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Change and Thievery

The *Mishnah* had stated: If he stole a pregnant cow and it gave birth etc.

The *Gemara* cites a *Baraisa*: If someone steals a sheep and shears its wool, or steals a cow and it gives birth, he pays for the animal in addition to the wool and calf. These are the words of Rabbi Meir. Rabbi Yehudah says: Whatever was stolen should be returned as is (*and he must pay the value of the wool or calf based on its value when it was stolen*). Rabbi Shimon says: We look at what was stolen as if it was evaluated in money when it was stolen (*and this is what he pays*). [*The Gemara will later explain how this is different from the opinion of Rabbi Yehudah.*]

The *Gemara* inquires: What is Rabbi Meir’s reasoning? Is it because he holds that a change in the item does not affect its ownership? Or does he hold that although it normally affects ownership, we give a thief a fine that he has to pay for it anyway? What is the difference? The difference is if the animal grows weaker.

The *Gemara* attempts to answer the question from the following *Mishnah*: If someone stole an animal or a slave and they got old, he pays what they were worth when he stole them. Rabbi Meir says: If he stole a slave, he tells him, “Here is what is yours (*the slave*).” If he stole an animal, he pays what it was worth when he stole it. If Rabbi Meir holds that a change does not affect the ownership, he should also be able to say “Here is what is yours” regarding the animal! Rather, it must be that Rabbi Meir holds that change does affect ownership. He merely holds that there is a fine on the thief.

The *Gemara* answers: In fact, Rabbi Meir could hold that a change does not affect ownership off the item. Rabbi Meir is merely addressing the claim of the Rabbis. He is saying that according to me, change does not cause acquisition, even regarding an animal. However, according to you who hold that change does cause acquisition, at least admit regarding a slave, who is compared to land which is never deemed stolen, that change should not cause acquisition! The Rabbis refutation is that they hold that a slave is similar to movable objects (*not land*).

The *Gemara* attempts to answer the question from the following *Mishnah*: If someone hired a person to dye a piece of wool red and he dyed it black or vice versa, Rabbi Meir says that the worker must pay for the wool. This implies that he must pay for the wool, but not for the improvement in the wool. If Rabbi Meir holds that a change does not lead to acquisition, he should have to pay for the wool and the improvement! Rather, it must be that Rabbi Meir holds that a change does cause acquisition, and in our previous *braisa* there is a fine (*which is why he must pay for the improvement*). This is a clear proof.

Others say: We do not question this (*that Rabbi Meir holds that a change causes acquisition*), as Rav taught the *Baraisa* in the opposite manner. He taught: If someone stole a cow or slave and they got older, he pays their value when they were stolen. These are the words of Rabbi Meir. The *Chachamim* say: Regarding slaves, he can say, “Here is what is yours.” It is clear that according to Rabbi Meir a change causes acquisition, and regarding a thief we simply give him a fine. The only question is: Did he only give this fine regarding a person who steals on purpose, or did he even

give this fine to someone who bought stolen goods and did not realize they were stolen (*i.e. an accident*)?

The *Gemara* attempts to bring a proof from the following *Baraisa*: There are five cases where a creditor may only collect from properties currently owned by the debtor (*and not from properties that were sold to others*). They are: The fruits and the improvements of the fruits (*where a field with its produce was taken away from a buyer by the man from whom the seller had robbed it; the buyer who may recover the cost of the field itself from the seller's sold or mortgaged property may not recover the cost of the produce except from his free assets*), one who obligates himself to support his wife's son or daughter, a document of a debt where the property pledge was omitted and a *kesuvah* without a property pledge. Now, who is the *Tanna* that holds that the omission of pledging property in a contract is not regarded as a scribe's oversight? Rabbi Meir; and yet we see that he holds that one gets compensated for the loss of fruits and the improvements of the fruits. Now, what is the case of the improvements of the fruits? The case is where he stole a field from his friend, sold it to someone, and the buyer improved it. The original owner of the field then seizes it from the buyer. When the buyer collects from the thief (*for having sold him a stolen field*), he can collect the principle from property with a lien, but the improvement he can only collect from property without a lien. The case therefore must be that the original owner seized the land and its improvement. [*This is why the buyer can claim both of these losses from the thief.*] Additionally, the case must be regarding an unlearned man, who does not know whether or not land is considered (*halachically*) stolen (*and therefore he thinks that he is legally improving the land, for he assumes that land is just like movables – that once they transfer to the domain of a buyer and the owner despairs on ever getting it back – it belongs to the buyer*), and even so he receives a fine (*that he loses the improvement as well*). This teaches us that Rabbi Meir imposes this fine even to one who inadvertently improved the stolen goods.

The *Gemara* answers: No. The case could be where it is a scholar who knows the law (*and therefore he is penalized*).

The *Gemara* attempts to answer the question from the following Mishnah: If someone hired a person to dye a piece of wool red and he dyed it black or vice versa, Rabbi Meir says that the worker must pay for the wool. This implies that he must pay for the wool, but not for the improvement in the wool. If Rabbi Meir holds that a fine is applicable even if the person acts inadvertently, he should have to pay for the improvement as well! It must be that Rabbi Meir only instituted this fine for one who acts deliberately. This is a clear proof. (95a1 – 95b1)

The *Baraisa* had stated the following. Rabbi Yehudah says: Whatever was stolen should be returned as is (*and he must pay the value of the wool or calf based on its value when it was stolen*). Rabbi Shimon says: We look at what was stolen as if it was evaluated in money when it was stolen (*and this is what he pays*).

The *Gemara* asks: What is the difference between their opinions?

Rav Zevid answers: The difference is regarding improvements that are still attached to the stolen object. Rabbi Yehudah says these benefits belong to the victim, while Rabbi Shimon says they belong to the thief.

Rav Pappa says: Everyone agrees that such benefit belongs to the thief. The argument here is regarding the percentage of benefit paid to shepherds for improving the flock of others, which is often one half, one third, or one quarter of the total benefit. Rabbi Yehudah says: The thief receives all of the benefit. Rabbi Shimon says: He receives benefit like the type of shepherd mentioned above (*but the rest of the benefit belongs to the original owner*).

The *Gemara* asks on Rav Pappa from our *Mishnah* which states: If someone stole a cow that became pregnant after he stole it, and then it gave birth, or a sheep which grew

wool after he stole it and he then sheared the wool, he pays how much it was worth when it was stolen. This implies that he only returns it without the child if it gave birth. If it did not yet give birth, he must return it as is. This is understandable according to Rav Zevid, who said that the improvement of the stolen object belongs to the victim according to Rabbi Yehudah, as this *Mishnah* could be authored by Rabbi Yehudah. However, according to Rav Papa who says that the improvement goes to the thief, who is the author of the *Mishnah*?

Rav Pappa will answer: Even if the animal does not give birth, the payment is made based on its value when it was stolen. The reason that the *Mishnah* states “it gave birth,” is only because the previous case in the *Mishnah* discussed when it gave birth (*but it was not to teach the law*).

The following *Baraisa* supports Rav Pappa. Rabbi Shimon says: We look at this based on the percentage of benefit paid to shepherds for improving the flock of others, which is often one half, one third, or one quarter of the total benefit. (95b1 – 95b3)

Rav Ashi says: When I was by Rav Kahana, we had the following question. According to Rabbi Shimon (*in the Baraisa above*), do we say that the owner pays the thief this money, or do we say that the thief has the right to take the value from the meat of the animal?

We answered the question based on a statement of Rav Nachman in the name of Shmuel. He said: For three types of people we estimate the profit and pay them with money. They are: a firstborn son who reimburses a regular son (*for improving his portion of the estate before its division*), a creditor who seizes a field from a person who bought it from his debtor, and a creditor who seizes a field from orphans.

Ravina said to Rav Ashi: Did Shmuel indeed say that a creditor pays the purchaser for the improvements? Didn't Shmuel say: The purchaser can collect the improvement?

Rav Ashi answered: This is not a difficulty, for when the grain is fully grown, he must reimburse the buyer. Otherwise, he does not have to reimburse him.

Ravina asked: But there were instances daily where Shmuel would have the creditor collect everything, even what was fully grown!?

Rav Ashi replied: This is not a difficulty, as this is so only where the amount of the debt owing to the creditor covers both the land and the improvements, whereas the former ruling applies where [the debt due to him] is only to the extent of the land. - He said to Rav Ashi: I grant you that on the view that [even] if the purchaser possesses money he has no right to bar the creditor from land by paying in money, your argument would be sound, but according to the view that a purchaser possessing money can bar the creditor from the field by paying him in money, why should he not say to the creditor, “If I had had money, I would surely have been able to bar you from the whole field [by paying you in money]; now also therefore I am entitled to be left with a parcel of land corresponding to the value of my improvements.”? — He replied: We are dealing here with a case where the debtor expressly made that field a security, as where he said to him, “You shall not be paid from anything but from the field.” (95b3 – 96a1)

DAILY MASHAL

Which Thief Benefits from the Enactment for Repentants

Our daf relates that in the generation of R'Yehudah Hanassi the chachamim enacted that one should refrain from taking restitution from a repentant thief. This was done so as not to discourage a repentant who might otherwise perceive his penance as insurmountable.

In the opinion of Rabbeinu Tam (Tos. 94b D.H. Biymei Rebbe) this enactment applied only to Rebbe's generation. Most Rishonim disagree and maintain that it applies to all subsequent generations (see two explanations in the Rosh).

The latter opinion is the halacha adopted by the Shulchan Aruch (C.M. 366:1). For a thief to benefit from this enactment he must meet two conditions: He must repent prior to his victim's demanding reimbursement, and he must be a renowned robber who has accumulated a great deal of debt through his thievery.

We can gain a clearer understanding of the parameters of this enactment by studying the responsa of many Gedolim collected in Responsa Shte Halechem (§31). Approximately 300 years ago a practiced con-artist managed to inveigle the cousin of a famous chazzan to steal the chazzan's money and escape with him to Spain. Upon arriving in Spain, the thief abandoned his faith. The chazzan died broken and destitute.

A few years later the con-artist left Spain and joined a Jewish community that had no knowledge of his nefarious past. When a passing traveler arrived and disclosed to the kehilla what sort of man they were harboring, they approached the local chacham. The chacham ruled that in order to repent, the thief must make a statement of regret in front of the entire congregation. The chacham also required him to let his beard grow unkempt and to sit in the rear of the shul. It was not long before he was allowed to be called up to the Torah and was treated by the Gabboim as a regular congregant.

On Erev Yom Kippur an elderly Jew, a brother of the deceased chazzan arrived in town. He was shocked when he realized that the gentleman who had been honored with taking out the Sefer Torah at the commencement of Kol Nidrei was none other than the con-artist. The distraught brother refused to be still. He insisted that the local Rabbonim issue an edict proclaiming that this man was not to be considered a penitent until he reimbursed the chazzan's heirs in full and begged forgiveness at his grave. A dispute arose since some Rabbonim held that he was not required to reimburse the chazzan's heirs. He had led a life of robbery and therefore was alleviated of repaying by the Enactment for Repenters.

A Robber's Debt Does Not Dissipate: This strange tale was sent to many Gedolim of the era for a halachic decision. The Rabbonim (of Berlin, Yavetz, Minchas Yaakov and more) concurred that although the enactment was made to benefit the robber, it was addressed to his victim. In practical terms this means the takana of Chazal was that the victim not insist on being reimbursed. But the thief owes the money until the victim waives his claim. Furthermore, the poskim wrote that the enactment was only made for those who were truly and fully contrite. This man who thought that he could simply make a declaration of regret without attempting to gain the forgiveness of the chazzan and his family could not be considered a repentant and therefore the enactment was not applicable.

Additionally, some poskim argued that a man who had willingly left the faith of his fathers was not to be trusted unless it was obvious and clear that he was seeking to rectify all his previous transgressions.

Finally the consensus of opinion was that the former thief would need to appease the family of the chazzan, and beg their forgiveness. Then after a full and complete contrition Hashem who is all-merciful would cleanse the thief of his guilt.

Based on the above reasoning that it is the victim's prerogative to relinquish his claim, the Sefer Chassidim (mentioned in Shach ibid) writes that a victim who is deep in debt is not obligated to waive his right to reimbursement.