

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) Acquisition by means of a change of name (cont.)

R' Yosef and R' Zeira defend the challenge to R' Yosef's assertion that a change in name effects acquisition.

The position that an irreversible change of name effects acquisition is unsuccessfully challenged.

2) Acquisition by means of יאוש (cont.)

R' Yosef's earlier assertion that יאוש does not effect acquisition is unsuccessfully challenged.

3) Acquisition by means of a physical change

R' Chisda in the name of R' Yonason offers an exposition that teaches that a physical change effects acquisition.

This exposition is unsuccessfully challenged.

A second version of this exchange is presented.

4) Acquisition by means of יאוש (cont.)

Ulla cites an exposition that demonstrates that יאוש does not effect acquisition.

Rava offers an alternative exposition that יאוש does not effect acquisition.

This position is challenged from a contradictory ruling of Rava.

Two resolutions are offered.

5) Fourfold and fivefold payments

Rava explains why the requirement of fourfold or fivefold payment is limited to oxen and sheep.

The Gemara further analyzes this exposition and decides that it is necessary to find another source for the exposition.

This exposition is also challenged and the Gemara settles on an acceptable exposition.

6) A second thief paying כפל

Rav taught that a second thief is exempt from כפל only if the original owner was not מיאש but if he was, the second thief pays כפל to the first thief.

R' Sheishes challenges Rav's ruling from a Baraisa. ■

Distinctive INSIGHT

The opinion of Ulla regarding יאוש

אמר עולא מניין ליאוש שאינו קונה

Although it seems clear from our Gemara that Ulla holds that יאוש is not קונה, Rabeinu Tam (תד"ה אמר עולא) notes that later (114a) Ulla seems to say the opposite. Rabbi Shimon and Rabanan have a disagreement in the Mishnah (Keilim 26:8) regarding יאוש of an owner after an object is stolen from him by either a thief (גנב) or robber (גזלן). Ulla explains that the disagreement among the Tannaim is only in a case where we have not heard any explicit reaction from the owner (סתם), but if we hear that the owner has expressed יאוש, the item is now owned by the thief or robber. Apparently, Ulla is of the opinion that יאוש is קונה.

Rabeinu Tam answers that, in fact, Ulla's opinion is that יאוש is קונה. It is only in the context of our Gemara which is in reference to animal offerings in the Beis Hamikdash that Ulla says that the degree of ownership achieved by a thief through יאוש is not adequate to allow the thief to bring the offering. This is a mitzvah which is effected through a sin, and it is therefore not valid. In Sefer HaYashar, Rabeinu Tam adds that יאוש is קונה for consecrated animals that will not be eligible for the altar, such as blemished animals or those which are designated specifically for the general fund of the Beis Hamikdash (בדק הבית).

Ra'aved explains that Ulla holds that יאוש is not effective from the Torah's law. He agrees, however, that the קנין is effective on a Rabbinic level, and this is what he discusses regarding the argument between Rabbi Shimon and the Rabanan later on 114a. Alternatively, Ra'aved (as well as Ramban and Rashba to Gittin 55a) suggest that Ulla consistently holds that יאוש is not קונה, as we find in our Gemara. His comments on 114a are only according to Rabbi Shimon and Rabanan, but Ulla himself does not agree with them.

שער המלך (לולב ח, ט) explains that the reason the Rabbis decided that יאוש is קונה was in order to make it easier for a thief to repent and return the object he stole (תקנת השבים). If the thief knows that he can pay for the object and not have to return the item itself, it would be easier for him to do teshuva. This rule, however, is only applicable when the item is no longer intact. The discussion between Rabbi Shimon and Rabanan, however, is regarding skins that were stolen and it is referring to a situation where the original item is still intact. Yet, Ulla states that יאוש is effective. This must be a Torah law, and not an application of a Rabbinic enactment. ■

Today's Daf Digest is dedicated
לרפואה שלימה
Shoshana Avigayil bas Yehudit Ita Halevi
by her family

HALACHAH Highlight

Does the enactment to assist those who wish to repent apply for stolen land?

הא לאו הכי הדר בעיניה

Were it not for the special enactment to assist those who wish to repent the beam would have to be returned intact

Rema¹ writes that the principle of תקנת השבים (enactment to assist those who wish to repent) that allows a thief to pay for the beam he stole rather than dismantle his house in order to return the actual beam is limited to movable objects. If, however, someone stole land and built a structure upon the land, he must tear down that building in order to return the land to its rightful owner. Levush² explains that the compelling reason Chazal set up this enactment was that it is possible for a thief to hide the stolen property. Therefore, in order to encourage him to step forward and admit to his transgression we allow him to pay the value of the stolen object rather than return it. This rationale does not apply to land since the thief cannot hide his transgression and thus the enactment does not apply.

Teshuvos Mabit³ asserts that if builders made an error and built a structure on a neighbor's property the enactment of תקנת השבים would still apply and it would not be necessary for the homeowner to dismantle his new house and it would be sufficient for him to pay for the land that he mistakenly took into his possession. Mishnah Lamelech⁴ strongly disagrees with the position taken by Mabit. Sha'ar Mishpat⁵ suggests that the disagreement between Mabit and Sha'ar Mishpat relates to a dispute cited by Rema. Someone owned a collection of bees that made their hive on a neighbor's tree. The bee owner wants to cut off the branch to take back his bees but the neigh-

REVIEW and Remember

1. What is the origin of the restriction against using drawn water for a mikveh?
2. What two concepts are derived from the words אשר גזל?
3. Does one pay ד' ו' for stealing and slaughtering a bird?
4. When does a thief from a thief pay כפל?

bor doesn't want someone to cut a branch off his tree. Rema cites one opinion, R' Yishmael, who asserts that the bee owner's claim is correct and the rationale is that there is an enactment that allows him to cause a small loss to his neighbor in order to prevent a larger loss. The second opinion disagrees and maintains that we do not hold like R' Yishmael on this matter. Accordingly, it could be explained that Mabit follows the first opinion in Rema and we would demand the property owner to sell a small piece of his property in order to prevent the building owner from suffering a greater loss. Mishnah Lamelech, however, follows the second opinion who maintains that a person cannot be forced to suffer a loss or sell some of his property in order to prevent another person from suffering a greater loss. ■

1. רמ"א חו"מ סי' ש"ס סע' א'
2. לבוש שם ומובא דבריו בפת"ש שם סק"א
3. שו"ת מב"י ח"ג סי' קמ"ג ומובא דבריו בפת"ש שם סק"א
4. משנה למלך פ"ו מהל' גניבה הי"א ומובא דבריו בפת"ש שם סק"א
5. שער משפט לס"י ש"ס ומובא דבריו בפת"ש שם סק"א ■

STORIES Off the Daf

The price of one's honor

ומדת תשלומי ארבע וחמשה

Today's daf discusses paying four or five times the original value for a stolen sheep or ox.

It is well known that Rav Shach, zt"l, was very accessible to everyone for any purpose. When he found later in life that his family placed someone downstairs to hinder the public from reaching him without some sort of process of selection, he was very upset. People came not only for advice or help. They also brought their children

to him in the hope that his profound fear of heaven would have a good effect on them. Often, when someone brought a child, he would request that the Rosh Yeshiva test his young son in whatever he was learning in cheder.

Once, Rav Shach, zt"l, agreed to test a man's son on parshas Mishpatim. "Do you remember why we pay four for a sheep but five for an ox?"

The boy answered, "Rashi brings from the Gemara in Bava Kamma that an ox walks on its own so stealing it does not necessitate that the thief embarrass himself so he must pay the full five. But a sheep must be carried, and since the thief humili-

ated himself in order to carry out his theft of the lamb, he only pays quadruple."

Rav Shach answered, "Correct. But can you tell me why a Jewish man's embarrassment is worth only the value of one sheep regardless of his standing in the community or how sensitive he may be?"

The boy clearly did not know, so the Rosh Yeshiva answered his own question. "Since the thief underwent the embarrassment to steal a sheep, he clearly felt that undergoing the embarrassment was worth the value of one sheep!" The Rosh Yeshiva then smiled lovingly at the child and gently said, "That was an easy one!" ■

1. תורתך שעשועי שמות כ"א: כ"ו