

This month's Daf Digest is dedicated in memory of
Mrs Yenta Weiss, Rivke Yenta bas Asher Anshel & Yosef ben Chaim Hacoheh Weiss
By Mr. and Mrs. Manny Weiss

OVERVIEW of the Daf

1) A creditor compensates a buyer for the improvements he makes to the encumbered field (cont.)

The Gemara concludes the exchange between R' Ashi and Ravina concerning Shmuel's position related to the creditor compensating the buyer for improvements he made to an encumbered field.

2) A robber who improves a stolen item

Rava rules that a buyer or heir to a robber who improved a stolen item is permitted to keep what the robber would have kept for himself.

Rava inquires whether a buyer who improved the stolen item is allowed to keep a percentage of the improvements.

After presenting the inquiry Rava answered that the buyer does get to keep those improvements.

Rava asked about the law of an idolater who improved a stolen article.

Ravina clarifies the intent of the inquiry and it is left unresolved.

3) A stolen date palm

R' Pappa discusses the changes necessary for the robber to acquire a stolen date palm.

Rava discusses the changes necessary for the robber to acquire the branches of a date palm.

R' Pappa inquires whether a split in the middle leaf is a change that effects an acquisition for the thief.

An unsuccessful attempt is made to resolve this inquiry.

According to a second version the Gemara demonstrates that a split in the middle leaf does constitute a change that effects acquisition.

R' Pappa continues to discuss the changes of different items and whether they constitute a change that effects acquisition.

4) Clarifying the final clause of the Mishnah

The Gemara identifies what is added by the summary clause of the Mishnah.

A related incident is presented.

5) **MISHNAH:** The Mishnah discusses what happens when a stolen object gets old or rots on its own thus diminishing it from its original value.

6) An aging animal

R' Pappa asserts that the Mishnah's reference to an aging

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Today's Daf Digest is dedicated by
Mr. and Mrs. Myron Cherry
in loving memory of their sister
Shayne Cherry Adell

Distinctive INSIGHT

What type of change can affect a קנין?

אמר רב פפא האי מאן דגזל עפרא מחבריה ועבדיה לבינתא לא קני, מאי טעמא? דהדר משוי ליה עפרא

The words of Rav Pappa here and later in this discussion in the Gemara indicate that even if an item is stolen, and it has undergone a physical change, it is not enough of a change to effect a transfer for ownership if the item can revert back to its original condition. For example, if dirt or clay was stolen, and it was fashioned into bricks, this is not considered a change, as the bricks can just as easily be ground back into their original state of being shapeless dirt or clay. An earlier example was where a broom (of leaves) was stolen, and the pieces were removed and woven into rope. Rava stated that this did not qualify as a change which effects a קנין, because the rope can be unwoven, and the pieces restored into being a broom.

Earlier (94b), the Gemara discussed a case where someone stole pieces of wood and fashioned them into a utensil. The Halacha is that the thief must pay the value of the wood at the time of the theft. This means that the thief has acquired the pieces. Abaye understands that the case is where boards that were pre-cut and shaped were stolen, and they were simply placed together to form a finished product. In other words, this is a reversible change, but yet a קנין has taken place. We must say, however, that the קנין spoken about is just rabbinic, because a Torah קנין has not occurred. Rav Ashi explains that the case is where a person stole raw wood, and the thief cut and shaped the wood before building it into a utensil. This situation constitutes a nonreversible change, and the קנין is legitimate on a Torah level. Rav Ashi, accordingly, is of the opinion that a reversible change cannot affect a קנין at all, not even rabbinically. In our Gemara, there are several approaches in the Rishonim. Ri"ף understands that Rav Pappa does not recognize the dirt being fashioned into bricks as being a change at all. It is a reversible situation, and does not constitute a valid change. The Mishnah (93b) where stealing wood is a קנין is to be understood according to Rav Ashi, where the wood was cut and shaped, and the קנין is a full, Torah-recognized one. Ri"ף rules that the halacha follows according to this opinion.

Tosafos (ד"ה ועבדיה) says that a reversible change which is flimsy cannot affect a קנין, but if it is a semi-significant change, albeit reversible, a rabbinic קנין is complete. Maharsha explains that Tosafos understands that Rav Pappa here holds according to Rav Yehuda, who says that a reversible change can effect a קנין.

Shulchan Aruch (C.M. 360:5) rules that a reversible change does not effect a קנין. ■

HALACHAH Highlight

Returning stolen chometz during and after Pesach

חמץ ועבר עליו הפסח

[He stole] chometz and Pesach passed.

Chok Yaakov¹ notes that since the Mishnah chose to discuss a case of a robber who wants to return chometz after Pesach with the declaration **הרי שלך לפניך**, it seems that if the robber wants to return the chometz to his victim on Pesach he would not be permitted to do so. The rationale is that since everyone is obligated to destroy chometz on Pesach we consider any chometz as if it is already destroyed and the robber is not returning anything. Ketzos HaChoshen² presents numerous challenges to this ruling. One challenge is that if chometz on Pesach is considered already destroyed it should be categorized as recognizable damage. Accordingly, why is the robber able to return the chometz after Pesach with the statement **הרי שלך לפניך** if it is already destroyed? A second challenge is that the Mishnah also discusses one who steals terumah that becomes tamei. Terumah that becomes tamei must also be destroyed and yet the Mishnah rules that the robber can declare **הרי שלך לפניך** and return the terumah to the victim.

Marcheshesh³ suggests that the halacha that chometz is considered ownerless applies only during Pesach due to the Biblical prohibition against benefiting from chometz. After Pesach, however, the chometz is Biblically permitted and the ownerless chometz returns into the possession of the owner. This is similar to the Gemara's discussion in Nedarim (44a) that allows something

REVIEW and Remember

1. What is an אפותיקי?
2. What change to a palm tree constitutes a change that effects acquisition for the robber?
3. Does minting metal into a coin constitute a change that effects acquisition for the robber?
4. What was R' Ashi's criticism of Mar Kashisha?

to be in a state of הפקר—ownerless, for a limited amount of time. An example of this type of hefker appears in the context of shemittah. During the shemittah year land is considered ownerless and anyone who wants to enter a field to take the produce is permitted to do so, nevertheless, once shemittah is over the field reverts back to the owner's possession. Consequently, during Pesach chometz is considered ownerless and thus the robber cannot return it with the declaration of **הרי שלך לפניך**. After Pesach when the chometz returns to the original owner's possession, the robber can physically return it to the owner, even though it has lost its value, with the declaration **הרי שלך לפניך**. ■

1. חק יעקב או"ח סי' תמ"ג סק"ח ד"ה נשאלתי
2. קצות החושן סי' שס"ג סק"א
3. מרשתת ח"א סי' א' אות ב' ס"ק ג' ד- ■

STORIES Off the Daf

Useless commodities

חמץ ועבר עליו הפסח

Acertain businessman would sell esrogim each year in his hometown. His practice was to travel far from his country and procure as many fine specimens as he could in the cheapest place. After he attained an abundance of fine specimens he would send them off to his wife to sell at home where esrogim were scarce, while he selected more.

He hired a coach service to take the esrogim home explaining that he required them to arrive as soon as possible so his wife would get the best prices. The owner of the service had many concerns so he could not take the box himself. He gave it to one of his wagon drivers with a long list

of deliveries. Unfortunately, the driver completely forgot about the box of esrogim until well after the holiday.

When the irate businessman found out that all his efforts were for naught he was very upset and took the owner of the service to beis din.

When this case was presented before the Nachlas Tzvi, zt"l, he ruled that the owner of the service was required to pay what the merchant had lost by not selling the esrogim before Sukkos. "Although we find on Bava Kamma 96 that one who stole chometz and returned it after Pesach may return it intact, there is an argument regarding whether an esrog is truly similar to this. After all, the chometz has the same intrinsic value, but everyone knows that an esrog is just a fruit after Sukkos.

"Yet even those who say that one can return a stolen esrog after the holiday would admit that in our case the owner is

obligated to pay what the esrogim were worth before Sukkos. Since the coachman was hired for the express purpose of ensuring that the esrogim arrive before Sukkos, it is as if the owner accepted on himself responsibility for the value of the esrogim before Sukkos!"¹ ■

1. נחלת יעקב יו"ד סימן צ"א ס' א'

Overview...continued from page 1)

animal includes even an animal that became lean.

This explanation is unsuccessfully challenged.

A discussion related to this ruling is presented.

7) An aging slave

Rav is cited as ruling like R' Meir that the robber can return the aged slave.

The Gemara clarifies why Rav followed the position of R' Meir. A second explanation is presented to explain the rationale behind Rav's position. ■