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Bava Kamma Daf 109

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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Stealing From His Father

Rav Yosef says: He should even give it to charity (*instead of keeping it for himself, if he cannot find any other inheritors of his father*). Rav Papa says: He must say, “This is for the money I stole from my father.”

The *Gemora* asks: Why doesn’t he just forgo having to pay back the money (*as he is also one of his father’s inheritors*)! Doesn’t the *Mishna* discuss someone who tells the thief that he does not have to pay the principle but he does have to pay the extra fifth? Why can’t he also forgo his own obligation to pay as one of the inheritors?

Rabbi Yochanan answers: This is not difficult, as one is the opinion of Rabbi Yosi ha’Glili, and one is the opinion of Rabbi Akiva. The *braisa* states: “And if the person will not have a relative to return the money to him.” Is there anyone in *Bnei Yisroel* who does not have a relative? Rather, this is referring to someone who steals from a convert. Someone stole from a convert, swore falsely that he did not steal from him, and he then heard that the convert had died. While bringing up his money to Yerushalayim (*to give to the Kohanim in lieu of the dead convert who had no relatives*), he meets the convert (*who is actually alive as well*). The convert tells him that he can owe the money to him as a loan. If the convert then dies, the thief can acquire the loan. These are the words of Rabbi Yosi ha’Glili. Rabbi Akiva says: He has not repented until he has the stolen money leave his hands.

Applying this to our case, Rabbi Yosi ha’glili would seemingly say that he, like other relatives, can forgo the loan. Rabbi Akiva would seemingly say that nobody can forgo the loan (*he must remove the stolen money from his possession*).

Moreover, according to Rabbi Yosi, this would even be true if he had not met up with the convert, and the convert had not made this into a loan. [*The Gemora will later ask when we would ever have a case where the money must be given to the Kohanim.*] The only reason “making it into a loan” was introduced was to showcase Rabbi Akiva’s position that even if this is done it does not help. He must remove the money from his possession.

Rav Sheishes asked: If so, the previous *Mishna* that was discussing the victim who tells the thief that he does not have to pay the principle etc., and which was established as according to Rabbi Yosi, should have said that even he can forgo the theft (*that he stole from his father*)! We would certainly know that a regular victim could forgo the principle! If it were according to Rabbi Akiva, it would have had to say that others cannot forgo payment and certainly not the thief himself!

Rather, Rav Sheishes says: Both are according to Rabbi Yosi ha’Glili. Rabbi Yosi holds that others can forgo the theft, but the thief himself cannot do so. Why, then, did Rabbi Yosi say in the case of the thief who stole from the convert that he can keep the money when the convert dies? This is because the convert turned the money into a loan.



Rava answers: Both are according to Rabbi Akiva. Rabbi Akiva just meant that he cannot forgo the theft to himself. However, it is effective if the victim told the thief he does not have to pay back. [*In the case of the convert, the convert wanted the money back, but merely turned it into a loan. This is why Rabbi Akiva does not say he can keep the money.*]

The *Gemora* asks: This implies that according to Rabbi Yosi ha'Glili he indeed could forgo the loan to himself. If so, when is there ever a case that he would have to pay what he stole from a convert (*who then died*) to *Kohanim* (*as mandated by the Torah*)?

Rava answers: The case where he has to give it to the *Kohanim* according to Rabbi Yosi is when he stole from the convert and swore falsely that he did not do so. After the convert dies, he admits that he stole. When he admitted, the money automatically goes to the *Kohanim* (*as opposed to admittance during the lifetime of the convert, which turns into a debt*). (109a – 109b)

Kohanim and Converts

Ravina inquires: What is the law if someone steals from a female convert? Do we say that the Torah only discussed a male convert when it said, “A man?” Or do we say that the verse was merely stating “A man” as this is the normal way that topics are discussed?

Rav Aharon told Ravina that he could prove the answer from the following *braisa*. The *braisa* states: I only know that this applies to theft from a male convert. What about theft from a female convert? When the verse says, “That is returned,” the implication is that it refers to two people (*as it is the second time such a term is used in the verse, which is otherwise unnecessary*). Why, then, does it say, “A man?” This is to teach that if the convert is an adult, one must first check to see if they have other relatives (*i.e.*

sons) to whom they are supposed to return the theft. If he is a minor, he does not have to check (*as he obviously has no sons*).

The *braisa* states: “To Hashem to the *Kohen*.” This teaches that it is as if Hashem acquired it and gave it to the *Kohen* of that *mishmar* (*the Kohanim on duty at the time*). You might think that instead of the *Kohen* of the *mishmar* it can be given to any *Kohen* that the thief wants to give it to. When the verse states, “Besides the ram of atonement that he will atone with it,” the indication is that it goes to those who atone (*for people bringing their sacrifices at the time, namely the Kohanim on the current shift*).

The *braisa* states: If the thief (*from a convert*) was a *Kohen* (*and he admitted during his mishmar*), how do we know that he cannot claim that because theft of a dead convert goes to the *Kohen*, and I am a *Kohen*, that I will just keep the money? This could be derived from a *kal v'chomer*. If he can receive money from others who stole from this convert, he should certainly be able to receive money he stole from the convert! Rabbi Nassan said the *kal v'chomer* in a different fashion. If another *Kohen* brings his own *korban* when it is not his *mishmar*, it does not belong to the *Kohen* of the *mishmar* unless the other *Kohen* gives it to him. Accordingly, something that he does have a portion of (*the theft*) should certainly be able to be retained by him during his *mishmar*!

The *Gemora* refutes the last *kal v'chomer*. It is not so. Something that he has no portion of is something regarding which his fellow *Kohanim* on the *mishmar* also do not have a portion. The theft returned from the convert is something that his fellow *Kohanim* on the *mishmar* also technically own!

Rather, the *Gemora* answers: It must be that the returned theft is split amongst all of the *Kohanim* of the *mishmar*.

The *Gemora* asks: Doesn't the verse say, "And a man (*Kohen*) will keep his own kodshim?" [*He should be able to keep his theft, just as he keeps his sacrifices even when it is not his mishmar!*]

The *Gemora* answers: We are discussing a case of an impure *Kohen* (*who does not do this either*).

The *Gemora* asks: The *braisa* could not have been talking about an impure *Kohen*, as it is inapplicable to discuss regarding him, "Things of which he normally would have a portion?"

Rather, the *Gemora* answers: We are discussing a pure *Kohen*, and we derive from a *gezeirah shavah* from the verse regarding inherited fields, using the word "*Kohen*," that he does not keep the money. This is as the *braisa* states: "His inheritance." What does this teach us? If a field would normally go to the *Kohanim* at *yovel* and a *Kohen* redeems it for himself before *yovel*, how do we know that the *Kohen* cannot say: Being that the field goes to *Kohanim* on *yovel* and I am a *Kohen* who currently owns the field, I should get to keep the field? This could even be stated as a *kal v'chomer*. If I receive a portion of the unredeemed field of others, surely I should receive my own field! The verse therefore states, "Like the field of a *cheirem* to the *Kohen* will be his inheritance." A *Kohen* can have an "inheritance" and at the same time not have this inheritance (*as it goes to the other Kohanim*). What is the case? It is this case, as the field goes out of his possessions and is split amongst the *Kohanim*. (109b)

DAILY MASHAL

The story is told of Rabbi Gershon Liebman (1905-1997), who survived the war to found the Novarodok yeshiva in France which still thrives today. On the day his concentration camp was liberated, it was reported that he immediately resumed the study of Bava Kamma, the tractate of the Talmud he had been learning before the

war. An American Jewish soldier came upon this sight and was stunned. "How could you be doing this after all your suffering?" he asked.

"We have wasted enough time over the past six years. I have decided to establish a yeshiva—the first yeshiva in Bergen Belsen," Rav Gershon replied.

"Who will be the Rosh Yeshiva?" the soldier asked. "I will," Rav Gershon responded.

"Who will be the yeshiva's fundraiser?" "I will be the fundraiser," was the quick retort.

"O.K. So you have a Rosh Yeshiva and a fundraiser, but what about students?" "I will be the student too," was his emphatic reply.