

מה לי קטלה כולה מה לי קטלה פלגא – What is the difference whether he killed it entirely or whether he killed half of the animal

OVERVIEW

The גמרא challenged the ruling of רב (that תשלומי כפל וכו' is כשעת העמדה בדין) from a כפל וכו' כעין שגגב¹ the thief pays שמינה והכחישה¹ which stated that if he stole a שמינה והכחישה (and not כשעת העמדה בדין as רב maintains). The גמרא answered that by שמינה והכחישה even רב agrees that he pays (the higher price) because מה לי קטלה כולה מה לי קטלה פלגא. There is a dispute between רש"י and תוספות how to understand this answer.

פירש הקונטרס משום דהכחשה אתחלה דטביחה היא² -

רש"י explained the answer of מה לי וכו' to mean, since the weakening of the animal is the onset of slaughtering it.

רש"י disagrees with תוספות:

וקשה לרבינו יצחק דלא שייכא הכחשה לטביחה מידי -

And it is difficult for the ר"י to accept this interpretation, for there is no association at all between טביחה and הכחשה -

כיון שאם היה הורגה כולה בענין זה לא היה בה דין ד' וה'³ -

Since if he would have killed her entirely in this manner (of הכחישה and not through טביחה), there would not be any rule of ד' וה'. Therefore since by הכחישה he does not incur the penalty of ד' וה' (so it cannot be compared to טביחה), he should be liable to pay only at the value as of the time of טביחה (or כשעת העמדה בדין as רב maintains) when the animal is worth less.

מה לי קטלא וכו' offers his interpretation of תוספות:

אלא הכי פריך מה לי קטלה⁴ כולה דאין הולכין בתר הדמים דהשתא -

But rather this is how the גמרא refutes the question; 'what is the difference

¹ See רש"י ד"ה והכחישה that the thief manually caused the weakening of the cow. תוספות will disagree.

² At whichever point the גגב would be טובה the animal he would certainly be liable to pay (the ד' וה' (תשלומי ד' וה') [at least] according to the value of the animal at the time immediately before the טביחה; similarly here too when he took a שמינה and he weakened it, he must pay (תשלומי ד' וה') for the value of the animal as it was before the הכחישה (which he caused), for the הכחישה is a partial טביחה.

³ The obligation to pay ד' וה' is only by טביחה (ומכירה); for any other killing of the בהמה he merely pays the value of the בהמה, but not ד' וה'. Therefore הכחישה (which cannot bring to ד' וה') cannot be considered as a partial טביחה and there is no proof from טביחה that he should pay שגגב.

⁴ According to the ר"י the term קטלה כולה is not referring to טביחה and the חיוב of ד' וה', but rather to a killing where there is no ד' וה'; we are discussing the חיוב for the קרן.

whether he killed the animal entirely', where we do not follow its present value (that the thief should pay its diminished value), the reason is -

דקנאה בשינוי⁵ ואינה של נגנב אלא בתר מעיקרא שהיתה שלו⁶ והוא הדין בקטלה פלגא-

Because the thief acquired the animal through 'change' (it is now a dead animal) and it does not belong to the one from whom it was stolen, and therefore we do not consider the current value of the animal⁷, but rather we follow the original value of the animal when it was the owner's (as רב maintains שגנב), and that same rule should apply when he killed half⁸ the animal (הכחישה), that the thief cannot claim I was טבא ומכר a lean animal, for since he stole a שמינה and was טבא ומכר, he must pay ד' וה' for a שמינה.

ולפי זה הוא הדין בהוכחשה ממילא דמשלם כדמעיקרא⁹ -

And according to this reasoning, the same ruling will apply if the animal became weakened by itself, nevertheless the thief would pay ד' וה' as it was originally worth; for the same reasoning applies -

דמה לי מתה כולה מה לי מתה פלגא -

What difference is there whether it died entirely (by itself) or whether it died partially (by itself), for -

ודאי מתה כולה מאליה יש לחייבו כדמעיקרא שהיתה של נגנב ולא בתר השתא¹⁰ -

If it died entirely by itself, the thief would certainly be obligated to pay the original value as it was when it belonged to the owner and we would not follow the current price, similarly by הוכחשה ממילא he pays שגנב ד' וה' כעין שגנב.

⁵ Generally if there is a (substantial) change in the status of the stolen item it belongs to the thief (regarding that he is not required to return the item, rather he must make a monetary payment for the item he stole).

⁶ The ruling of קטלה כולה teaches us that whenever something is stolen, the thief is liable for the value of the item that he stole as it was worth when the נגנב owned it and not the value it has after it leaves the רשות of the נגנב through שינוי. It seems logical that the obligation to pay begins at the moment when the object was stolen. Therefore when the תורה obligates one to pay ד' וה' by טביחה, it must be for the value of the item as it was worth when it was completely ברשות הנגנב (at the moment it was stolen), before there was any physical change in the status of the animal which can be considered a שינוי. See 'Thinking it over'.

⁷ The animal currently belongs to the גנב (for he acquired it through the שינוי of מיתה). The גנב is responsible to pay for an animal that belonged to the נגנב (which was a חיה), not for the animal that belongs to the גנב (which is a מתה), that is why we cannot go השתא בטר השתא.

⁸ Just as by קטלה כולה we say that the גנב must pay for the animal as it was before there was a change in the status of the animal, for after there is a change it is no longer the animal of the נגנב, but rather the animal of the גנב. In a similar sense if the animal was הוכחש, this is considered a שינוי (at least) to the extent that the payments due for this animal [including ד' וה' כפל וד' וה'] are to be assessed at the value prior to when the שינוי took place when it was definitely the animal of the נגנב (which is at the time it was stolen).

⁹ According to this reasoning it makes no difference if the שינוי was caused by the גנב or if it happened on its own. If there is a שינוי it leaves the רשות of the נגנב and belongs to the גנב. Whenever there is a שינוי, the payment must be for the value of the item before the שינוי took place.

¹⁰ It is the same reasoning as in קטלה כולה.

וכי קא משני ומוקי מילתא דרב ביוקרא וזולא¹¹ לא הוה מצי לאוקמי בכחשה דממילא¹² -
And when the יוקרא answers and establishes the ruling of רב (only) by יוקרא
רב [concerning תשלומי כפל וד' וה' וזולא] it could not have established the ruling of רב
when the animal became lean on its own.

מה לי קטלה כולה וכו' of¹³ offers an alternate explanation תוספות

ועוד אומר רבינו יצחק דמצי לפרש בענין אחר מה לי קטלה¹⁴ כולה מה לי קטלה פלגא -
'מה לי קטלה כולה מה לי ר"י, it is possible to interpret
'קטלה פלגא, in a different manner -

כלומר אפילו למאן דאמר אין לשחיטה אלא לבסוף¹⁵ -
Meaning that even according to the one who maintains that the שחיטה process is
not completed until the conclusion of the שחיטה -

ולא מחייב ד' וה' עד משהו אחרון¹⁶ -
And therefore he is not obligated to pay 'ד' וה' until the very last bit -
אפילו הכי לא אזלינן בתר חשיבותא דההיא שעתא כפי מה שהוא שוה במשהו אחרון -

Nevertheless we do not assess it value at that time, according to what the
animal is worth at the last moment before the שחיטה is completed¹⁷ -
אלא כפי מה ששוה קודם שחיטה¹⁸ -

But rather we assess the animal how much it was worth before the שחיטה
process began; the full value of the animal that he stole, -

¹¹ Concerning יוקרא וזולא, the תורה requires that he be paid back two animals or four (or five) animals like he stole (the תורה writes חמשה בקר תחת השור וגו' or חיים שנים ישלם). If the price of animals decreased, he is therefore paying him now the proper multiple of the animal that he stole. The נגב can purchase with this money, two, four (or five) animals comparable to the one that was stolen.

¹² It would seem that according to רש"י (as well as according to the ר"י which follows shortly) the ruling of רב can be established in a case where it was ממילא. However according to this answer, by הוכחשה ממילא he pays ד' וה' כעין שנגב.

¹³ Some difficulties of the first explanation may include that according to תוספות by הוכחשה ממילא he pays שנגב, while the ברייתא only mentions הכחישה (which seems to mean בידים). In addition the לשון וכו' of קטלה כולה, indicates that we are discussing a טביחה that results in a חיוב ד' וה' (while according to תוספות the term קטלה כולה is referring to a regular killing), etc.

¹⁴ According to this explanation the term קטלה is referring to טביחה; concerning the payment of ד' וה' See previous footnote # 4.

¹⁵ See later on עב,א where there is a dispute whether עד סוף ישנה לשחיטה מחילה ועד סוף (meaning that the שחיטה process is a continuum from the beginning until the end [and all the laws pertaining to שחיטה are valid throughout this period]) or (and the laws which are effected through שחיטה take place only at the conclusion of the שחיטה).

¹⁶ Since שחיטה becomes effective only at the conclusion of the שחיטה, the obligation of paying ד' וה' becomes effective only at the conclusion of the שחיטה, not before.

¹⁷ One might think that since the חיוב ד' וה' begins at the conclusion of the שחיטה, the payment of ד' וה' should be assessed at the value of the animal prior to שחיטה (which is basically the value of a dead animal).

¹⁸ This teaches that the thief is liable to pay ד' וה' for the entire animal including the diminished value of the animal that he caused (through שחיטה) prior to שחיטה.

אם כן כי קטלה פלגא נמי דהיינו הכחישה לא אזלינן בתר השתא אלא בתר מעיקרא -
If this is indeed so, then by קטלה פלגא as well which means when the thief caused it to be weakened, we do not assess it as it is now (a weakened animal), but rather as it was originally a healthy animal.

ולפי טעם זה הוי מצי לאוקמיה מילתיה דרב בהוכחה ממילא¹⁹:

And according to this reasoning, the גמרא could have established the ruling of רב in a case of הוכחה ממילא²⁰; for there too he would pay כשעת העמדה בדין.

SUMMARY

according to רש"י; just as by טביחה he pays the value of the animal as it was worth before the קטלה כולה מה לי קטלה פלגא, similarly by כיחשה he pays the value of the animal as it was worth before קטלה פלגא.

According to תוספות; just as by killing (קטלה כולה) he pays the value it had before the שינוי (when it belonged completely to the נגנב) the same is by קטלה פלגא, that he pays the value before it became a כחוושה.

According to the ר"י; just as by a קטלה כולה of טביחה he is responsible for the diminishing value caused by the השחיטה, similarly by קטלה פלגא he is responsible for the diminishing value caused by כיחשה. It follows that according to רש"י ועוד אומר ר"י, the ruling of רב (כשעת העמדה בדין) is applicable to כחשה, however according to תוספות the ruling of רב is by יוקרא וזולא exclusively and not by any sort of כחש.

THINKING IT OVER

argues that just as קטלה כולה we do not follow the current price, for the thief was קטלה פלגא²¹, but rather he pays כדמעיקרא, the same should apply by קטלה פלגא. This would seem to indicate that the קטלה פלגא of שינוי is קונה. However that cannot be for if the קונה is גנב the animal (through הכחישה) then there is no ד' וה' (for תשלומי ד' וה')!²² (שלו הוא טובח

¹⁹ We can compare הכחישה בידים to טביחה for in both cases the thief actually caused the deterioration of the animal prior to the חיוב ד' וה'. Therefore just as by טביחה the thief pays ד' וה' for the loss he caused prior to the חיוב of ד' וה' (which takes place at שחיטה), similarly the thief pays ד' וה' for the loss he caused through הכחישה. However by הוכחה ממילא where the loss was not caused by the thief, there is no precedent that he should be liable for the full value of the animal as it was before it was הוכחה ממילא. Therefore he will pay ד' וה' as it is worth שחיטה.

²⁰ The שעת העמדה בדין (by טביחה) would be the value of the animal just prior to the טביחה (if it was ממילא) as opposed to its value הגניבה. [See מהרש"א]

²¹ See footnote # 6.

²² See אמ"ה ונח"מ.