

This month's Daf Digest is dedicated in memory of
Mr. Israel Gotlib of Antwerp and Petach Tikva and Yisrael Tzvi ben Zev.
By Mr. and Mrs. Manny Weiss

OVERVIEW of the Daf

1) Stealing and slaughtering on Yom Kippur

The Mishnah's ruling that a thief pays 'ד 'וה for stealing and slaughtering on Yom Kippur is challenged since he should be exempt due to the punishment of lashes that he receives.

It is suggested that the Mishnah follows R' Meir who allows lashes and compensation.

This explanation is unsuccessfully challenged.

The Gemara challenges the premise that the thief pays 'ד 'וה when another person sold or slaughtered the stolen animal.

Two sources are cited to demonstrate that a thief is liable to pay 'ד 'וה when another person sold or slaughtered the animal.

Mar Zutra questions how it is possible for one to be liable for what another does but exempt if he did the same act himself.

R' Ashi answers this inquiry.

It is explained that Rabanan who disagree with R' Meir follow R' Shimon who says that a slaughter that is not fit is not categorized as a slaughter.

The Gemara further clarifies that Rabanan follow the position of R' Yochanan HaSandlar that one may not eat from an animal that was intentionally slaughtered on Shabbos.

The rationale behind R' Yochanan HaSandlar's position is explained.

2) Benefitting from melachah that was done on Shabbos

R' Acha and Ravina disagree whether it is Biblically or Rabbinically prohibited to derive benefit from melachah performed on Shabbos.

The rationale for each position is explained.

The position that it is Rabbinically prohibited is explained.

Rava explains why the thief pays 'ד 'וה for slaughtering for idolatry and a condemned ox.

R' Kahana unsuccessfully challenges the assertion that the Mishnah follows R' Meir.

3) An ox owned by partners

Rava inquired whether a thief must pay if he stole and slaughtered an animal that belonged to partners and admitted to one of them of his crime.

R' Nachman responded that he is not liable.

This ruling is unsuccessfully challenged from our Mishnah.

Rava further challenges this interpretation.

R' Nachman offered one response and in the morning changed his ruling. ■

Distinctive INSIGHT

The status of food prepared in violation of Shabbos

פליגי בה רב אחא ורבינא חד אמר מעשה שבת דאורייתא וחד אמר מעשה שבת דרבנן

Our Gemara cites a disagreement between Rav Acha and Ravina regarding the prohibited status of a product of a violation of Shabbos. For example, if food was cooked on Shabbos - is such an item prohibited from the Torah, or only due to rabbinic enactment? The Gemara had earlier cited a three-way disagreement regarding the guidelines of benefiting from intentional or inadvertent violation of Shabbos. Ra'aved explains that the Amoraim who argue here are discussing the view of R' Yochanan HaSandlar, who said that if the food was cooked on Shabbos inadvertently it may be eaten after Shabbos only by others (who did not violate the Shabbos), but not by the person who cooked it. If the food was cooked with intentionally violating Shabbos the food may never be eaten by anyone. Rav Acha and Ravina argue whether this is prohibited from the Torah or only rabbinically.

Rosh proves that Ra'aved is correct based upon an upcoming question of the Gemara. The Gemara notes that if the prohibition against eating something prepared in violation of Shabbos is only rabbinic, why would the Rabbanan in the Mishnah exempt a thief who slaughters an animal on Shabbos from paying the four-fold penalty? If the Torah technically allows the consumption of the meat when it is slaughtered on Shabbos, the שחיטה is valid, and although the thief's act is a violation of Shabbos, it is still a valid act of שחיטה. Now, explains Rosh, if Rav Acha and Ravina both agree that R' Yochanan holds the meat is prohibited from the Torah, and they are not arguing within the opinion of R' Yochanan HaSandlar, it could very well be that the Rabbanan of the Mishnah hold according to R' Yochanan HaSandlar, and the שחיטה is not valid at all. The fact the Gemara has difficulty with the Mishnah's exempting the thief from the four-fold payment therefore indicates that Rav Acha and Ravina argue within the opinion of Rav Yochanan HaSandlar, and the Gemara's question is according to the one who says that the שחיטה is not valid from a Torah perspective.

Rif writes that in a dispute between Rav Acha and Ravina, we rule according to the more lenient opinion (from Pesachim 74b). In this case, this means that we do not rule according to R' Yochanan HaSandlar. Rashba notes that Rif must have understood that these Amoraim argue if the halacha is according to the strict opinion of R' Yochanan HaSandlar. Yet, Rashba points out that we found here that the Amoraim argue how to understand R' Yochanan, not whether his view is the halacha. ■

HALACHAH Highlight

Liability for a car accident on Shabbos

קס ליה בדרכה מינייה

He is stood on [the punishment] that is greater than it

Reuven parked his car on the street before Shabbos and after Shabbos discovered that a non-religious Jew had crashed into his car on Shabbos. Without consulting a rabbi he took the non-religious Jew to court and was awarded five-thousand dollars to cover the cost of the repairs. After Reuven collected the money the question arose whether Reuven has the right to keep the money he collected. The principle of **קס ליה בדרכה מינייה** teaches that someone who is liable to two punishments for a single act is only given the more severe punishment. Accordingly, since the non-religious Jew is deserving of punishment for his Shabbos violation he should be exempt from financial liability even though the punishment will not be administered for his Shabbos violation.¹ What further complicates the matter is that R' Akiva Eiger² rules that money collected from a fellow Jew in a secular court that would not have been awarded in Beis Din is considered stolen property. Seemingly, Reuven should be obligated to return the money that was awarded to him.

Shach³ cites Maharshah who issues an interesting ruling related to the principle of **קס ליה בדרכה מינייה**. Rashi writes that a person who is exempt from paying for damages due to the principle of **קס ליה בדרכה מינייה** should nevertheless pay the damaged party in order to fulfill his obligation in Heaven. Maharshah adds to this that if the damaged party was to take hold (תופס) of property that belonged to the damager we would not force him to return that property. The rationale

REVIEW and Remember

1. What is the source that the thief pays 'וה' even when someone else does the slaughtering of the stolen animal?
2. What is the rationale behind R' Yochanan HaSandlar's position concerning food cooked on Shabbos?
3. Explain **דבר הגורם לממון כממון דמי**.
4. Is there such a circumstance where one would pay half of 'ד' וה'?

behind this ruling is that the damager owes the money since he damaged his friend's property but we can't force him to pay due to a technicality but if it was taken we recognize that he has the right to that money. In light of this ruling we can allow Reuven to keep the money. Although Rema⁴ rules that one may not use a gentile to collect money from a fellow Jew that is legitimately owed according to Jewish law, nevertheless once the money was collected he rules that it need not be returned. Therefore, although it was incorrect for Reuven to take his nonreligious neighbor to secular court, once a verdict in the case was issued and money was collected it is unnecessary for Reuven to return it since he does have a claim to the money and it is already in his possession. ■

1. ע' שו"ע חו"מ סע' תכ"ד סע' ב' וסמ"ע שם
2. חידושי רעק"א ריש סע' כ"ו
3. ש"ך חו"מ סע' כ"ח סק"ב
4. רמ"א חו"מ סע' ד' סע' א' ■

STORIES Off the Daf

Guarding the Shabbos

ושמרתם את השבת כי קדוש הוא לכם

On today's daf we find a reference to the verse **ושמרתם את השבת כי קדוש הוא לכם**—Guard the Shabbos, for it is holy to you... Clearly, this is yet another reminder to observe the Shabbos.

Rav Shlomo Zalman Auerbach, zt"l, would often encourage people to observe the Shabbos. His short message was very effective. "How can a person fail to learn the halachos of Shabbos? They are relevant on Shabbos every single week!"

Because he was so meticulous to always review the halachos of Shabbos b'iyun, the staff of Yeshivas Kol Torah were convinced that he would immediately consent to adding maseches Shabbos to the cycle of tractates learned by the yeshiva. They were very surprised when he was not so quick to agree.

Rav Auerbach made a further stipulation before he acquiesced: "Only on condition that we learn more than just the first melachah of הוצאה. We must see the other melachos as well!"¹

Rav Chaim Palagi, zt"l, would also arouse people to make time to learn these essential halachos. "We find in Sefer Chasidim that one must learn the halachos of

Shabbos close to Shabbos, just as one has an obligation to learn the halachos of each chag before the holy day.

He would add, "I recall with longing the good days of my youth. I learned in the beis medrash of Rabbi Magen, zt"l, for over twenty years... We would sit and learn hilchos Shabbos b'iyun every Friday, from the gemara to the halachah. If only the talmedei chachamim of our days would also learn hilchos Shabbos b'iyun every Friday whenever possible! Sadly, they are busy learning **מסכת ביקורים**—the "Tractate of Visits," as they fritter away the day flitting from one visit to another."² ■

1. חכו ממתקים ח"ב ע' קע"ז
2. כף החיים סימן כ"ט אות ג'