

## דתניא כחושה והשמינה כולי –

**For it was taught in a ברייתא, 'If it was lean and he fattened it, etc.'**

### OVERVIEW

רב taught that the קרן is paid according to its original value while כפל וד' וה' are paid according to the value בשעת העמדה בדין. This ruling was challenged by רב ששת who cited a ברייתא which states that by כחושה והשמינה he pays כפל וד' וה' according to the original value, and not as רב maintains that he pays בשעת העמדה בדין.<sup>1</sup> It is apparent from the question, that רב ששת assumed that רב (when he made the distinction between קרן and כפל וכו') was also discussing a case where there was an increase in value after the item was stolen (and not only a case where the value diminished) for otherwise there is no challenge. תוספות questions the correctness of this assumption.

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תוספות asks:

**תימה היכי סלקא דעתיה דרב ששת שדבר רב בכחושה והשמינה דאם כן היה מגרע כחו של קרן -**  
**It is astounding! How did it even enter the mind of רב ששת that רב was discussing a case where the animal was lean and he fattened it?!<sup>2</sup>** For if it is indeed so that רב is discussing a case of כחושה והשמינה, it would turn out that רב **was diminishing the power of the principal.** רב maintains that the קרן is paid כעין שגנב (when the animal was a כחושה) and the כפל וד' וה' is paid בשעת העמדה בדין (when the animal is a שמינה). The result is that we are stricter for כפל וד' וה' [where he pays (the multiple of) the higher value (שמינה)] than we are for the קרן [where he pays the lower value (כחושה)]. This cannot be -  
**וממילתיה דרב משמע שבא ליפות כחו של קרן ולגרע כח כפל וד' וה' -**

**For from the statement of רב it is indicated that he comes to strengthen the power of the קרן and to diminish the strength of כפל וד' וה'.**

תוספות proves this point that רב empowers קרן over כפל וד' וה':

**דקאמר אחייה לקרן דוקא<sup>3</sup> כעין שגנב ואחייה משמע לשון יפוי כח<sup>4</sup> -**

**For רב stated אחייה [only] for the קרן, like he stole; and אחייה indicates an**

<sup>1</sup> The גמרא answered that by כחושה והשמינה even רב agrees that he does not pay בשעת העמדה בדין for the גנב has a valid argument; (the improvement is due to my investment and is not yours).

<sup>2</sup> It would seem that תוספות question is not limited to כחושה והשמינה, but rather תוספות maintains that רב cannot be discussing any case in which there was an increase in the value of the item (even יוקרא וזולא), for then there would be an empowerment of קרן over תשלומי כפל וכו'.

<sup>3</sup> See previous גופא ד"ה תוספות that we derive that כפל וד' וה' is בשעת העמדה בדין from the fact that only by the קרן is there a requirement of כעין שגנב.

<sup>4</sup> תוספות assumes in this question that the term אחייה means to make it 'alive'; indicating that the קרן payment is alive and vigorous as opposed to the payment of כפל וד' וה' which is 'dead' and weak.

**empowerment.** If there is an empowerment only for the קרן and not for כפל וכו', it would be illogical to assume that תשלומי כפל וכו' should be more stringent than the תשלומי קרן. Therefore we must assume that רב is only discussing a case where the price of the item decreased; then קרן has a יפוי כח; it pays the original higher price, while כפל וכו' are weaker for they pay the current lower price. How then can ר"ש assume that רב was discussing a case of כחוש והשמינה?!

תוספות answers:

**ויש לומר דאחייה אין לשון יפוי אלא לשון תשלומים -**

**And one can say; that אהייה is not an expression of empowerment, but rather (only) an expression of payment -**

וכל דבר שמשלים החסרון שגנב או גזל קרי אחייה <sup>5</sup> -

**And anything which compensates for the loss which he caused by stealing or robbing is called אַהִיָּה.** Therefore רב did not mean that קרן is stronger (or weaker) than כפל וד'. We may therefore assume that רב is discussing all cases whether the price increased or decreased, and indeed occasionally (if there is an increase in value) כפל וכו' will be 'stronger' than קרן.

כפל וד' וה' קרן seeks to prove this point that רב is not empowering the קרן over 'וה' וד'

וכן משמע בסוף שמעתין<sup>6</sup> דקאמר טלאים כדמעיקרא [משלם] כפל ד' וה' כשל עכשיו -

**And it is also so indicated at the end of this discussion where the גמרא states; for the sheep, [he pays] it is as it was initially;<sup>7</sup> however concerning כפל ד' וה' he pays as it is worth now', this -**

משמע אפילו מעיקרא שויה זוזא ולבסוף ד' דומיא דטלה ונעשה איל<sup>8</sup> -

**Seems** to mean that **even if initially it was worth a זוז, and at the end it was worth four זוזים, similar to the case of a sheep which became a ram** (where the value increased) -

**משלם כפל כי השתא<sup>9</sup> לפירוש רבינו יצחק דלקמן ושם אפרש בעזרת השם -**

<sup>5</sup> A payment which compensates for a loss (such as קרן) is referred to as אחייה [for it revives the ('dead') loss] (as opposed to the payment of כפל וד' וד' which does not compensate for a loss).

<sup>6</sup> כפל וכו'. The גמרא there challenges the opinion of רב from איל where the ruling is that he pays כפל וכו' as it was worth שגב. The answer of the גמרא is כשל עכשיו דמים כדמעיקרא דמים [others amend the גירסא in our תוספות to read this way as well]. פירושי ר"י ור"ת עיי"ש בתוס' ד"ה תלאים.

<sup>7</sup> The meaning of טלאים כדמעיקרא is that for any change in the physical characteristic of the טלה (such as נעשה איל or כשל עכשיו וכול' he pays שגגה. However concerning a change of זולא ויקרא (which רב is discussing) he pays כשל עכשיו וכול' and that is the meaning of כשל עכשיו וכול'.

<sup>8</sup> We are contrasting טלה ונעשה איל כפל to טלה; just as by טלה ונעשה איל there is an increase in value, the same holds true for the case of דמים. See previous footnote # 6.

<sup>9</sup> We see from this conclusion that כפל pays at a higher rate than קרן (for the כפל pays ד' [the current value] and for קרן he pays only א' [the original value], and there is no פיו כה for קרן over וכו'. See מהרש"א who asserts that there is no proof however from תשלומי ד' וה' for just as he pays ד' וה' multiples of the ד' זוזים that it is worth at the time of טביחה, he also pays ד' for the קרן, since the rule is that if the גנב destroys the item while it is in his possession he pays the price of the item as it is valued at the time of its destruction.

**He pays the כפל at the current elevated price according to the explanation of the ר"י later. And I will explain it there with the help of השם.**

Tosfos cites a differing opinion:

**ומיהו רבינו תם פירש בענין אחר לקמן<sup>10</sup> -**

**However the ר"ת later explains the answer of כדהשתא דמים כדמעיקרא דמים in a different manner -**

**דלגרע כח הכפל קאמר רב כשעת העמדה בדין ולא ליפות<sup>11</sup>:**

**That when רב said concerning 'כפל וכו' that it is כשעת העמדה בדין he intended to diminish the strength of the כפל and not to empower it.** Only if the price decreased does רב maintain that 'כפל וכו' pays כשעת העמדה בדין; however when the price increased (regardless of the cause) the 'כפל וכו' is paid כעין שגגב.

## **SUMMARY**

The ר"י maintains that there is no יפוי כח of קרן over 'כפל וכו' according to רב (and רב is discussing all cases regardless whether there was an increase or a decrease in price); while the ר"ת maintains that when רב ruled that 'כפל וכו' is כשעת העמדה בדין he meant only to diminish the כח of 'כפל וכו' (and רב is only discussing a decrease in price).

## **THINKING IT OVER**

1. The words of רב, or is it an explanation furnished by the גמרא כמו שגגב?<sup>12</sup>

2. טלאים כדמעיקרא [משלם] כפל ד' וה' כשל עכשיו גמרא which states טלאים כדמעיקרא. Seemingly if he was טבח ומכר (for that is when he pays 'ד' וה'); then the קרן is also כפל ד' וה' כשל עכשיו (only) when the גמרא state that (only) כשל עכשיו.<sup>13</sup> Why then does the גמרא state that כפל ד' וה' כשל עכשיו?<sup>14</sup>

3. According to the ר"ת that רב intends to be מגרע the כח of 'כפל וכו'; the original question of Tosfos remains: why did ר"ש assume that רב is discussing כחושה, where there will be a יפוי כח for the 'כפל וכו'?

<sup>10</sup> סו,א תוד"ה טלאים.

<sup>11</sup> According to the ר"ת no proof can be brought from the answer of 'כפל וכו' כדמעיקרא, that אחייה does not mean a כפל, for according to the ר"ת there is no instance where קרן is weaker than כפל.

<sup>12</sup> See תו"ח.

<sup>13</sup> See (end of) footnote # 9.

<sup>14</sup> See מהוד"ב למהרש"א א.