleg or hind leg, he does not pay the fourfold or fivefold payment. If he sold it besides for its horns or shearings, he does pay the fourfold or fivefold payment.

The *Gemora* asks: What is the crux of their argument? The *Tanna Kamma* holds: "And he slaughtered it," implies the entire animal. Similarly, "And he sold it," implies the entire animal." Rebbe holds: "And he slaughtered it," implies anything which is required for slaughter, as opposed to parts that are not necessary for slaughter. We derive the qualifications of "And he sold it," from the qualifications of "And he slaughtered it." Rabbi Shimon ben Elazar holds: The horns do not stand to be cut off, and therefore, if they are not present, he does not pay the fourfold or fivefold payment. The shearings stand to be cut off, and therefore, if they are not present, he still pays the fourfold or fivefold payment. The second understanding of Rabbi Shimon ben Elazar holds: Forelegs or hind legs that require slaughtering are considered something that was left out, and he therefore would not pay the fourfold or fivefold payment. Horns and shearings do not require slaughtering, and it is therefore not considered as something was left out.

The *Gemora* asks: This is a contradiction in Rabbi Shimon ben Elazar's opinion!?



The *Gemora* answers: Two *Tannaim* argue regarding Rabbi Shimon ben Elazar's opinion. (78b2 – 78b3)

### **Partners**

The *Baraisa* states: If someone stole an amputated animal, a lame animal, a blind animal, or an animal belonging to partners, he is liable (*to pay the fourfold or fivefold payment*). However, partners that stole are not liable.

The *Gemora* asks: Isn't there a *Baraisa* that states that if partners steal, they are liable?

Rav Nachman answers: One *Baraisa* is discussing a thief who stole from his friend (*his partner; then he is exempt*), and one is discussing a partner who stole (*on behalf of his partner*) from a regular person.

Rava asked Rav Nachman a question from a *Baraisa*. The *Baraisa* states: One would think that a partner who stole from his partner and partners that stole should be liable. This is why the verse states, "*And he slaughtered it,*" implying he must slaughter the entire thing. [*This clearly shows that in both cases discussed by Rav Nachman, one is exempt!?*]

Rather, Rav Nachman answers: One is referring to a partner who slaughtered with the knowledge of his partner (*his partner appointed him as his agent, and as we learned above – the "sender" is liable in this instance*), and one is talking about someone who slaughtered without the knowledge of his partner (*he is exempt; and he is not liable for half either, for it has been derived that one is only liable for the entire animal*). (78b3 – 78b4)

### **Inquiries**

Rabbi Yirmiyah inquired: If he sold it (*for all time*) aside from thirty days, or besides for its work, or besides for its fetus (*if it was pregnant*), what is the *halachah*? According to the opinion that a fetus is like its mother's thigh, there is no question, as he is excluding part of the mother. The question

is according to the opinion that it is not like its mother's thigh. Do we say that because it is attached to the mother, it is considered part of the mother that is being excluded? Or do we say that because it will eventually separate from the mother, it is not regarded as an exclusion?

Some say the question is asked in a different fashion. Do we say that because it is not like its mother's thigh, it is not considered an exclusion, or do we say that because it (*the fetus*) needs to be permitted through the slaughtering of its mother, it is considered part of it?

The *Gemora* leaves this question unresolved.

Rav Pappa inquired: If he stole an animal, cut off a limb, and then sold it, what is the *halachah*? Do we say that what he stole he did not sell (*and therefore he does not pay*), or do we say that he did not exclude anything from the sale?

The *Gemora* leaves this question unresolved. (78b4 – 78b5)

## **INSIGHTS TO THE DAF**

### **Replacing the Lost Esrog**

By: Rabbi Mendel Weinbach - Ohr Sameach

A Jew borrows a very expensive *esrog* from his neighbor to fulfill the mitzvah of taking the four species on *Sukkos*. Before he has a chance to return it, it somehow gets lost and he must now compensate the owner with another *esrog*. But why should he be required to purchase a similarly expensive *esrog* if he can provide him with a perfectly kosher one that is not of the same quality but much cheaper?

This question was dealt with by two great halachic authorities in connection with our *Gemora*. The Sage Rava rules that if someone set aside an ox for fulfillment of his vow and that ox was stolen, the thief can replace it with a sheep and the victim cannot demand an ox because he wished to bring a sacrifice of greater quality. One opinion is

that the case of the *esrog* is similar to this case and the ruling should be the same. A dissenting opinion is found, however, in the Responsa of Chacham Tzvi (Responsa 102). In the case of our *Gemora*, he points out, the thief did not cause his victim any loss of money, while he did so in the case of the *esrog*. That expensive *esrog* had the potential of being sold for a high price, while an animal set aside for sacrifice is not for sale.

#### DAILY MASHAL

##### Replacing a High-Quality Sefer Torah

If someone damages a pair of fine tefillin or an expensive sefer Torah or a beautiful *esrog* worth hundreds of dollars, can he return a similar item of much lower quality and value, telling the owner he can fulfill the mitzvah with the replacement he brought? This type of question in various forms has been addressed by gedolei Torah throughout the generations, and their analysis is based primarily on our sugya.

A person who obligated himself by making a neder to bring an olah to the Beis HaMikdash must set aside an animal to fulfill his obligation. If he designated an animal, but it was stolen, lost, damaged, ran away, etc., he is required to select another animal in order to fulfill his obligation to bring an olah to Beis HaMikdash. Our daf teaches us that if a person designated an ox to fulfill his neder and someone came along and stole it, the thief does not need to return an ox. Instead he can return a sheep, or, according to R. Elazar ben Azaryah, even a bird, for sacrificing a sheep or a bird would also fulfill his neder. Even if the original owner argues that he wanted to perform a hiddur mitzvah by bringing a fattened ox, the thief is still not obligated to pay for an ox, since the owner suffered no monetary loss.

A standard *esrog* in exchange for a mehudar *esrog*: Based on our daf the Maharam Mintz (Responsa §113) rules that someone who steals a mehudar *esrog* is allowed to return a standard *esrog* to the owner and tell him that just as

someone who steals an ox designated for an olah is allowed to return a sheep, so, too, someone who steals a mehudar *esrog* is allowed to return a regular *esrog*, which can also be used to fulfill the mitzvah.

The difference between a korban and a mitzvah article: Many poskim question this ruling by the Maharam Mintz. The Chacham Tzvi (Responsa §120 s.v. teshuvah davar) writes, "In my humble opinion he is mistaken," and then proceeds to distinguish between an *esrog* and an ox that was designated to be used as an olah. The ox is hekdesch [Temple property], he says, and the person who made a neder is not allowed to sell it or transfer its ownership since it does not belong to him. Therefore the thief is not obligated to compensate the loss resulting from the theft. The loss is valued at the price of a sheep or bird, which are sufficient to fulfill his neder. On the other hand, the owner of the mehudar *esrog* is allowed to sell it whenever he wants. He has possession of an item of great value and someone who damages this *esrog* must compensate for any loss down to the last penny, concludes the Chacham Tzvi.

However, when a person damages an article, such as a sefer Torah belonging to a beis knesses, whose worth cannot be assessed in monetary terms because it may not be sold, some poskim (Responsa Torah Lishmah §354; Responsa Yehudah Ya'aleh I, Y.D. §292) claim that all opinions would agree that the damager is allowed to pay for a simple sefer Torah. The sefer Torah is not considered an item of monetary value, but an article that allows one to fulfill the mitzvah of reading in the Torah. To fulfill that mitzvah one can use a regular sefer Torah and therefore the damager need not pay for a mehudar one.