



OVERVIEW of the Daf

1) Paying ד' וה' (cont.)

The novelty of the cases mentioned in the Baraisa discussing paying ד' וה' is explained.

2) **MISHNAH:** The Mishnah begins with one last halacha related to liability to pay ד' וה' and concludes with a discussion of when a person acquires the stolen animal that would make him liable in the event the animal were to die.

3) Acquisition of a shomer

Ameimar inquires whether it is necessary for a shomer to make a kinyan to formally begin his responsibilities.

Rav Yeimar demonstrates from the Mishnah that it is necessary for the shomer to make a kinyan.

This proof is unsuccessfully challenged.

Another teaching and Baraisa are cited to support the assertion that a kinyan is necessary to become a shomer.

A detail regarding the Baraisa is clarified.

4) גזלן and גנב

R' Elazar asserts that someone who hides in a forest to steal an animal is a גנב and must pay ד' וה'.

R' Chisda explains how this גנב made a kinyan

The reason this person is not a גזלן is explained and R' Avahu and R' Yochanan give examples of someone who qualifies as a גזלן.

R' Avahu and R' Yochanan explain why they disagree with the other's source.

5) Fourfold and fivefold payments

A Baraisa is cited that explains why a גנב pays ד' וה' rather than a גזלן and why five-fold is paid for an ox but only

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Distinctive INSIGHT

Selling while in the domain of the owner

אבל גנב וטבח ומכר ברשותם פטור

The Mishnah teaches that if a thief steals a sheep or ox, and he either slaughters or sells the animal to someone while the animal is still in the property of the owner, the thief “is exempt”.

Tosafos Ri”d explains that he initially thought that the ruling of the Mishnah referred to the thief being exempt from the multiple payments of four and five, and the reason he does not have to pay is that the animal is not yet considered “stolen” at the moment of the slaughter or sale. Later, when the buyer removes the animal from the domain of the original owner, the thief will be liable for כפל. A support for this explanation is from the end of the Mishnah, where we find that if a thief gives the animal to a kohen as redemption of his son (לבכורות בנו) or if he gives it to his creditor to pay his debt, the thief is liable for כפל, when the animal is removed from the domain of the original owner. It seems, Tosafos Ri”d explains, that this halacha should apply in a case where the thief sold it, and the buyer removes the animal from the domain of the original owner.

After considering things further, though, Tosafos Ri”d concludes that the case is not referring to where the buyer removed the animal from the owner’s possession, but rather where the animal died after the sale, but while still in the domain of the owner. If, however, the animal was taken out of the possession of the owner by the buyer, the thief would be liable for the full payments of four or five-fold. This would not conform with the ruling of the Mishnah, where the thief is “exempt”.

Furthermore, Tosafos (ד”ה אבל) and Rashba explain that the case also cannot be referring to where the thief lifted the animal before selling it. If the thief lifted it (הגבהה), the thief would immediately acquire it, even while standing in the domain of the owner. Rashba notes, however, that this being the case, we might wonder why the Mishnah lists that this event is taking place in the “domain of the owner”. The point is simply that the thief has not acquired the item before selling it because he has not lifted it. This could be illustrated as occurring even in a neutral domain.

Ra’aved disagrees and contends that the Mishnah teaches that while in the domain of the owner, the theft is not valid even if the thief lifts the item. Although a קנין can take place by lifting the object in a context of buying and selling even when standing in the domain of the seller, however, there is a special decree of the Torah that a theft is not valid by simply lifting the item, unless it is removed from the owner’s possession. This is seen in the verse **אם המצא תמצא בידו הגניבה**. It must be removed from the owner and taken by the thief before the theft is complete. ■

REVIEW and Remember

1. What is the source that the thief is obligated to pay ד' וה' if he instructs someone else to slaughter the stolen animal?
2. Is it necessary for a shomer to make an acquisition to formally begin his shemirah?
3. What is the classic case of a גזלן?
4. Where in Eretz Yisroel is it permitted to raise small undomesticated animals?

HALACHAH Highlight

Raising small domesticated animals in Eretz Yisroel in modern times

אין מגדלין בהמה דקה בארץ ישראל

We may not raise small domesticated animals in Eretz Yisroel

Rav Ovadiah Yosef¹ was asked about the ruling in Shulchan Aruch that permits raising small domesticated animals in Eretz Yisroel since there are not many fields that are owned by Jews. How does this ruling apply in modern times when most of the land is owned by Jews? Do we say that once the decree was suspended it does not automatically return when circumstances change, or perhaps once the rationale for the decree returns the decree also becomes reactivated and it would therefore be prohibited to raise small domesticated animals in Eretz Yisroel in our times? He ruled stringently on the matter, asserting that it is not necessary to formally reaccept a decree that was discontinued due to specific circumstances, once the rationale for the decree returns.

Teshuvos Tzitz Eliezer² cited the lenient opinion of Rama M'Pano who asserted that the restriction against raising small domesticated animals is limited to where the animals are sent out to find food for themselves. Under such circumstances the animals will cause great damage to other fields. If the animals are fed and are thus contained on their owner's property the restriction does not apply. Although there are many authorities who disagree with Rama M'Pano on this matter, nevertheless

four-fold for a sheep.

6) **MISHNAH:** The Mishnah discusses restrictions related to raising different varieties of animals.

7) **Small domesticated animals**

A Baraisa is cited that elaborates on the Mishnah's ruling related to raising small domesticated animals and when it is permitted to import them into Eretz Yisroel. ■

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when there is a need, asserts Tzitz Eliezer, it is permitted to rely on his lenient position. He further suggests that new settlements that were established with the intent to raise small domesticated animals are permitted according to all opinions to raise these animals. The reason is that it can be assumed that the neighbors are willing to forgo the damage that will result from the presence of these small animals. Accordingly, it has to be assumed that in the times of the Gemara people lived in a more isolated fashion without any order or consensus to the way others were allowed to conduct themselves. As a result, there was a prohibition due to the likelihood that one's animals would damage a neighbor's property. After citing support from the wording of Rambam about this matter he concludes that it is permitted. It is also certainly permitted for someone to raise a goat in his house. In a later teshuvah Rav Ovadiah Yosef³ expressed agreement with the ruling of Tzitz Eliezer. ■

1. שר"ת יביע אומר ח"ג חר"מ סי' ז'

2. שר"ת ציץ אליעזר ח"ז סי' כ"ד

3. שר"ת יביע אומר ח"ד חר"מ סי' ו' בסוף התשובה ■

STORIES Off the Daf

Preserving another's honor

בוא וראה כמה גדול כבוד הבריות

On today's daf we find that the Torah takes into account the embarrassment even of a thief. One of the signs of a truly great person is that he is exceedingly vigilant regarding the honor of his fellow man in all circumstances.

Once, the Beis Halevi, ז"ל, was returning home from shul on Pesach night when he almost collided with a man stealthily slinking away from his own house with all the silverware and vessels stacked precariously in his hands.

When the caught man noticed the Beis Halevi, he turned white. But the Rav was determined to find a way to

avoid embarrassing his fellow Jew—even if he was a thief. The rav beamed on the man and said, "Pesach kasher v'sameach! You are probably bringing me vessels to use as collateral to borrow money from me after Yom Tov. Why don't you leave them here and return during chol hamoed for the loan..."

The thief, who had not disguised himself in any way, breathed a deep sigh of relief and immediately returned the stolen objects.¹

When one of the students of Rav Shlomo Zalman Auerbach, ז"ל, was slated to get married, it was automatically assumed that the Rav would attend as the mesader kiddushin.

Rav Shlomo Zalman arrived early as was his wont. He noticed a prominent rabbi was in attendance. This rabbi was

part of a certain sect that many authorities hold are not fit to be witnesses. When he asked the family if this Rav would receive a kibud, they informed him that he was slated to be one of the witnesses.

Rav Shlomo Zalman immediately approached this rabbi and insisted that he officiate as the mesader kiddushin instead. Although the rav balked a little at accepting, Rav Shlomo Zalman was so insistent that this Rabbi finally complied and Rav Shlomo Zalman was a witness in his stead.

In this manner, Rav Shlomo Zalman ensured that there was no question about the status of the kiddushin and that the rav was not embarrassed in public.² ■

1. מובא בספר מרביצי תורה ומוסר
2. התורה המשמחת