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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

The *Gemora* had cited a *Baraisa*: If one stole an ox and slaughtered it on *Shabbos*, or he stole and slaughtered it for idol worship, or he stole an ox that was destined to be stoned and he slaughtered it, he is liable to pay the payment of four and five (*times the value of the ox*); these are the words of Rabbi Meir. The *Chachamim* say: He is exempt from paying. The *Gemora* had explained the *Baraisa* to be referring to a case where the robber did not slaughter the animal himself; rather, he instructed an agent to slaughter it for him (*in which case, he himself is not subject to death*).

Mar Zutra asked: Is there such a thing that if he does it himself he is not liable (*does not have to pay, as in this case*), but if his agent does it he is liable?

The *Gemora* answers: He is not free of punishment because he is not liable, but rather because of the law of “*kim ley b’drabah minei*” (*a person who becomes liable for two punishments simultaneously receives only the harsher of the two*).

The *Gemora* asks: If the *Baraisa* is referring to a case where it was slaughtered by another person, why do the *Chachamim* exempt him from paying (the robber is not subject to any death penalty in this case)?

The *Gemora* answers: The *Chachamim* are following Rabbi Shimon’s opinion who holds that a slaughtering that is not fit (*it does not permit the meat to be eaten*) is

not regarded as a slaughtering (*and therefore, he is not liable to pay the extra penalty*).

The *Gemora* asks: That is understandable regarding the case where he slaughtered the animal for idol worship and where he slaughtered an ox that was destined to be stoned because it is forbidden to derive any pleasure from the animal (*and the slaughtering did not accomplish anything*), however, what is the explanation for the case when he slaughtered the animal on *Shabbos*? The meat is permitted to be eaten, as we learned in the following *Mishnah*: One who slaughters an animal on *Shabbos* or on *Yom Kippur*; even though he is put to death, the slaughtering is a valid one.

The *Gemora* answers: The *Baraisa* is following the opinion of Rabbi Yochanan Hasandler, as we learned in the following *Baraisa*: If one cooked on *Shabbos* by mistake (*he didn’t realize that it was Shabbos or he didn’t know that cooking was forbidden*), he is permitted to eat the food (*even on that Shabbos*). If he cooked intentionally, he is prohibited from eating the food (*forever; others, however, are permitted to eat the food on that Shabbos*); these are the words of Rabbi Meir. Rabbi Yehudah says: If he cooked inadvertently, he is only permitted to eat the food after *Shabbos* is over (*Motzoei Shabbos because the Chachamim penalized this case on account of a case where one cooked deliberately; others, however, are permitted to eat the food on that Shabbos*). If, however, he cooked intentionally, he is prohibited from eating the food forever (*so that he should not derive any benefit from the transgression; but others, may eat the food once*



Shabbos is over). Rabbi Yochanan Hasandler says: If he cooked inadvertently, others are only permitted to eat the food after *Shabbos* is over, but he may not eat from that food. If, however, he cooked intentionally, he and others are prohibited from eating the food forever.

The Gemora asks: What is the reason of Rabbi Yochanan Hasandler?

The Gemora answers: It is as Rabbi Chiya expounded at the entrance of the house of the Nasi: It is written: *You shall observe the Shabbos, for it is holy for you*. From this we derive: Just as what is holy (something which is consecrated) is forbidden to be eaten, so too what has been prepared on the *Shabbos* (using a forbidden labor) is forbidden to be eaten. If so, you might say that just as what is holy is forbidden for benefit (besides for eating), so too what has been prepared on the *Shabbos* should be forbidden for benefit (as well)? The Torah says: *for you; it shall belong to you (to use)*. You might have thought that it is forbidden to eat even that which has been prepared on the *Shabbos* by mistake; therefore, the Torah said: *every one that desecrates it shall surely be put to death*. This teaches us that only when the act was done deliberately have I told you (that it is forbidden just as that which is holy), but not if it was done inadvertently. (33b4 – 34a2)

The Gemora cites a dispute regarding Rabbi Yochanan Hasandler's opinion between Rav Acha and Ravina whether food which was cooked on *Shabbos* is forbidden to be eaten Biblically or only Rabbinically.

The Gemora notes (their respective sources): He who says that it is a Biblical prohibition is as we have just explained (from the Scriptural verse). And he who says that it is a Rabbinical prohibition learns as follows: *It is holy*; that means: 'it' (the *Shabbos*) is holy, but what has been prepared on it is not holy.

The Gemora asks: According to the one who says that it is only a Rabbinical prohibition, what is the reason of the Chachamim who exempt him? [As the slaughterer rendered the animal fit for consumption on a Biblical level, he should be liable for the payment of four or five)?

The Gemora answers: The Chachamim exempt him only with regard to other cases (where it was slaughtered for idolatry or it was an ox that was condemned to stoning, but they were not referring to the case where it was slaughtered on *Shabbos*). (34a2)

The Gemora returns to its explanation of the *Baraisa* and asks the following question: Why does Rabbi Meir rule that he is liable to pay the penalty when he slaughtered the animal for idol worship? As soon as he begins the slaughtering, the animal becomes forbidden; the remaining part of the slaughtering should not be regarded as if he is slaughtering the owner's animal! (*Once an animal becomes forbidden, it should not be regarded as the owner's property since he has no monetary rights in it.*)

Rava answers: The case is where he states that he is not slaughtering it for the sake of the idol until the conclusion of the slaughtering. (34a2 – 34a3)

The Gemora asks on the *Baraisa*: Why does Rabbi Meir rule that he is liable to pay the penalty when he slaughtered the animal which was condemned to be stoned? Since it is forbidden to derive pleasure from the animal, it should be regarded as if it does not belong to the owner!

Rabbah answers: The case is as follows: The owner of the animal handed it to a watcher and it caused the damage while in the house of the watcher and it was sentenced for stoning while in the house of the watcher and a thief stole it from the house of the watcher. Rabbi Meir follows the view of Rabbi Yaakov and the view of Rabbi Shimon.

He maintains like Rabbi Yaakov, who says: If the watcher returned it even after the sentence had been pronounced, it is regarded as returned (*although the condemned animal has no value, the liability of the watcher, who has to return the animal to its owner, is discharged by returning the animal to its owner*). And he holds like the view of Rabbi Shimon, who says: That which causes the gain or loss of money is regarded as money. (*Since the thief stole the condemned animal, the watcher cannot return it to the owner and he has to pay to the owner the value of the animal as it was when he entrusted it to him. The ox that is to be stoned has therefore a money value for the watcher. The thief must therefore pay the money fine.*) (34a3)

Rabbah answers the original question (*why is the thief liable to pay when he is also subject to the death penalty*) differently: In truth, the Baraisa refers to a case where the thief slaughtered it himself, and Rabbi Meir maintains that one cannot receive lashes and pay for the same action, but he can be put to death and pay for the same action. However, this is his opinion only when the monetary payment is a penalty, which is itself a novelty, but he would concede that he would be exempt from an ordinary monetary liability.

The *Gemora* demonstrates that Rabbah holds elsewhere that one can be put to death and nevertheless, be liable to pay for the penalty. For Rabbah said: If he (a thief) had a goat which he had stolen (before the Shabbos) and he slaughtered it on Shabbos, he is liable (for the fourfold payment), for he was already guilty of stealing before he came to the desecration of the Shabbos (as he transferred from a private domain into a public one); but if he stole and slaughtered it on Shabbos, he is exempt, for if there is no (liability for) stealing (as this was done through desecrating the Shabbos), there is no (liability for) slaughtering and no selling. [Since there is no payment of the principal or the double payment, there is also no payment of the fine for the slaughtering and selling, for

there is only a fourfold or fivefold payment for slaughtering or selling, not a threefold or fourfold payment.]

[The Torah writes that if one is found while he is tunneling in to someone's house attempting to steal, and the owner strikes him and kills him, the owner is not liable. This is because the burglar knows very well that the owner will stand up to defend his property, and therefore he is prepared to kill the owner if he is confronted. The owner is therefore allowed to kill the burglar, as this would constitute an act of self-defense. It emerges that as the burglar is tunneling, there is a death sentence hanging over his head.] And Rabbah said further: If he (a thief) had a goat which he had stolen and had slaughtered it while tunneling, he is liable (for the fourfold penalty), for he was already guilty of stealing before he came to the tunneling prohibition (and the death penalty does not exempt him from a fine, as we explained above), but if he stole and slaughtered it while tunneling, he is exempt (from all payments), for if there is no (liability for) stealing (as this was done through desecrating the Shabbos), there is no (liability for) slaughtering and no selling.

The *Gemora* notes: And it was necessary to state both cases, for if he (Rabbah) had taught us just the case of the Shabbos, we might have said that he is exempt from payment, because its prohibition is a perpetual prohibition (as he is liable for death even after he commits the act), but in the case of tunneling, which is only a temporary prohibition (as he can only be killed by the home owner as he is tunneling), I might say, that it is not so (and he would be liable to pay). And if he had taught us the case of tunneling, we might have said that he is exempt from payment because his tunneling is his warning (as he is liable for death even without a warning), but with regard to the Shabbos, in which case a warning is required, I might say that it is not so (and he would be

liable to pay). Therefore, it is necessary to state both cases. (34a31 – 34b2)

Rav Pappa rules regarding the following case: If one stole a cow before *Shabbos* and slaughters it on *Shabbos*, he will be liable to pay the penalty for slaughtering, since he is responsible for the stealing from before *Shabbos* (and the punishment of death does not exempt him from paying the penalty on account of the slaughtering). If the cow was lent to him and he stole and slaughtered the cow on *Shabbos*, he will be exempt from paying the penalty.

Rav Acha the son of Rava asked Rav Ashi: Is Rav Pappa coming to teach a novelty regarding a cow (for Rabbah already taught us this case regarding a goat)?

Rav Ashi said to him: One might have thought that since a borrower is responsible to feed the animal once he pulls the cow out of its owner's domain, perhaps he will be responsible from that time on if any accident befalls the animal (and he will be liable to pay even if he slaughters the animal on *Shabbos* since the obligation is retroactive to time that he borrowed it); Rav Pappa teaches us that this is not the case. (This is because as long as the animal is alive, the borrower must give back the cow and not its value; he is stealing it at the time which he slaughtered it, and that occurred on *Shabbos*.) (34b2 – 34b3)

Rava said: If their father (after he died) left them a cow which was borrowed by him, they may use it for the entire period for which it was borrowed. If it died, they would not be liable for the accident. If they had assumed that it was the property of their father, and they slaughtered it and consumed it, they would have to pay for the value of meat at the cheapest price (two-thirds of the market value). If their father left them real property, they would be liable to pay (for the borrowed item).

Some connect this last ruling with Rava's first ruling (if the animal died, they would be liable to pay from the real

property; accordingly, Rava must maintain that a borrower becomes liable for any accident that might happen at the time of the borrowing, and as a result from that, a lien is placed upon his real property to return the animal or its value). Others, however, connect it with Rava's last ruling (if they had assumed that it was the property of their father, and they slaughtered it and consumed it, they would have to pay full value). Those who connect it with the first ruling would certainly apply it to the last ruling and thus differ from Rav Pappa (for he maintains that a borrower only becomes liable for an accident that happens at the time that it actually happens), whereas those who connect it with the last ruling would not apply it in the first ruling, and so he would be in agreement with the view of Rav Pappa. [For Rav Pappa had stated: If one stole a cow before *Shabbos* and slaughters it on *Shabbos*, he will be liable to pay the penalty for slaughtering since he is responsible for the stealing from before *Shabbos* (and the punishment of death does not exempt him from paying the penalty on account of the slaughtering). If the cow was lent to him and he stole and slaughtered the cow on *Shabbos*, he will be exempt from paying the penalty, for the violation of *Shabbos* and the theft occurred simultaneously. Evidently, Rav Pappa is of the opinion that that a borrower only becomes liable for an accident that happens at the time that it actually happens, for if he would be liable from the time that he borrowed it, the halachah of *kim leih bid'rabbah minei* would not be applicable). (34b3 – 34b4)

[The Mishnah had stated: If one violates a woman who is forbidden to him, they are entitled to a fine. Even though they incur kares, they are not liable to the Court imposed death penalty (and therefore, they are not exempt from the fine). The Gemora asked a contradiction on this from the following Mishnah in Makkos: If one cohabits with a woman who is forbidden to him, he will receive lashes. We have learned that one cannot incur lashes and pay money for the same violation. (Since the Mishnah in Makkos teaches us that

he receives lashes, it is evident that he is not required to pay!) Rish Lakish answered: Our Mishnah reflects the opinion of Rabbi Meir, who holds that whenever one is liable for both money and lashes, he incurs both punishments. Rabbi Yochanan answered that the Mishnah in Makkos is discussing a case where he was warned (and therefore he is subject to the penalty of lashes), and our Mishnah is discussing a case where he was not warned (and that is why he pays).]

The Gemora asks: It is understandable that Rabbi Yochanan did not say according to Rish Lakish, because he wants to explain it (the Mishnah) according to the Rabbis (that one cannot incur lashes and pay money for the same crime, and not like R' Meir, who holds that one can receive both punishments), but why doesn't Rish Lakish say according to Rabbi Yochanan?

The Gemora answers: He will answer you: Since he (a person who cohabited with a woman forbidden to him) is exempt (from paying the fine) if they warned him (as he then would be subject to lashes), he is also exempt even if they did not warn him.

The Gemora notes that they are indeed consistent in their views stated elsewhere, for when Rav Dimi came from Eretz Yisroel, he said as follows: He who committed inadvertently an act which, if he had committed it deliberately, would have been punishable with death or with lashes, and at the same time committed an act punishable with something else, Rabbi Yochanan says that he is liable, but Rabbi Shimon ben Lakish said: He is not liable.

The Gemora explains: Rabbi Yochanan said that he is liable, for he had not been warned (of the greater penalty), but Rabbi Shimon ben Lakish says: he is not liable, for since, if he had been warned (of the greater penalty) he would not be liable, so too, if he had not been warned of it, he is also not liable. (34b4)

INSIGHTS TO THE DAF

Borrower Lending to Another

Rava said: If their father (after he died) left them a cow which was borrowed by him, they may use it for the entire period for which it was borrowed.

The commentators ask: How are the heirs permitted to use it? The *halachah* is that a borrower is not permitted to lend the item out to anyone else, for the owner can say, "I do not want my deposit to be in the hands of someone else"!?

The Hagahos Mordechai answers that since it is self-understood that a borrower will give the item to his wife and children, this would be permitted even after the borrower's death.

The Machaneh Efraim asks on this interpretation that if so, it should only be permitted by the borrower's sons and only if they are supported by the father!?! Otherwise, it should be forbidden, and from the *halachah*, this does not appear to be the case!?

Reb Akiva Eiger answers that the *halachah* that a borrower is not permitted to lend the item out to anyone else is only *l'chatchilah*; however, once he lends it out, the owner cannot take it away from him. Therefore, in this case, where the children took possession of it through an act of Heaven, they are permitted to use it.

The Erech Shai answers that the owner may be particular only to say that he did not intend to lend it out to someone else; however, with respect to the death of the borrower, which is not such a common occurrence, he cannot say that if I would have known that my cow would end up by the inheritors, I would not have lent it in the first place. The heirs therefore are permitted to use it.



DAILY MASHAL

Benefitting from a Shabbos Violation

By: Daf Digest

On one Shabbos morning in 1943, the congregants of a certain shul arrived and found that the door was locked. Since there was no eiruv, they could not get in unless someone brought a key from a nearby house through the public domain. One member escorted his son home and instructed him to put the key in his pocket despite the fact that this is clearly prohibited. By the time the two returned, the congregation's Rabbi had arrived and been appraised of the problem and what had been done. As the father and son approached, the Rabbi barred the door with his body and announced to the crowd waiting outside the building, "Rabbosai! I hate to disappoint you and keep you waiting further, but this flagrant violation of the holy Shabbos didn't help us in any way! The Gemora in states clearly that the benefits of intentional Shabbos violation are prohibited for the duration of Shabbos. It is therefore forbidden for any of us to enter the shul if it has been opened with a key carried through the public domain where there is no eiruv. We must be patient and find a non-Jew who will be able to help us by bringing a different key."

Naturally, this took some time. Eventually the minyan began, and later in the day the Rabbi took the time to reflect on whether his decision had been correct. After all, making use of a key that had been the object of a melachah merely constituted an indirect benefit. This is very different from the direct benefit sought by one who wishes to enjoy food that was cooked on Shabbos.

The Rabbi decided to ask Rav Moshe Feinstein, zt"l, if he had ruled correctly. Rav Moshe responded, "I am inclined to say that you ruled correctly and even indirect benefit in your case was prohibited. However, even if we were to

conclude that according to the letter of the law it was permitted to make use of the key, you still acted properly. You had to make a fence so that Shabbos violation will not be cheapened in your congregants' eyes!"