

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, sanctifying and slaughtering

The Gemara questions why someone who steals and sanctifies an animal does not pay 'וה' ד' since that sanctification should be equivalent to selling the stolen animal.

One resolution is suggested and rejected.

A second resolution is suggested and rejected.

A final explanation is presented.

### 2) Clarifying R' Shimon's position

R' Shimon's position is challenged.

The Gemara explains that R' Shimon was not referring to the previous line of the Mishnah as was initially assumed and identifies the halacha R' Shimon was addressing.

Another challenge to R' Shimon's position is presented.

Three answers to this challenge are recorded.

R' Elazar challenges two of the answers, one that was suggested by R' Yochanan and one that was suggested by Reish Lakish.

The Gemara answers that R' Elazar forgot that R' Shimon maintains that blood that stands to be thrown is considered as if it were thrown and items that stand to be redeemed are considered as if they were redeemed.

A Baraisa is cited that demonstrates R' Shimon's position regarding blood that stands to be thrown. ■

## REVIEW and Remember

1. Who owns kodshim kalim?

2. Explain the principle of חזרה קרן לבעלים.

3. What action permits a korban for consumption?

4. What is the proof that R' Shimon subscribes to the principle כל העומד לזרוק כזרוק דמי?

## Distinctive INSIGHT

*When the thief is מקדיש the animal, when is it similar to a sale?*

מעיקרא תורה דראובן והשתא תורה דראובן

The Mishnah taught that if the thief first consecrated the stolen animal, and he then slaughtered it or sold it, he does not pay the four or five-fold penalty. According to the conclusion of the Gemara, this halacha applies whether the thief designated the animal as קדשים קלים or as קדשי קדשים, and the reason that the multiple payments of four or five are not assessed is that consecrating the animal is not considered as a full sale. In a sale to a private individual, the animal first belonged to the thief, and now it belongs to the buyer. This is a type of sale which results in the penalties of four or five. However, when the animal is consecrated, although there is a change in ownership, the nature of this change of possession is not as pronounced as in a regular case. Here, the animal was owned by Reuven (the thief), and even after it is הקדש it is still referred to as the animal of Reuven. In fact, even when he later brings the animal as an offering, it is still known as "the olah of Reuven." Therefore, this change of ownership is not the type which results in payment of multiples of four or five.

The Rishonim discuss whether this same exemption applies as well when the consecration was for the general upkeep of the Beis HaMikdash (בדק הבית). Tosafos (ד"ה states that when the thief gives a donation to בדק הבית, his name is no longer associated with the item, and the gift to הקדש is paramount to a sale. The thief must therefore pay the four or five-fold penalty for having sold the animal.

Tosafos Ri"d, however, learns that the exemption from paying multiple payments applies in all cases of הקדש. If the consecration is for an offering, we have seen that the change in possession is diminished by the name of the thief remaining with the animal even in its state of being הקדש. This is also true regarding בדק הבית as well, as the "name of the thief" as previous owner remains relevant, for example, regarding redemption. If the thief redeems the animal, he must add a חומש payment, whereas anyone else who redeems the animal pays its market value without adding a חומש. This is also the opinion of Ramban (in מלחמות קיד).

Rambam (Geneiva 2:6) does not make a distinction be-

## HALACHAH Highlight

### *Serving as sh'liach tzibbur or taking an aliyah by force*

והרי חזרה קרן לבעלים

*But in such a circumstance it is as if the principal was returned to the owner*

Chasam Sofer<sup>1</sup> wrote that he recalls from his youth hearing an interesting ruling from the Shev Yaakov regarding someone who takes a kaddish that belongs to someone else. Shev Yaakov asserted that reciting a kaddish that belongs to someone else will not provide benefit for the soul of the deceased relative of the one who took the kaddish and will not cause a loss to the relative of the one who was supposed to recite the kaddish because the kaddish will always benefit the one who was supposed to benefit from that kaddish. Chasam Sofer writes that proof to this assertion could be found in our Gemara. The Gemara teaches that one who steals and offers as a korban an animal designated to be a Korban Olah from his friend is exempt from payment. The reason, explains the Gemara, is that the principal has returned to the owner, meaning Hashem knows who is the true owner of the animal and he is the one who is credited with the mitzvah, so too regarding the recitation of kaddish it will be credited to the one who had the right to say it.

Tosafos<sup>2</sup> rules that if someone steals an aliyah from another he does not have to pay the ten zuz that is normally

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tween a thief who consecrates an animal as an offering or if it is for בדק הבית. In all cases, the thief's actions are not regarded as a sale. Maggid Mishne explains that Rambam holds that if there was a distinction to be made, the Gemara itself would have clearly delineated the difference between the thief's being מקדיש for a קרבן or for בדק הבית. ■

paid when one steals a mitzvah from another since the victim could have answered אמן to the beracha made by the one who stole the aliyah. Teshuvos Tzvi Tiferes<sup>3</sup> questions this ruling from the ruling of Shulchan Aruch<sup>4</sup> that one should not answer אמן to one who serves as sh'liach tzibbur by force. How do we resolve these two contradictory rulings? Teshuvos Ginzei Yosef<sup>5</sup> suggests that there is a fundamental difference between someone who forcefully serves as sh'liach tzibbur and someone who steals an aliyah. It is necessary for a sh'liach tzibbur to be acceptable to the congregation and thus someone who forces himself upon the tzibbur cannot fulfill the role he is supposed to serve. In contrast, there is no such requirement for the person who receives an aliyah to be acceptable to the tzibbur and thus the aliyah is acceptable and the victim should have answered אמן to the thief's beracha and if he didn't it is his loss. ■

1. שו"ת חת"ס יו"ד סי' שמ"ה
2. תוס' לקמן צ"א ד"ה וחייבו רבן גמליאל
3. שו"ת תפארת צבי סי' ל"ז
4. רמ"א אור"ח סי' נ"ג סע' כ"ב
5. שו"ת גנזי יוסף סי' ל"ה אות ח' ■

## STORIES Off the Daf

### *Misdirected Mitzvos*

מה לי מכרו להדיוט

Today's daf discusses selling a stolen object.

Once, a certain man approached someone and offered to sell him used, but very good, talis and pair of tefilin.

"But where are they from?" asked the prospective buyer.

"They are my father's extra pair," he replied.

"So you are selling it on his behalf?"

The man answered, "Actually, I took it without really getting permission. In any case, everything that he owns will

eventually be mine after he dies..."

The man figured that he was permitted to buy the tefilin since the general rule is that someone is not believed when he says that he is a wicked person. Since the man appeared to be maligning himself by saying that he had stolen his own father's belongings, technically his self-incrimination made his declaration suspect.

They agreed on a price and the son took the money and left town.

When the father noticed what looked like his missing pair of tefilin and talis on a fellow member of his minyan he was incensed. "Aren't those my property? I gave up on them months ago! Did you actually steal them from my house?"

"No, your son sold them to me."

"But who said he could? You must return them to me immediately!"

"Actually, I don't think that is correct," replied the buyer. "I purchased them from your son after you gave up on them, as you yourself admitted just now. They are therefore mine, and the most I must return to you is what I paid for them, not the objects themselves."

When the two went to beis din the dayan ruled that the purchaser must return the talis and tefilin to the father. "Certainly one who acted in such an underhanded manner should not be allowed to enjoy the benefits of his unethical actions!"<sup>1</sup> ■

1. מובא בדברי הגאונים כלל י"ז אות ז'