



OVERVIEW of the Daf

1) The twofold payment (cont.)

The Gemara concludes citing the Baraisa of Chizkiyah that provides a source for the ruling that a thief is obligated to pay כפל.

The Gemara challenges one of the expositions of the Baraisa.

Rava offers an explanation of the Baraisa's exposition.

This explanation is challenged.

Rava elaborates on his explanation and proceeds to explain the Baraisa in light of this explanation.

The exposition of the Baraisa is unsuccessfully challenged.

The mechanics of this exposition is challenged.

Ravina teaches that one could make a כלל ופרט וכלל even when the two כללים are next to one another.

This exposition is also challenged and the Gemara resorts to making an exposition using the mechanics of וריבה וריבה.

The necessity for all the different examples recorded in the Torah is explained.

The Gemara asks what exposition the dissenting opinion, namely the one who maintains that one pasuk refers to a thief and the other to someone who falsely claimed the item was stolen, will make from the phrase אם המצא תמצא.

The exchange back and forth between these two opinions is presented.

The Gemara notes that the phrase אם המצא תמצא is utilized for a different purpose. ■

REVIEW and Remember

1. What does the Torah teach with the hermeneutic principle of פרט וכלל?
2. Does the placement of the two generalizations next to one another prevent formulating a כלל ופרט וכלל?
3. What are the different sources that teach that one who incriminates himself does not pay the related fines??
4. What is the purpose of the Torah's repeating a parsha?

Distinctive INSIGHT

Understanding the specific details listed in the verse

חד למעוטי קרקע וחד למעוטי עבדים וחד למעוטי שטרות, גניבה וחיים לכדרב דאמר אחייה לקרן כעין שגנב

The Gemara cited two Baraisos on 63b regarding the law of a thief and the cases in which he must pay כפל— double — as a penalty for his crime. The verses in the Torah (Shemos 21:37 and 22:6-8) discuss not only a typical case of a thief, but also the case of a watchman who falsely claims that the item which was entrusted to him was stolen, when he himself was the one who stole it. These verses specifically list that this double payment is made whether the item stolen was “an ox, donkey, or a sheep.” The Gemara elaborates and explains that it was necessary for the verse to specify and itemize these details in order to teach that the law of כפל applies only when the item stolen is similar to “ox” in its being movable (to exclude land and slaves) and something which possesses intrinsic value (to exclude documents).

The Gemara finally realizes that the method of using a כלל ופרט וכלל is not adequate to account for the detail in this verse, as the words תמצא תמצא are adjacent to one another, and placing the specifications of ox, donkey or sheep between these generalizations does not work in the case of sheep.

Rather, this verse is interpreted using the method of ריבוי מיעוט וריבוי. What, then, is the purpose of the specification of “ox, donkey and sheep”? The three itemizations come to exclude double payment when land, slaves or documents are stolen. The words חיים and גניבה teach the lesson of Rav, that payment for a stolen object is fixed at the price of the object when it was taken from the owner's possession.

The Achronim note that the only reason the Gemara abandoned its analysis of the verse using a כלל ופרט וכלל was

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HALACHAH Highlight

Admitting to a punishment

ההוא מיבעי ליה למודה בקנס פטור

That is needed to teach that one who admits to a fine is exempt

The Torah (Devarim 22:29) teaches that a man who forces himself (אונס) on a girl who is a na'arah is subject to two punishments. One punishment is to pay fifty selaim to the father of the girl and the second punishment is that he must marry the girl and is not permitted to divorce her. Radvaz¹ was asked whether these two punishments are interrelated or not. For example, halacha teaches that one who admits to an action that is punishable by a fine is exempt from paying that fine (מודה בקנס פטור). If someone forces himself on a na'arah and then admits to his crime he is certainly exempt from paying the victim's father, but will he be exempt from marrying the girl as well or are the two consequences independent of one another? Another application, although not mentioned by Radvaz, would be the application of these punishments in our times. Since the payment is a fine it is not collected nowadays in accordance with Shulchan Aruch's ruling² that a Beis Din that is not made up of members who have semicha that could be traced back to Moshe Rabbeinu does not have the authority to impose fines. Do we say that since the financial component cannot be enforced Beis Din will not be able to compel the man to marry the girl or is the obligation to marry unrelated to the payment of the fine?

Radvaz responded that this issue is not addressed explicitly by earlier sources but his inclination is that the two punish-

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due to the extra word **שה**. Yet, according to the conclusion of the Gemara, the word **חיים** teaches the lesson of Rav, and the word **שור** by itself only teaches live animals, thus leading us to require the word **שה** to expand the law of **כפל** to all items which are movable and have intrinsic value. With the word **שה** being used, we can now use a **כלל ופרט** **כלל וריבוי ומיעוט וריבוי** and there is no need to move to a **כלל וריבוי**.

They answer that if we would, in fact, use a **כלל ופרט** and **כלל וריבוי**, we would not use **חיים** for the law of Rav, but rather as a specification to be placed between the words **המצא תמצא**. This would have been necessary in order not to learn the verse to be limited to include only kosher birds, whose carcasses transmit impurity. If we want to correctly apply the law to all cases of movable object with intrinsic value, **פרט חיים** would be a **פרט**. ■

ments are independent of one another and he is obligated to marry his victim even when he does not pay the money to her father. One proof he cites for his assertion is the fact that Rambam in Sefer Hamitzvos counts the two punishments as separate mitzvos which indicates that they are not related to one another. Once we accept that they are independent matters the next logical step is to understand that the obligation on the offender to marry his victim is a punishment (עונש) rather than a fine (קנס) and the principle that "one who admits is exempt" is limited to consequences categorized as a fine but when it comes to a punishment one cannot exempt himself by admitting to his transgression. ■

1. שו"ת הרדב"ז ח"א סי' י"ט

2. שו"ע חר"מ סי' א' סע' א' ■

STORIES Off the Daf

Self-incrimination

פרט למרשיע את עצמו

On today's daf we find that there is a difference whether one admits to a fine or if he is incriminated by beis din. Rava bar Ahilai learns from the verse, "If it shall be found out," that one is only required to pay a fine if he is found out through the testimony of witnesses before judges. If he incriminates himself, he is not responsible to pay the fine.

Rav Yehoshua Heschel of Mannisritch, zt"l, brings from Rishonim that the entire basis of the mitzvah of confes-

sion is this halachah—that one who incriminates himself by admitting to a fine is not obligated.¹ He explains: "Just as after witnesses come it is too late to discharge one's obligation through admitting, it is also too late to confess. This is because the very beams of one's house bear witness against him on the day of judgment, as we find in Chagigah 16. Since one's confession precedes this bearing of witness, he is like a modeh b'knas whose witnesses came after his admission and who is not obligated to pay."²

Rav Yeruchem Levovitz, zt"l, explained that this also teaches the vital importance of learning mussar. "One who incriminates himself also refers to a

person who learns about what his obligation is in this world and notices his shortcomings. He is also a modeh b'knas and definitely saves himself much suffering in the next world. Sadly, one who does not learn mussar and ignores his shortcomings is in a lot of trouble. He is only made aware of them when the 'witnesses' come before the heavenly court. Then it is too late to be discharged by admitting his failings..."

Rav Yeruchem concluded, "This is the foundation of all mussar work: to admit to one's faults and be discharged of the kenas!"³ ■

1. מובא במדבר קדמות מער' ו' אות ט'

2. ערכי יהושע ע' ע"ג

3. דעת חכמה ומודר חלק ב' ע' ק"ט