

OVERVIEW of the Daf

1) Clarifying R' Meir's position (cont.)

Related to clarifying R' Meir's position the Gemara asserts that the opinion that disagrees with his position reflects R' Shimon's position that an unfit slaughter is not a "shechitah."

In response to a challenge to this explanation the Gemara asserts that the view of Chachamim in the Baraisa (who disagree with R' Meir) follows the position of R' Yochanan Hasandlar who maintains that one may not eat an animal that was slaughtered on Shabbos.

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

R' Acha and Ravina dispute whether R' Yochanan Hasandlar's position reflects a Biblical or Rabbinic prohibition.

2) Clarifying the Baraisa

The Baraisa's case of slaughtering for idolatry is clarified.

The Baraisa's case of slaughtering an ox that is condemned to stoning is explained.

3) Clarifying R' Meir's position (cont.)

Rabbah suggests as an explanation of R' Meir's position that he maintains that one could be liable for lashes and payment but not death and payment.

The Gemara proceeds to explain that this explanation of Rabbah is consistent with two rulings of Rabbah, one related to slaughtering a stolen animal on Shabbos and one related to slaughtering an animal in an underground tunnel.

The necessity for Rabbah to issue two related rulings is explained.

R' Pappa issues a similar ruling but mentions a cow rather than a goat.

R' Ashi explains the novelty of R' Pappa's ruling.

4) Using the cow a deceased father borrowed

Rava issues a number of rulings related to using the cow a deceased father borrowed.

Two explanations regarding the intent of the last ruling of the Baraisa are presented.

5) Violating a relative (cont.)

The Gemara explains why R' Yochanan and Reish Lakish reject one another's explanation of the contradiction concerning one who is liable for lashes and payment.

6) Inadvertently violating a transgression that carries liability for lashes or the death penalty

The Gemara notes that the disagreement between R' Yochanan and Reish Lakish relates to their other disagreement of whether one who transgresses a prohibition that carries the punishment of lashes/death and payment, but committed the transgression inadvertently, is liable to pay. R' Yochanan maintains he is liable to pay whereas Reish Lakish maintains he is not liable to pay.

Each Amora explains the rationale for his position.

Reish Lakish begins a challenge to R' Yochanan's position. ■

Distinctive INSIGHT

Stealing and slaughtering on Shabbos

גנב וטבח בשבת פטור

Rabba rules that if one steals an animal and slaughters it on Shabbos he is exempt from the multiple payments of four or five. The reason is that he is exempt from the principle payment which coincided with a violation of Shabbos. Once there is no principle payment, the multiple payments of four or five are no longer applicable, as the Torah says "four" and "five" times the amount of the sheep or ox, and not "three" and "four."

Ritva notes that this being the case, the thief would be exempt if he merely stole the animal on Shabbos, even if he slaughtered it on a weekday. The key is that the principle payment is suspended, which renders void the remainder of the payment. Why, then, does Rabba stipulate that he is exempt only if the theft as well as the slaughter were on Shabbos?

Ritva answers that when the animal is slaughtered on a weekday, this constitutes a new act of theft, and the thief is liable for the principle payment once again. Although the initial theft was on Shabbos, we know that as long as the animal was still alive, it could have been returned intact. The act of slaughtering definitively removes the animal from the possession of its original owner. If this occurs on a weekday, the full multiple payments of four or five is applicable, and the thief is fully liable.

Rashba, however, disagrees, and he states that once the original theft takes place on Shabbos, the thief would be exempt even if the slaughter of the animal would be on a weekday. There is no payment of the principle, so the additional multiple payments are suspended. He therefore learns that the statement of Rabba is not to be understood narrowly. The halacha is that the thief is exempt not only if he steals and slaughters the animal on Shabbos, but also in a case where he steals the animal on Shabbos, even if he slaughters it on a weekday.

The Achronim struggle with the opinion of Ritva. How can Ritva simply explain that the original theft which took place on Shabbos can be ignored when the thief later slaughters the animal on a weekday? Although the animal is irreparably damaged when it is killed, the removal of the animal from the domain of the owner occurred on Shabbos, and for that, the payment of the principle should be released.

Or Sameach explains the rationale of Ritva. If a thief steals a barrel and later smashes it, he must pay back its later, higher value (Bava Kamma 65a). The reason is that the degree of the crime has been exacerbated when it is not only removed from the possession of its owner, but it is also damaged. So, too, here, when the thief slaughters the animal after having stolen it, he has generated a new obligation to pay the principle. Before this, the animal could have been returned intact, but now it cannot be returned.

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לע"נ ר' שלמה בן ר' משה זכרי ע"ה

HALACHAH Highlight

Children who accidentally eat someone else's food

כסוברין של אביהם היא וטבחה ואכלה משלמין דמי בשר בזול

If they thought it was their father's and they slaughtered and ate the meat they must pay the value of cheap meat

One time a grocery store made a delivery to the wrong family and before the parents returned home to correct the mistake the children ate some of the delivered bananas. A disagreement between the store owner and the family arose whether the family is responsible to pay for the bananas. Rav Tzvi Shpitz¹, the author of Mishpatei Hatorah cites our Gemara as precedent to determine the halacha in this case.

Our Gemara states that when the children slaughter an animal thinking it belonged to their deceased father they are not liable for the damage to the animal, which would make them liable for the market value of the animal while it was alive; rather they must pay the value of cheap meat, which is two-thirds of its value as meat. The difference between paying for damages and paying for the benefit from eating the meat is highlighted by Rav Yaakov Loberbaum², the Nesivos Hamishpat. Nesivos Hamishpat writes that had the children damaged the animal rather than eaten its meat they would not be liable to pay anything. The reason is that they have the right to presume that any property in their father's possession belongs to him; consequently, the damage that was caused is classified as if it were done due to circumstances beyond their control (אונס) and they are exempt from making payment.

STORIES Off the Daf

The labor of Shabbos

מה קודש אסור בהנאה אף מעשה שבת אסור בהנאה

On one Shabbos morning in 1943, the congregants of a certain shul arrived and found that the door was locked. Since there was no עירוב, they could not get in unless someone brought a key from a nearby house through the public domain. One member escorted his son home and instructed him to put the key in his pocket despite the fact that this is clearly prohibited.

By the time the two returned, the congregation's rabbi had arrived and been apprised of the problem and what

had been done. As the father and son approached, the rabbi barred the door with his body and announced to the crowd waiting outside the building, "Rabbosai! I hate to disappoint you and keep you waiting further, but this flagrant violation of the holy Shabbos didn't help us in any way! The Gemara in Kesuvos 34a states clearly that the benefits of intentional Shabbos violation are prohibited for the duration of Shabbos. It is therefore forbidden for any of us to enter the shul if it has been opened with a key carried through the reshus harabim where there is no eiruv. We must be patient and find a non-Jew who will be able to help us by bringing a different key."

Naturally, this took some time. Eventually the minyan began, and later in the day the rabbi took the time to reflect on

whether his decision had been correct. After all, making use of a key that had been the object of a melachah merely constituted an indirect benefit. This is very different from the direct benefit sought by one who wishes to enjoy food that was cooked on Shabbos.

The rabbi decided to ask Rav Moshe Feinstein, zt"l, if he had ruled correctly. Rav Moshe responded, "I am inclined to say that you ruled correctly and even indirect benefit in your case was prohibited. However, even if we were to conclude that according to the letter of the law it was permitted to make use of the key, you still acted properly. You had to make a fence so that Shabbos violation will not be cheapened in your congregants' eyes!" ■

REVIEW and Remember

1. What is the source that מעשה שבת are prohibited for consumption?

2. Explain הגורם לממון כממון דמי דבר.

3. Why was it necessary for Rava to issue similar rulings?

4. What is the debate between R' Yochanan and Reish Lakish concerning מיתות שוגגי?

Rema³, however, does mention that it is appropriate for someone who damaged property as a child to make some effort to achieve atonement. Mishnah Berurah⁴ adds that the child should make an effort to go beyond the letter of the law (לפנים משורת הדין) and reimburse the damaged party for his loss. On the other hand, one could argue that these rulings are limited to cases where the child intentionally caused the damage but in our case where the damage was caused due to circumstances beyond their control perhaps they should be exempt entirely. Nonetheless, Mishpatei Hatorah advises that it is fitting that the children reimburse the store two-thirds the value of the bananas when they become adults. ■

1. משפטי תורה ח"א סי' ה' "ילד שאכל בנות של השכנים בשוגג
2. נתיבות המשפט סי' רל"ב סק"ה
3. רמ"א או"ח סי' שמ"ג
4. מ"ב שם סק"ט ושעה"צ שם ס"ק י"ח ■