

OVERVIEW of the Daf

1) Exemption from the one-fifth surcharge (cont.)

The Gemara concludes explaining the relevance of the inquiry of whether it is the כפל payment that exempts a person from also paying the one-fifth surcharge or is it that one oath can only generate one payment.

Rava answers that once one is liable to pay כפל he is exempt from paying the one-fifth surcharge.

Ravina inquires whether כפל and the one-fifth surcharge can be paid by two separate people.

The circumstances of the inquiry are clarified and the matter is left unresolved..

R' Pappa inquires whether one person could be liable to pay כפל or the one-fifth surcharge twice for the same sum of money.

The circumstances of the inquiry are explained.

The Gemara proves from a statement of Rava that one could be liable multiple כפל or one-fifth surcharges for the same sum of money.

2) A shomer who pays for a stolen object

Abaye and Rava disagree who collects כפל when a shomer swears that the deposit was stolen and he then paid for it and subsequently the robber was found.

Each Amora offers the rationale for his respective opinion.

It is further explained how both opinions based their position on an inference from the same Mishnah.

Each Amora explains why he rejects the other's inference.

3) A thief who admits his guilt to the shomer

The Gemara inquires whether a robber who admits his crime to a shomer who took an oath to exempt himself from liability would have to pay כפל if he denied his crime to the owner of the stolen object.

Rava answers that it depends on whether or not the owner took a truthful oath.

Rava asks a related question that is left unresolved.

A second version of Rava's unresolved question is presented.

The Gemara inquires whether a robber who admits his guilt to the owner of the stolen object but denies his guilt to the shomer who paid the owner after the object was stolen

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 By the Muskat and Lindner families
 In loving memory of their mother
 מרת ציפורה פייגא בת הרב אלכסנדר סנדר ע"ה

Distinctive INSIGHT

Repayment of the stolen money when the son inherits

הגוזל את אביו ונשבע לו ומת הרי זה משלם קרן וחומש לבניו או לאחיו

The Mishnah teaches the case where a person steals an object from his father, and the son takes an oath denying the theft, and the father then dies. If the son then admits that he swore falsely, the son must repay the item he stole, plus a חומש (one-fifth penalty), and bring an asham offering. If the father has other sons, the payment is divided among them. If the father has no other sons, the payment goes to the father's brothers. Rashi explains that even though the son inherits from his father, and he therefore inherits in return his portion of the item he stole, the son must nevertheless fulfill his obligation to return the stolen object.

Rosh (cited in Shitta Mikubetzes) writes that although, from a Torah-level perspective, the son does not need to return the portion which he has now inherited, the rabbi obligated him to rid the stolen object from his possession. The proof for this is a statement later (109a) that if the son cannot find any heir to his father, he must take the wallet he stole and give it to a fund for the poor. If the obligation to return the stolen goods was a Torah-level requirement, the option of giving the money to tzedakah would not satisfy his obligation.

Pnei Yehoshua, however, does learn that the son's requirement to repay the money is a Torah-level law. Once he denied owing the money and took an oath to back up his lie, he cannot achieve atonement until he pays the principal plus the one-fifth penalty. The returning of the money is an essential part of the atonement process.

Chazon Ish writes (20, #12) that according to the opinion that this is a Torah-level law, the rule to allow giving the money to tzedakah must be part of a halacha l'Moshe m'Sinai, because we could not arrive at such a conclusion based upon logic alone. ■

REVIEW and Remember

1. What are the circumstances where one would pay כפל to one person and the one-fifth surcharge to a second person?
2. What is the point of dispute between Abaye and Rava concerning כפל?
3. When is a robber exempt from paying כפל for his admission to a watchman?
4. Is it possible for a watchman to resume his responsibilities if the deposit was taken from his possession?

HALACHAH Highlight

What should be done with money when the depositor cannot be found?

הגזול את אביו ונשבע לו ומת וכו'

One who steals from his father and took a false oath and the father died etc.

Poskim discuss a case in which Reuven received a deposit from Shimon and Shimon died without any known heirs, what is Reuven to do with the money? Maharam of Lublin¹ ruled that Beis Din should take the deposit from Reuven and either hold onto it or give it to someone to hold in escrow until a relative appears to collect his inheritance, since every Jew has a relative, or, in the event a relative cannot be located, wait for Eliyahu Hanavi to arrive and direct the money to the correct person. Rav Yaakov Emden², however, disagreed with Maharam of Lublin's assertion that the money should be taken by Beis Din from Reuven and writes that not only does Beis Din not take the money from Reuven but he can consider the money his and should consider this a gift from Hashem. Chasam Sofer³ quotes the opinion of Rav Yaakov Emden and cites further support for that position and amongst his proofs is our Gemara.

Teshuvos Chelkas Yaakov⁴ was asked to rule about a case in which Reuven received one thousand dollars from Shimon during one of the world wars. Reuven made numerous attempts to track down Shimon to return to him his money but as much as he tried he was unsuccessful at locating Shimon and he did not know anything about Shimon's family to begin to search for surviving relatives. Reuven was interested in using the money to publish letters from great scholars who perished during the war and inquired whether he is permitted to do so. Chelkas Yaakov cites our Mishnah that discusses the responsibilities of a son who stole from his father and the comment R' Yosef makes in the Gemara which, according to Rashi means, in the event the son cannot find another relative to whom he could return the

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would pay כפל.

The inquiry is left unresolved.

4) The watchman's responsibility to pursue the thief

Abaye maintains that an unpaid watchman has the option to swear to the owner or pursue the robber himself whereas a paid watchman must pursue the robber himself. Rava argues that in both cases the watchman must pursue the robber himself.

It is noted that Rava's position is seemingly at odds with a ruling of R' Huna bar Avin.

Rava qualifies R' Huna bar Avin's opinion in a way that does not contradict his ruling.

5) A watchman's responsibility after the stolen object is returned

Rabbah Zuti inquires about whether a watchman resumes his responsibility if the stolen object that was taken in an unavoidable way is returned into his possession and the matter is left unresolved.

6) MISHNAH: The Mishnah discusses additional cases of liability for an unpaid watchman who swears falsely about the deposit and subsequently admits that he lied. The Mishnah also addresses a case of a son who stole from his father and took a false oath denying the theft and then admitted to his crime after his father passed away. A second related case is presented. ■

stolen money he should give it to tzeddaka. His conclusion, based on his analysis of the different commentators to our Gemara is that it would be permitted for Reuven to use this money for the publication of the letters written by great scholars who perished in the war. ■

1. שר"ת מהר"ם מלובלין סי' י"ב

2. שר"ת היעב"ץ ח"א סי' קמ"ב

3. שר"ת חת"ס חו"מ סי' קכ"ב

4. שר"ת חלקת יעקב חו"מ סי' ט"ז ■

STORIES Off the Daf

Identifying the criminal

והעדים מעידים אותו שגנבו

Rav Nissim Yagein, zt"l, once spoke on the topic of theft. "Surely no one here would ever consider stealing outright. Yet, it is sometimes easy to transgress the prohibition of theft without even noticing. Although we feel as though our hands are completely clean, the reality is that we are still thieves.

"For example, it is fairly common for one who needs to go to the city center to call a cab. If a neighbor then offers him a ride as he is waiting for the cab, there are times when someone might thoughtlessly take the opportunity to save a little money. But why don't people realize that this is nothing less than outright theft? The driver comes all the way to his house and spends money on gas and likely would have found another client if not for this man's call. How can one justify robbing him of his time and money?

"Another fairly common example:

One often has guests over for Shabbos. If the baal habayis accidentally spills the Kiddush wine on a boy's jacket, he feels that just asking forgiveness suffices. Yet why should he think for a moment that this forgiveness is given whole-heartedly? Does the guest have an option of explaining to his host that he really can't afford to pay the dry-cleaning bill? A truly honest person will insist on paying the bill.

"It is only through continuous vigilance that one is ensured that his hands are absolutely clean!"¹ ■

1. נתיבי אור קמ"א-קמ"ב