



OVERVIEW of the Daf

1) Paying 'ד' וה' for a crossbreed (cont.)

The Gemara continues to determine whether the term או is meant to include or exclude.

In light of the fact that crossbreeds are excluded from payment of 'ד' וה' the Gemara questions when Rava's statement that the term ש excludes crossbreeds applies.

After many suggested applications are rejected the conclusion is that the statement refers to the halacha of the first-born donkey.

According to R' Elazar who permits redeeming a crossbreed donkey the exposition will apply to the case of a non-kosher animal that was born to a kosher mother impregnated by a non-kosher father.

The possibility that a kosher animal could be impregnated from a non-kosher animal is unsuccessfully challenged.

2) Stealing a consecrated animal

Rava inquires whether one who steals an ox set aside as a Korban Olah could repay the victim with a lamb, according to Rabanan, or a bird, according to R' Elazar ben Azaryah.

Rava resolved the inquiry and ruled that the thief can fulfill his obligation with a lamb or a bird.

A second version of Rava's statement is presented.

3) **MISHNAH:** Additional cases where a thief does not pay ד' וה' are presented.

4) Withholding from a sale

Rav and Levi disagree what has to be withheld from a sale in order for the thief to be exempt from paying 'ד' וה'.

Rav's position that some of the meat must be excluded from the sale is unsuccessfully challenged.

The point of dispute between the Tannaim on this issue is explained.

The Gemara explains that there are two versions of R' Shimon ben Elazar's position on this matter and thus it is not considered contradictory.

5) Partners

Two contradictory Baraisos are cited related to liability for 'ד' וה' for partners who steal.

R' Nachman suggests a resolution to the contradiction.

This explanation is successfully refuted and an alternative explanation from R' Nachman is offered.

6) Withholding from a sale (cont.)

R' Yirmiyah inquires whether other possible cases of withholding from a sale nullify the sale.

Two versions of the last inquiry are presented and the inquiries are left unresolved.

R' Pappa presents another inquiry that also remains unresolved.

7) Paying 'ד' וה'

The Gemara begins to cite a Baraisa which is related to paying 'ד' וה'. ■

Distinctive INSIGHT

Must a thief repay the full value of an expensive esrog?

הדר פשטה גנב פטר עצמו בכבש לרבנן בעולת העוף לרבי אלעזר בן עזריה

Rava proposed a question regarding a case of someone who pledged an olah offering, and he designated an ox for that offering. A thief then stole the animal. The question is whether the thief can fulfill his obligation to "return the stolen object" by furnishing a different type of animal instead of an ox. For example, Rava cites the Mishnah (Menachos 107a) where Tanna Kamma holds that if someone promises to bring an olah, he must bring a sheep (or better), while R' Elazar ben Azarya rules that he can bring a dove or pigeon. Rava considers, and then concludes, that the thief who stole an ox can replace it with a sheep, according to Tanna Kamma, or a dove or pigeon according to R' Elazar ben Azarya.

Rashi explains the rationale for this halacha. The thief has an obligation to provide the owner with an animal to fulfill his oath to bring an olah, and this is satisfied adequately by furnishing him with any animal at all which can be used as an olah. Although הקדש will now be receiving a sheep or bird instead of an ox, no compensation is due for causing a loss to הקדש.

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REVIEW and Remember

1. What is a נדמה?
2. What is the point of dispute between R' Elazar and R' Yehoshua?
3. If a thief slaughters a stolen animal that turns out to be a treifah, is he obligated to pay 'ד' וה'?
4. Is selling an animal except for for its fetus considered an incomplete sale?

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 By Mr. and Mrs. Boruch Weinberg
 In loving memory of their father
 ר' משה דב בן ר' יעקב יצחק, ז"ל

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HALACHAH Highlight

Using slices of bread for lechem mishnah

מכרו חוץ מאחד ממאה שבו וכי

If he sold the animal except for one-hundredth of it etc.

If someone would arrive late to the Shabbos meal of Rav Itzelle of Volozhin, the Rav would hand him two slices of bread to use for lechem mishnah. Netziv¹ wrote in explanation of this practice that the question of whether bread is considered whole and could be used for lechem mishnah or not depends upon how it appeared when it was presently brought out. If a whole loaf was brought out and someone cut some slices from that loaf, the loaf and the slices are now considered deficient. If, however, the bread was brought out as half a loaf, as far as we are concerned this is considered a whole loaf and may be used for lechem mishnah. Proof to this assertion can be found in our Gemara. If a person sells an animal but retains for himself one one-hundredth for himself he does not have to pay 'ד' וה' since he did not sell the entire animal. On the other hand, if he stole and sold an animal that was missing a limb he would be obligated to pay 'ד' וה' since as far as this person is concerned the animal is complete. Accordingly, when a guest would arrive late to the table of Rav Itzelle of Volozhin the Rav would give him two slices of bread since as far as that person is concerned these are whole pieces of bread and can be used for lechem mishnah.

Teshuvos Minchas Yitzchok² was asked what a person should do if he only has one whole loaf of bread; should he make the beracha on the one whole loaf or perhaps he should break the loaf in two and make the beracha on two half loaves? Basing his response on the explanation of Netziv he wrote that another person should slice the loaf in two and then bring the two pieces to the one who needs to make hamotzi and he will,

(Insight. Continued from page 1)

שו"ת מהר"ם מינץ (113) considers a case where someone steals a beautiful esrog before Sukkos. Someone else then either ruined it or stole it. Had the esrog not been stolen or ruined, the first thief could have just returned it is. Now that it is no longer here, the first thief wishes to repay the owner the value of what he stole. Shu"t Mahara"m Mintz rules that it is not necessary for the thief to repay the full value of a beautiful esrog, and the owner cannot claim that it was his intention to fulfill the mitzvah in a more beautiful manner. He brings a proof from our Gemara where we see that a thief may repay a sheep in place of the ox which was designated to be used for an olah, even though the owner might have wanted to bring the more valuable animal as a form of beautifying the mitzvah.

Mishne L'Melech (Ma'ase Korbanos 16:7) argues, contending that the one who steals an expensive esrog must repay the full value of the beautiful mitzvah fruit. He distinguishes the case of the esrog from the case in our Gemara, because the ox for an olah has no resale value. Once it is consecrated, its only value is regarding its ability to have the owner discharge his pledge to bring an olah. This is not the case with the esrog, where the owner could have sold it for its full, inflated value, and this is what the thief stole and this is what he must repay.

שו"ת שואל ומשיב also distinguishes between an esrog, where the halacha demands that the mitzvah be done with grandeur, as opposed to an olah, where any eligible animal is adequate to fulfill the obligation to bring an olah. ■

בדיעבד, fulfill his obligation. In the event that the one loaf is already before him, the only option is to find a whole cake and use that as the second loaf for lechem mishnah or make the beracha on the single loaf. ■

1. שו"ת משיב דבר ח"א סי' כ"א
2. שו"ת מנחת יצחק ח"י סי' כ"ד ■

STORIES Off the Daf

Partners in Crime

שותפים שגנבו חייבין

Today's daf discusses partners who stole.

A certain man noticed that some valuable books of his had gone missing. Understandably, this man kept his eye open for the seforim. There were only a few people in the town who were likely to purchase these seforim and he quietly talked to them all. One of them had purchased the seforim from his daughter-in-law's cousin. When the angry owner confront-

ed the presumed thief—who was fairly well-to-do—he seemed very surprised.

He claimed, "It is true that I took the books from your house, but I took them at your daughter-in-law's behest. She told me they were hers and that she was unable to lift them. I didn't even remove the books from the shelf. She handed each one to me and asked me to deal with them. There was no way for me to know that she was lying so I brought them to a prospective buyer and arranged the sale. I gave the entire proceeds to her. I deeply apologize, but unless I am very much mistaken she used it for various expenses. I don't see why I should be responsible to pay for this regrettable misunderstanding..."

When this case was adjudicated by the Rosh, zt"l, he ruled that the owner could take the entire value of the seforim from either the daughter-in-law or her relative. "Everything in a person's house is presumed to be his property. If someone claims that something in the house is not the owner's, one must first verify this before removing any items. In addition, it is clear that her accomplice was working with her to rob her father-in-law. What is more, the books were heavy and by his admission she could not have done it without him..."¹ ■

1. שו"ת הרא"ש כלל ק"א ס' ז'