

OVERVIEW of the Daf

1) An agent who deviates from the investor's instructions (cont.)

It is noted that according to Abaye's interpretation of the Baraisa there is a ruling that is obvious.

The novelty of that ruling is explained.

Another ruling in the Baraisa is noted as obvious according to Abaye's interpretation.

The novelty of that ruling is explained.

A related incident is cited in which Rav seemingly rules in accordance with the position of "Those of the West."

This interpretation of the incident is rejected and an alternative explanation is offered.

2) MISHNAH: The Mishnah discusses different cases of one who steals, swears falsely about his theft and then admits to his crime.

3) Identifying the author of the Mishnah

The Gemara notes that the Mishnah's ruling that one who swore falsely about a robbery must pursue the victim to Madai, seemingly does not follow the position of R' Tarfon or R' Akiva.

The relevant opinions of R' Tarfon and R' Akiva are presented.

The Gemara demonstrates how the Mishnah is, in fact, consistent with R' Akiva.

The exchange between R' Akiva and R' Tarfon concerning their dispute is presented.

R' Huna bar Yehudah challenges the interpretation that the dispute between R' Tarfon and R' Akiva relates to a case

(Continued on page 2)

REVIEW and Remember

1. Why was R' Kahana hesitant to take the money for the increased value of his flax?
2. When is a robber obligated to add a one-fifth surcharge to the money he returns to his victim?
3. What is the point of dispute between R' Tarfon and R' Akiva?
4. To whom does the Gemara refer when it mentions חסיד אחד?

Distinctive INSIGHT

The limit for theft is a peruta

הגוזל את חברו שוה פרוטה וכו'

Minchas Chinuch (Mitzvah 130, #4) analyzes the halacha in our Mishnah which sets the limit for theft at a peruta. On the one hand, we could say that the monetary amount of a peruta is the threshold of what is defined as theft. Just as we find limits to define the legal definition of what is considered eating or in terms of sizes for tum'ah, so too we are taught that a peruta is the amount necessary before an act of stealing is legally meaningful. On the other hand, we might say that an act of stealing is defined with even the smallest amount of larceny, but the sages determined that until the amount is a peruta, the owner would overlook the theft, and it is only at the level of a peruta that the act need be pursued.

In order to resolve this inquiry, Minchas Chinuch cites the Gemara in Sanhedrin (59a) which states that theft from an idolator is more severe than theft from a Jew. Theft from an idolator applies even at less than a peruta, because they are not willing to forgo any amount taken from them, while theft from a Jew only applies at a peruta or more, as the Jew dismisses the loss when it is less than a peruta. We see, concludes the Chinuch, that theft is prohibited even when the amount taken is less than a peruta, but a Jew is assumed to forgo the sin against him when it is less than this amount.

Rambam (Hilchos Melachim 9:9) writes that the crime of theft only applies when the amount stolen is a peruta or more. The reason theft applies even less than this amount for idolators is that שיעורים for mitzvos of the Torah are only given as they are applied to Jews. Maggid Mishne explains that Rambam may hold that theft applies even for an amount less than a peruta, but only due to his holding according to R' Yochanan from Yoma (74a), using the rule חצי תורה שיעור אסרה תורה. This means that the Torah not only prohibits partaking of the full volume which is normally prohibited, but it also prohibits an amount smaller than that, particularly when the smaller amount is capable of being combined with more of that item. For example, one may not eat even a crumb of non-kosher food, although the amount which is defined as "eating" to be liable is only a k'zayis. In our case, stealing one half of a peruta is prohibited, because the thief may then steal another half of a peruta. Nevertheless, the limit for theft itself is only a full peruta.

Minchas Chinuch takes issue with this opinion of Rambam, as we noted, due to the Gemara in Sanhedrin which states clearly that theft from a Jew is not applicable for less than a peruta. ■

HALACHAH Highlight

The mitzvah to pay a worker on time

או מצא אבידה וכחש בה ונשבע על שקר

Or he found a lost item and denied it and swore falsely

Teshuvus Rav Pealim¹ cites a teshuvah of Radvaz². Radvaz was asked whether the aphorism, "there is a mitzvah for a person to pay back his debts" (פריעת חוב מצוה) is a Biblical command or if it is only Rabbinic. Moreover, if it is a Biblical command why isn't it counted as one of the 613 mitzvos of the Torah? Radvaz answered that it is a Biblical command and cites the pasuk of the Torah (Vayikra 5:23) that states, "And he shall return the stolen item that he stole, or the profit of his fraud or the pledge that was left with him or the lost item that he found." Rambam³ writes that the halacha is that someone who falsely swears that he does not owe someone money must pay the victim the principal as well an additional one-fifth surcharge. This applies, elaborates Rambam, whether we are dealing with a robber, someone who committed fraud, a thief, a borrower, a watchman, someone who found a lost object and denies possession of it, a partner who denies that he retained some of the assets of the partnership or someone who does not pay his worker.

In this list, Rambam equates paying back a loan (i.e. a borrower) with all of the other examples that are enumerated by the Torah. Since in the beginning of this halacha Rambam

where the robber swore falsely.

Another challenge to this interpretation from Rava is presented.

These challenges are accepted and the Gemara suggests that the Mishnah follows R' Tarfon and offers a new explanation of the dispute between R' Tarfon and R' Akiva.

This interpretation is also challenged. ■

(Overview. Continued from page 1)

wrote that one who stole from a friend is Biblically obligated to return that stolen object, it is logical that there is a mitzvah to pay back the money one owes for all of the other examples of the Torah, including loans. (Even though the Torah does not mention the case of a loan Rambam clearly categorizes it together with the cases that are Biblical without drawing a distinction indicating that there is no difference between the case of a loan and the cases that are mentioned explicitly in the Torah.)

The reason paying a loan is not counted as one of the mitzvos is that the mitzvah to return stolen property is the general mitzvah that includes all cases where payment is required. Rather than enumerate each form of payment as a separate mitzvah we only count the first case of returning stolen property. ■

1. שו"ת רב פעלים חר"מ ח"ד סי' ז'

2. רב פעלים כתב שתשובה זו נמצאה בח"ג סי' תר"י אבל חפשי ולא מצאתי

3. רמב"ם פ"ז מהל' גזלה ואבידה ה"ב ■

STORIES Off the Daf

All the way to Medea

ולכנו אחריו אפילו למדי

Acertain man asked the following question to Rav Yitzchak Zilberstein, shlit"a: "A certain experience from when I was younger gives me no rest. I would be forever grateful to the Rav if he could give me an appropriate teshuvah for my transgression.

"When I was young I went with a friend to visit a certain older man from France. He had emigrated here from France and was not in the greatest health. At one time, my friend had assisted this man for while and even slept in his apartment to ensure that his every need was carried out. Naturally, my

friend felt very much at home. Right as we were leaving my friend took me into the kitchen and served me a cup of juice.

"Later I learned that this was quite likely theft, and that I was required to make restitution for the juice. Unfortunately, when I tried to return to this man to explain and perhaps pay him back, I found that he had already died. I would have paid his relatives, but his son lives in France and I don't know his address.

"So I have two questions: Was this actually theft? And if it was, must I track down the son to pay it back?"

The Rav replied, "Although it is likely that this elderly gentleman would have happily given you a drink, you cannot assume this since he did not give it to you himself, and you have no way of knowing that he would not have been

particular regarding the juice, especially if he was a thrifty sort of person. I heard that Rav Eliezer Gordon of Telz, zt"l, invalidated a witness to a divorce when the witnesses took a glass of wine that was on the table without asking permission. It is plausible that juice is no different.

"Yet you need not search out the son in France. Although the Gemara in Bava Kamma 103 states that one who stole even a prutah's worth and swore falsely regarding this must even go to Medea to repay the theft, this is only if he swore. It comes out of the Minchas Chinuch that you can be mezakeh the money to the son through another person. In this way, you have certainly fulfilled any obligation you may have."¹ ■

1. עלינו לשבח במדבר ע' תרל"ג-תרל"ד