

OVERVIEW of the Daf

1) Assisting those who wish to repent (cont.)

The Gemara continues to unsuccessfully challenge R' Nachman's resolution.

2) Benefitting from the stolen object

A Baraisa is cited that a dispute exists concerning the liability of a robber who steals a cow that gives birth or takes the shearings of a stolen sheep.

The Gemara inquires which of two explanations of R' Meir's position is correct.

On the second attempt the Gemara demonstrates that R' Meir maintains that change effects acquisition and the Baraisa was referring to a case of a penalty.

According to a second version the Gemara's inquiry related to whether R' Meir imposes a penalty for שוגג in addition to imposing a penalty for מויד.

On the second attempt the Gemara demonstrates that R' Meir only imposes a penalty in a case of מויד.

3) Clarifying the position's of R' Yehudah and R' Shimon

R' Zevid explains the point of dispute between R' Yehudah and R' Shimon.

R' Pappa offers an alternative explanation of the point of dispute between R' Yehudah and R' Shimon.

R' Pappa's explanation is unsuccessfully challenged.

A Baraisa is cited in support of R' Pappa's explanation.

R' Ashi clarifies a detail related to R' Shimon's position.

(Continued on page 2)

REVIEW and Remember

1. What is the point of dispute among R' Meir, R' Yehudah, and R' Shimon?
2. Which five people may only collect from unsold properties?
3. According to R' Zevid, what is the point of dispute between R' Yehudah and R' Shimon?
4. What is שבח המגיע לכתפים?

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 ר' יעקב יצחק בן ר' משה ע"ה

Distinctive INSIGHT

The "enactment of the beam" - תקנת מריש

ותנן על המריש הגזול שבנאו בבירה שיטול דמיו מפני תקנת השבים

Rebbe instituted an enactment to assist and encourage thieves to repent. The rule was that they could repent even without returning the object they stole. Rav Nachman explains that although Rebbe instituted a rule to benefit thieves and to encourage them to repent, if the stolen item is still intact and in the possession of the thief, it must be returned. The Gemara then points out that the Mishnah (Gittin 55a) rules that if a beam is stolen and built into a building, the thief need not return it, but he is allowed to pay for it instead. Here, the beam is still intact, and yet the Mishnah rules that it need not be returned. The Gemara answers that once it is built into a structure, demolishing the building just to recover the beam would be too prohibitive. Therefore, this parallels a case where the item is no longer intact and does not have to be returned, as it is, for all intents and purposes, not available.

Tosafos Rabeinu Peretz points out that "the enactment of the beam" appears in the Mishnah, and Tosafos (earlier, 93a) noted that the Gemara was careful to challenge Rebbe only from Baraisos, as they might have been written after the enactment of Rebbe. However, the Gemara did not challenge Rebbe from halachos found in a Mishnah, because Rebbe redacted the Mishnayos without changing them, and any ruling in the Mishnah regarding thieves might have predated Rebbe's ruling. Why, then, is the case of the beam brought as a question against Rebbe?

Tosafos Rabeinu Peretz answers that the ruling in this Mishnah clearly reflects a view which considers Rebbe's law, as the Mishnah teaches a lenient approach toward thieves, and how they do not need to return the beam which is built into a structure. This parallels the concept of adjusting the guidelines of repentance in order to facilitate the ease of having a thief correct his ways, which is precisely the underlying mind set of Rebbe.

In fact, Rashba and Ra'aved write that there were apparently two enactments. One was the enactment of Rebbe, that if a stolen item is no longer intact, the thief does not have to return it at all. After this ruling demonstrated the need for compassion regarding thieves, a second ruling was then issued, that a thief does not have to return a beam which is built into a building, but he only needs to pay for it. The basis for the Mishnah regarding the beam was the enactment of Rebbe, and the Gemara contrasts them, knowing that the Mishnah was fully aware of the law of Rebbe. ■

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HALACHAH Highlight

Does a change effect acquisition outside of the context of theft?

אלא לאו שמע מינה קסבר ר' מאיר שינוי קונה

Rather one could infer from here that R' Meir maintains that a change effects acquisition

Poskim discuss whether a change in the object (שינוי) constitutes an act of acquisition (קנין) in contexts other than robbery and theft. Shulchan Aruch¹ rules that a lender may not repossess the garments of a borrower's wife or children nor may he take garments that were colored for their sake even though they did not yet wear those garments. S"ma² explains that Shulchan Aruch refers to garments the borrower purchased for himself and then changed his mind and decided to give to his wife or children and they acquire those garments when the borrower dyed them for their sake.

Ketzos Hachoshen³ challenges this explanation since the only context in which a change effects acquisition is when an object is stolen but not when a man decides that he will give his garment to his wife and children and then dyes that garment. Therefore, Ketzos explains that Shulchan Aruch refers to garments that belong to the borrower's wife or children but the dye belongs to the borrower. Seemingly, there is a dispute between S"ma and Ketzos whether the acquisition of change effects acquisition outside of the context of robbery and theft.

Sefer Mikor Baruch⁴ cites proof for S"ma from a ruling of

(Overview. Continued from page 1)

4) A creditor compensates a buyer for the improvements he makes to the encumbered field

A contradiction is noted concerning Shmuel's position regarding the creditor compensating a buyer for the improvements he makes to the encumbered field.

R' Ashi suggests a resolution to that contradiction.

Ravina unsuccessfully challenges this answer. ■

Chok Yaakov⁵. A Jew gave some grain to a gentile before Pesach to grind. For some reason the gentile did not get around to grinding the grain until the seventh day of Pesach and he decided to do a favor for the Jew and made bread out of the grain and delivered it to the Jew immediately after Pesach. At first glance it would seem that the bread is prohibited since the gentile made it using the grain of the Jew on Pesach. Chok Yaakov, however, permitted the bread taking into account many factors and one of the factors is relevant to our discussion. He maintains that the moment the gentile ground up the grain into flour, before it even became chometz, the gentile acquired the flour since he damaged (הזיק) the Jew's property. Accordingly, the gentile made dough out of what was, halachically, his flour and thus it is not prohibited for the Jew to eat it as חמץ שעבר עליו הפסח. ■

1. שו"ע חו"מ סי' צ"ז סע' כ"ה

2. סמ"ע שם סק"ס

3. קצות החושן שם ס"ק י"ד

4. ספר מקור ברוד (גינצברג) השמטות לח"ב סי' כ"ה

5. חק יעקב אור"ח סי' תח"ח סק"ד ■

STORIES Off the Daf

To catch a thief

כאן בגזילה קיימת

On today's daf we find a discussion about theft.

Once, three businessmen attended a fair together. They were very successful in several lucrative deals and went away with their high profit in cash. On their long trip home they ended up staying for Shabbos at a place where they did not know anyone. The three decided to bury the money at a certain site to ensure that they not lose their profits. Immediately after Shabbos they dug up the spot where the money had been but there was nothing at all. There was no question that the spot was where the money had been and under-

standably the three merchants accused one another of wrongdoing.

They went to the mayor of the town who sent them with a letter to the local rav, who was the son of the Chakrei Lev, zt"l. "Our local rabbi is exceptionally acute and will likely ferret out the thief."

When they arrived at the rav's house he gazed at each of them intently but after hearing the story he appeared to be very flummoxed. He asked, "I appreciate the vote of confidence, but how in the world am I supposed to know who is the thief?"

The rav penned a letter and sent them back with it to the mayor. But as they were just about out the door he called them back. "Wait a minute. Perhaps I do have some insight into your case. Tell me precisely what occurred..."

As they were leaving for a second time, the rav called them back again.

"Give me back the letter," he said.

The mystified threesome returned the letter and the rav gave them a different one to deliver to the mayor. The moment the mayor read it he immediately ordered his guards to seize one of the three.

The man who was taken confessed completely to his crime and revealed where he had stashed the money.

When they asked the rav how he had identified the culprit, he explained, "It was simple. Although two of the litigants strode in with confidence, one of them seemed to slink in with some apprehension. I was afraid he may have a handicap or the like so I sent them away and called them back to make certain. As soon as I saw that the third was really able-bodied, I was ready to act!"¹ ■

רעיונות לדוש ע' פ"ז-פ"ח