

OVERVIEW of the Daf

1) The twofold payment (cont.)

The Gemara concludes the challenge to the exposition in the Baraisa that כפל is made for living things as well as inanimate objects.

After an exchange back and forth regarding the validity of the exposition the Gemara finally accepts the Baraisa's exposition that all things are included in the כפל obligation.

The reason the Torah mentions four items explicitly is explained.

A Mishnah is cited that contrasts an unpaid watchman's false claim that an item was lost and his claim that it was stolen.

The Gemara takes note that the unpaid watchman pays כפל only when he falsely claims it was stolen but not when he claims it was lost and asks for the source for this distinction.

Two Baraisos are cited that clearly hold that one pays כפל if he falsely claims an item was stolen.

Rava explains the exposition that develops this position.

The exchange between the earlier-cited two Baraisos is presented regarding the relative strength of their respective positions. One Baraisa maintains that two verses refer to someone who falsely claims an item was stolen, and the another Baraisa that maintains that one verse refers to an actual thief, while another verse refers to someone who falsely alleges an item was stolen.

In defense of the position that maintains that both verses refer to one who falsely claims that an item was stolen the Gemara is forced to identify another source for the obligation of a thief to pay כפל. ■

REVIEW and Remember

1. What type of bird transmits tumah to a person who swallows it?

2. Why does the Torah mention an ox, a donkey, a sheep and a garment in the context of כפל?

3. What is the source that someone who falsely claims an item was stolen is obligated to pay כפל?

4. Explain אין משיבין על ההיקש.

Distinctive INSIGHT

The claims which result in the payment of כפל

למ"ד חד בגנב וחד בטוען טענת גנב, דהאי גנב הגנב אפקיה למעוטי טענת אבד, דר' חייא בר אבא מנ"ל? א"ל הקישא הוא ואין משיבין על הקישא

The Gemara cites two Baraisos which analyze the verses (Shemos 22:6,7) which teach the details of the law of a thief who is found. The verses present the law of an unpaid watchman who claims that the item entrusted to him was stolen. The verse declares that when the thief is found he must pay double (כפל). The Baraisos teach that the halacha of paying double applies to a watchman who falsely claims that the item was stolen (טוען טענת גנב) and where he takes an oath to verify his claim, when it was he who actually tried to steal the item. The halacha of paying double also applies, of course, to an actual thief who steals an item. The halacha does not apply, however, to a watchman who falsely claims that the item was lost (טוען טענת אבד) even though it was he who actually tried to steal the item.

The source for this last law, where the double payment is not applied to one who claims that the item was lost, is a matter of dispute between the two Baraisos. One learns it from the fact that we have two verses which teach the law of "the watchman who claims it was stolen." The reason we have two verses which teach the same lesson therefore teaches that the law of "claiming the item was lost" is excluded from כפל. The other Baraisa learns this law from the extra letter 'ה' in the word הגנב. The first Baraisa uses the extra 'ה' to teach the law of Rav Chiya bar Abba, that the watchman who claims that the item was stolen is treated completely as a thief, and he is liable for double, and potentially four or five payments where he slaughters or sells the animal he stole.

Finally, the second Baraisa learns the lesson of Rav Chiya bar Abba from the juxtaposition of the verses of a thief and that of a watchman who claims that the item was stolen. This is a היקש, and we are not to register logical arguments against it.

Some commentators note that the word הגנב with its extra 'ה' appears twice in these verses. The Baraisa which uses one of the extra letters to exclude טוען טענת אבד can still use the other extra 'ה' to learn the law of Rav Chiya bar Abba. Why does the Gemara search until it finds a היקש? The answer is that the first reference of הגנב, with its definite article "the" is appropriate, as the first verse (v. 6) is speaking about an actual thief. It is only in verse 7 which is not speaking about an actual thief, but of a watchman who makes a false claim, where the definite article 'ה' seems inappropriate. This letter is therefore ripe for analysis. ■

HALACHAH Highlight

Collecting כפל in our times

He makes a כפל payment

Shulchan Aruch¹ rules that nowadays Beis Din does not have the authority to obligate a thief to pay כפל. The reason is that our judges do not have the type of סמיכה that is traced back to Yehoshua, therefore, the authority they have to adjudicate is as agents of earlier Batei Din and that agency was only granted for circumstances that are 1) common and 2) involve a loss of principal. Since the כפל payment is a fine imposed by the Torah but does not represent a loss of principal Beis Din may not obligate someone to pay כפל. Shulchan Aruch² adds that although Beis Din is not authorized to obligate a person to pay כפל, nevertheless, if the damaged party seized property of the damager equal to what he has the right to collect, meaning even כפל, it will not be taken from him.

Ketzos Hachoshen³ takes note of the fact that alt-

משלם תשלומי כפל

though regarding this halacha Shulchan Aruch does not draw a distinction between different categories of liability, there is, in fact, a fundamental distinction that needs to be drawn. When discussing cases that are not adjudicated by Beis Din due to the fact that they are uncommon it is clear that there is an obligation for the damager to pay. The reason the damager cannot be forced to pay is that Beis Din does not have that authority. However, since it is clear that he should pay there is an obligation for him to voluntarily pay to fulfill his Heavenly obligation (לצאת ידי שמים). In contrast, when it comes to the categories of fines there will not be an obligation for the damager to voluntarily pay. The rationale behind this approach is that a person is not obligated to pay a fine unless Beis Din rules that he must pay the fine. Since nowadays we do not have a Beis Din with the authority to issue such a ruling the obligation to pay a fine never begins and as a result there is no obligation to pay even to fulfill one's Heavenly responsibility since the obligation does not exist. ■

1. שו"ע חו"מ סי' א' סע' א'
2. שו"ע שם סע' ה'
3. קצה"ח שם סק"ז ■

STORIES Off the Daf

Common thievery

בגנב עצמו הכתוב מדבר

Today's daf discusses the verse regarding a thief.

As is well known, the great Chasidic masters would try and find methods to help others—especially simple people—improve. They would carefully take the measure of each simple friend and work out what to say, to enable them to realize where they were wrong and to change. During the time when Rav Yitzchak of Vorki, zt"l, worked for Tamar'l of Warsaw, there was a simple coworker in whom he would confide.

One day Rav Yitzchak said, "You know, it is permitted to steal a little

bit from the ba'al habayis. I am careful to take a little."

The simple man grew very animated, "I, too, pilfer from the boss..." He began to enumerate various times when he had robbed their employer.

Rav Yitzchak of Vorki gazed at this man with a mixture of pity and horror and cried, "Oy vey! Is that what you thought I meant? How is it possible for someone to act in such a wanton manner? One who acts in such a way has violated some very serious Torah prohibitions. He must ask forgiveness and repay every penny."

He continued, "I was talking about stealing time to learn. This is surely permitted, since our boss is a G-d-fearing person who loves Torah and will not mind if we grab a little Torah whenever we can."

These strong words spoken from a heart, filled with love and yiras shamayim, caused his simple coworker to become a ba'al teshuvah!¹

The Pele Yo'eitz, zt"l, discussed some people's strange tendency to rationalize stealing from their employers, customers, or anyone else. "They falsely claim that nowadays times are so hard that if one does not steal he will not be able to provide even the simplest fare for his family. In this manner stealing seems to them as if it is permitted and no one even regrets these serious Torah violations... It is well known that the very first question Hashem asks after a person leaves this world is: 'Did you do business in good faith?'"² ■

1. שיח שרפי קודש ערך תורה אות י"ח
2. פלא יועץ אות משא ומתן