



OVERVIEW of the Daf

1) A second thief paying כפל (cont.)

R' Sheishes concludes his unsuccessful challenge to Rav's assertion that a second thief is exempt from כפל only if the original owner was not מיאש but if he was, the second thief pays כפל to the first thief.

Another unsuccessful challenge to Rav's ruling is recorded.

A third challenge to Rav's ruling is presented.

Rava asserts that the Baraisa used to formulate the challenge is not authoritative and since it must be adjusted it could be adjusted in a way that does not refute Rav.

R' Pappa maintains that it is unnecessary to adjust the Baraisa and R' Zevid then explains why the Baraisa does not refute Rav's position.

A possible challenge to this interpretation is suggested and rejected.

2) Selling an animal before יאוש

R' Nachman and R' Sheishes disagree whether 'וה' ד' is paid if the thief sold the animal before the owner had יאוש.

Each Amora explains his respective position.

R' Nachman's position that 'וה' ד' is paid is

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Distinctive INSIGHT

Slaughtering is irreversible, so, too, a sale that is not reversible
 איתמר: המוכר לפני יאוש רב נחמן אמר חייב רב ששת אמר פטור

A thief must pay four-fold for his crime if he compounds his act by selling a sheep after having stolen it. Rav Nachman and Rav Sheishes argue whether this law applies only if the sale occurs after the original owner has given up hope of retrieving his animal (לפני יאוש), or whether this halacha also applies if the sale takes place before יאוש. Rav Sheishes contends that the attempt to sell the sheep before יאוש would not be effective. His opinion is that the penalty of paying four-fold is not due to the attempt to sell the sheep, but in being successful in doing so, and this would only be if the sale was after יאוש. Accordingly, if the stolen animal underwent a change in the thief's possession before he sold it, in which case the thief had already acquired the animal with a שינוי, the sale would be valid and even Rav Sheishes would agree that the thief pays four-fold even before the owner's יאוש.

In support of his opinion, Rav Sheishes cites a Baraisa which analyzes the verse which teaches the law of multiple payments for a thief. "וטבתחו או מכרו"—If the thief slaughtered or sold the animal... Just as slaughtering is a non-reversible act, so too is the type of sale of the animal referred to in this verse. The Gemara observes that if the sale was done before יאוש of the owners, the sale would be reversible. We see, therefore, that the penalty of paying four-fold is assessed when a sale is made after יאוש, and this is a question against Rav Nachman.

Rav Nachman responds that the verse is coming to exclude a case where the thief sells the stolen animal for thirty days, after which it will be returned. This is the case of a reversible sale for which the thief would not pay four-fold. However, Rav Nachman insists that a sale before יאוש is a valid sale, although it is susceptible to being cancelled if the owner invalidates it.

Rambam rules (Geneiva 2:11) that if a thief sells an animal with the stipulation that the sale not be valid until thirty days have elapsed, and the original owner discovers the thief during those thirty days (before the sale was complete), the thief only pays double (כפל). Maggid Mishneh notes that this ruling does not parallel our conclusion, and he explains that Rambam had a different text than ours in the words of Rav Nachman. His text read, "the verse excludes a sale for after thirty days." Lechem Mishneh explains that if the thief was found before the thirty days elapsed, the object is returned to its owner, and the sale never began. This מכירה is certainly unlike טביחה, and the penalty of four-fold would not apply. ■

REVIEW and Remember

1. Does a thief from a thief pay כפל?

2. What is the issue disputed by R' Nachman and R' Sheishes?

3. Does a thief pay 'וה' ד' if he sold the animal after the owner had had יאוש?

4. What is the defining characteristic of the צנועין?

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HALACHAH Highlight

The parameters of kidnapping

גניבה בנפש תוכיח שאין יאוש בעלים וחייב

Kidnapping will demonstrate [that your position is incorrect] for there is no יאוש of the owner and the thief is still liable

R' Yochanan challenges R' Elazar's assertion that the term "selling" refers to a sale that effects acquisition from the Torah's discussion of stealing a person. Rashi¹ explains that the challenge is from the fact that the Torah holds one liable for stealing and selling a person even though the victim does not have יאוש on himself. Since the Torah holds the kidnapper liable even though his sale was ineffective since there was no יאוש, we see that "selling" can even refer to cases where the sale does not effect acquisition. So too, asserts R' Yochanan, one is liable to pay ד' וה' for selling a stolen animal even though it did not effect acquisition, e.g. if it was sold before the owner had יאוש.

Rav Yeruchum Fishel Perlow² wrote that Rashi's comment proves that the parameters of the prohibition against kidnapping - נפש - גונב - is when someone is taken and sold against his own will. The reason it is necessary to emphasize this point is that Rabbeinu Betzalel³ writes that the parameters of kidnapping is when one steals a person from his relatives. Support for this is found in Rambam⁴ who explains that kidnapping occurs when one is separated from his relatives as a result of being sold. An outcome of this approach, continues Rabbeinu Betzalel, is that one is only considered a kidnapper if he does an act of גניבה but he is not liable if it is גזילה, i.e. if the victim was taken in the presence of the relatives. Rashi's comment, explains Rav Perlow, clearly indi-

(Overview. Continued from page 1)

unsuccessfully challenged.

The Gemara points out that R' Elazar also maintains that יאוש ד' וה' is only paid after.

R' Elazar's related statement is unsuccessfully challenged. R' Yochanan challenges R' Elazar's statement

3) Selling an animal after יאוש

This challenge indicates that R' Yochanan maintains that ד' וה' is paid even before יאוש and the Gemara expresses uncertainty whether יאוש would be paid if the animal was sold after יאוש.

In response to this inquiry the Gemara teaches that R' Yochanan holds that the thief must pay ד' וה' whereas Reish Lakish maintains that he is exempt.

Each Amora explains his respective position.

R' Yochanan unsuccessfully challenges Reish Lakish's position.

The Gemara finds Reish Lakish's explanation insufficient and continues to challenge his position. ■

cates that the parameters of kidnapping is when a person is taken from himself and for that reason Rashi asserts that יאוש does not apply but according to Rabbeinu Betzalel, where kidnapping refers to a person that is stolen from his relatives there is no reason to assume that יאוש is not possible. Accordingly, concludes Rav Perlow, there is no reason to assume that there is a distinction between גניבה and גזילה since taking a person from himself is always an act of גזילה. ■

1. רש"י ד"ה גניבה בנפש

2. בפירושו לספר מצוות לרס"ג ח"ב עמ' קכ"ח

3. רבינו בצלאל תשובה ל"ט

4. רמב"ם פי"ט מהל' גזילה ה"ג ■

STORIES Off the Daf

Never give up

גזל ולא נתייאשו הבעלים

When Rav Yechezkel of Shinava, ז"ל, learned the Gemara in Bava Kamma 68b, he used it to teach a lesson filled with chizuk. "The rule is that one must never give up on himself. Even if he is truly on a very low level, ר"ל, he must never despair of teshuvah. This is the lesson of the Gemara's statement,

'If a thief stole it and the owner did not give up on it, neither can declare it

hekdesh. The thief cannot declare it hekdesh because it is not his, and the owner because it is not in his domain.' Similarly, if the yetzer stole time or energy for foolishness and sin, it does not become his unless one despairs of doing teshuvah. [Hekdesh means to set something aside.] But the owner also cannot yet designate this for holiness since it is not yet in his domain. But there is an easy solution to the owner's difficulty. The verse states, **כי קרוב אליך הדבר מאד בפיך, ובלבבך לעשותו**.

"This verse teaches the path to true teshuvah for one who has fallen into sin.

First he must understand that teshuvah is a gradual process. The easiest way to repent is explained: First one must rectify his money which is called מאד. Slowly but surely, he must change his wayward ways and learn to be honest in monetary matters. Afterwards, he works on בפיך, speaking words of Torah and prayer. He must work on his davening and make set times to learn Torah.

"If he will slowly proceed along this path, he will merit בלבבך, that holiness will permeate his heart and he will merit to keep the entire Torah!" ■

1. דברי יחזקאל פר' נצבים ע' נ"ט