

OVERVIEW of the Daf

1) The twofold payment (cont.)

The Gemara explains why it is possible to make multiple expositions from the phrase **אם המצא תמצא**.

2) Calculating payments

Rav taught that the principal is paid according to the object's value at the time of the theft but **כפל** and **'ד** 'וה' are calculated based on the object's value at the time of the court case.

An exposition is cited as proof to Rav's position.

R' Sheishes unsuccessfully challenges this exposition from a Baraisa.

Another unsuccessful challenge to Rav's position is presented.

The Gemara clarifies the exact case where Rav's ruling applies.

R' Chanina cites a Baraisa in support of Rav's position.

Rava rejects this proof.

3) Paying an additional fifth for taking a false oath

The Gemara cites the opinion of Chachamim who maintain that one pays an additional fifth only when his payment is limited to the principal but if he pays **כפל** he is not obligated to pay the additional fifth but in all cases he must bring a Korban Asham.

The Gemara explains why the Korban Asham is brought in all circumstances.

The exchange between R' Shimon ben Yochai and Chachamim regarding this point is recorded.

4) Stealing an animal that matured

R' Ila asserts that if one steals a young animal and slaughters it after it has matured he does not pay **'ד** 'וה' since he acquired the animal when it matured.

R' Chanina challenges this position and they debate this issue until it is left without resolution.

R' Zeira suggests that an animal that matures should be acquired since it undergoes a change of name.

Rava answers that even a newborn is called an ox or a ram.

Pesukim that support this statement are cited.

The Gemara returns to the challenge presented by R' Chanina to R' Ila.

R' Sheishes answers that R' Ila follows a position of Beis

Shammai and cites a related dispute between Beis Shammai and Beis Hillel.

The Gemara begins to elaborate on the point of dispute between Beis Shammai and Beis Hillel. ■

Distinctive INSIGHT

The change which effects a transfer of ownership

אמר רב אילעא גנב טלה ונעשה איל עגל ונעשה שור נעשה שינוי בידו וקנאו, טבח ומכר שלו הוא טובח שלו הוא מוכר

Rav Ila'ah teaches that if a lamb is stolen and it matures and becomes a ram, or if one steals a calf and it grows and becomes an ox, the thief has acquired the animal. Now, if the thief proceeds to slaughter or sell the animal he will not pay the penalty of four or five times the value of the animal, as we now say that he has slaughtered or sold his own animal, and not one that still is owned by the original owner.

We must define the nature of the **שינוי** which effects this acquisition. Rosh (**שינוי השם**) writes that the change in name which has transpired (**שינוי השם**) is a bona fide **שינוי**, and the Torah thereby recognizes that possession of the animal transfers from the original owner to the thief with the animal's maturing process and the associated change from the animal having been a lamb to becoming a ram. This is also the ruling of Tur and Shulchan Aruch (C. M. 353).

ים של שלמה wonders about the comment of Rosh. The conclusion of our Gemara is that there really is no change of name in the particular examples used in our discussion. A ram which is even one day old is already referred to as an **איל** (not merely a **טלה**/lamb), and a one-day old ox is already known as a **שור** (and not merely an **עגל**/calf). The name of the adult animal is therefore not a changed name, so this cannot be the "change" to which R' Ila'ah refers. Rather, the change is the physical change in the animal from being small and undeveloped into being large and mature. The reason R' Chanina disagrees and says that this change does not effect a **קנין** is that it is a change which happens by itself (**ממילא**), and he is of the

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REVIEW and Remember

1. What is the point of dispute between Rav and R' Sheishes?
2. If one stole a barrel of wine worth a zuz and after it increased in price to four zuz it broke, how much does he pay the owner?
3. According to Chachamim, when does a thief pay an additional fifth for swearing falsely?
4. What is the point of dispute between Beis Shammai and Beis Hillel?

HALACHAH Highlight

Does a thief become a watchman?

Rav rules that a thief pays for stolen principal according to its value at the time it was stolen

Shulchan Aruch¹ discusses the liability of someone who stole property worth one zuz and by the time the thief was brought to Beis Din the item increased in value to four zuz. If the thief slaughtered, sold, broke or lost the item at the time it was worth four zuz the thief will have to pay four zuz. Sema² explains that the case of lost refers to a circumstance in which the thief was negligent with the object he stole and as a result of his negligence the item became lost. Ketzos Hachoshen³ disagrees with this interpretation of Shulchan Aruch. The only time a person is obligated to pay when something becomes damaged or lost as a result of negligence is when he is a shomer but a thief would not be obligated to pay for his negligence since he never accepted upon himself the responsibilities of a shomer. If he damaged the item directly he would be obligated to pay its current value of four zuz but that obligation is because he is damaging (מזיק) an item that is currently worth four zuz. In contrast when he does not damage the object directly his only liability is that he stole the object, accordingly he is only obligated to pay one zuz, its value at the time of theft.

Sha'ar Mishpat⁴ cites the difficulty Ketzos has with Sema and writes that upon further review it seems as though Sema's ruling is correct. Rema⁵ rules that Reuven, who saw Shimon take an object from Levi, is obligated to pay Levi for the stolen

אמר רב קרן כעין שגנב

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opinion that the only change which results in a transfer of ownership is one which is done to the animal by others (בידים).

ש"ך (ibid. #1) defends Rosh and explains that although in the days of R' Ila'ah a day-old ox was also referred to as an ox, the halacha recognizes that the way people speak has legal significance, and today we only call a newborn animal a calf or lamb. The mature animal's name changes to an ox or ram, so we consider this a significant name change. This, then, is a שינוי which can effect the transfer of possession. ■

object in the event that he somehow had possession of the object but returned it to Shimon, the thief, rather than Levi, the owner. The rationale behind the ruling is that an object that was stolen is lost from its owner (אבוד מיד הבעלים) therefore once it reaches Reuven's possession he is a watchman for a lost object (שומר אבודה) who is responsible at least to the degree of an unpaid watchman. Once he is assigned that responsibility he is obligated to pay in the event that he is negligent. Similarly in our case, once the thief has the object in his possession it is lost from its owner and he, the thief who has possession of that stolen object, is obligated to return it. That obligation imposes on him the responsibilities of a watchman, thus if he is negligent he must pay for the value of the object at the time of his negligence which in our case is the increased value of four zuz. ■

1. שר"ע חר"מ סי' שנ"ד סע' ג'
2. סמ"ע שם סק"ז
3. קצה"ח שם סק"ב
4. שער משפט שם
5. רמ"א סי' שמ"ח סע' ז' ■

STORIES Off the Daf

A question of propriety

חיטין ועשאן סולת

Acertain community required a new aron kodesh. One of the wealthier members of the community purchased a very expensive mirror in a very ornate frame. It struck him that the frame of his mirror would look beautiful as an aron hakodesh, so he decided to donate it to the shul.

When word of this reached the Rav, he protested. "Moshe refused to accept the mirrors of the daughters of Israel for the כיור since he felt this was inappropriate for the mishkan. Although Hashem told him to accept them, this was an exception. In general, we learn that such accoutrements

are not permitted for use in a shul."

When the congregant got very upset, the Rav offered to take the question to the posek hador, Rav Shlomo Kluger, zt"l. He answered, "First of all, we find in the Rema (Yoreh Deyah, #147), that one may not use an object that had been used for a mundane purpose to cover the bimah. Similarly, it is forbidden to use other items that were previously used for mundane matters for other holy uses in shul. It is irrelevant that the present owner has never used it for anything else, since the prohibition applies if it was ever used for a mundane purpose, regardless of who owned it then.

"In this particular case, it is even more problematic since the mirror was purchased from non-Jews and was almost certainly used for purposes that have no rela-

tionship to holiness and definitely disqualify the item. However, there is another side to this question. Beis Hillel in Bava Kama 65 rule that even things which are prohibited to be used to purchase a korban like esnan may be used if there is a change in the item. In light of this, why would we think the mirrors were prohibited for use in the כיור? The answer is that since it was not normal to use mirrors for a laver, it would be recognizable that mirrors had served as the base material and a shinui would not help. Similarly, in our case, although the frame was not directly used for an unseemly purpose, since it would be recognizable that the aron hakodesh comes from the frame of such a mirror it is definitely prohibited." ■

1. שו"ת האלף לך שלמה ח"א ס' ע"ב

