

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

OVERVIEW of the Daf

1) The law of the land (cont.)

The Gemara continues to clarify Rava's last ruling related to testifying against a fellow Jew.

R' Ashi poses a related question that is left unresolved.

R' Ashi rules that one who sells land to an idolater that borders on land belonging to a Jew is placed in חרם.

The rationale for this ruling is explained.

An application of this ruling is cited.

2) **MISHNAH:** The Mishnah begins by presenting circumstances in which one acquires the property that belonged to others. The Mishnah concludes with a discussion related to ownership of a swarm of bees.

3) Taking the donkey that was received as an exchange with a tax collector

A Baraisa is cited that contradicts the Mishnah's ruling that one is permitted to take a donkey that was received as an exchange with a tax collector. Two resolutions are offered to explain the Baraisa.

4) Bandits

R' Ashi asserts that the case of bandits mentioned in the Mishnah refers to idolatrous bandits, as opposed to Jewish bandits.

This explanation is rejected and the Gemara asserts that the qualification was intended for the second ruling of the Mishnah related to bandits.

5) Despair - יאוש

A Mishnah presents a dispute whether one is more prone to despair recovering stolen hides from a גנב or from a גזלן.

Ulla and Rabbah disagree whether this dispute applies even when it is known the owner despaired (Rabbah) or only when it is not known (Ulla).

Three unsuccessful challenges to Rabbah are presented.

Rebbi declared that a גנב is like a גזלן and the Gemara expresses uncertainty whether he meant that in both cases the

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REVIEW and Remember

1. Why is it permitted to keep items one receives from bandits?

2. What is an אנס?

3. What are the two types of גזלנים?

4. What conditions are necessary for a person to be able to reclaim property he claims was stolen?

Distinctive INSIGHT

Does the halacha accept the three rulings of R' Yishmael?

שעל מנת כן הנחיל יהושע לישראל את הארץ

In the Baraisa brought in the Gemara, Rabbi Yishmael, the son of R' Yochanan b. Beroka, taught three rules that were established as "a condition set by Beis din," and were conditions set by Yehoshua as he apportioned the land of Israel among the Jews. One of the rules is the final case of the Mishnah (114a). If one's bees swarmed across the property line and, as a group, they settled upon a branch of one's neighbor's tree, Rabbanan say that the owner of the bees may enter the property to retrieve his bees, but he may not break off the branch to bring his bees back, even if he wishes to pay for it. Rabbi Yishmael rules that the owner of the bees may snap off the branch to recover his bees, but he must pay for the branch he takes.

Another halacha of R' Yishmael is where there are two people, one has a barrel filled with wine, and the other has a barrel filled with honey, which is more expensive than wine. The barrel carrying the honey breaks, and the honey is at risk of being lost. The owner of the barrel of wine may dump his wine in order to save the honey, and he may recapture the full value of his wine from the value of the honey which was saved.

י"א cites an opinion that the halacha follows R' Yishmael in all of these rulings. Yet, Ri"ף himself contends that the halacha is not in accordance with R' Yishmael. Firstly, regarding a person dumping his wine to save his friend's honey, the Mishnah later (115a) brings the opinion of Rabbanan which argues and says that the wine owner is paid for his time, but not for his wine. We generally rule according to a סתם משנה, which would mean that we do not rule according to R' Yishmael. Furthermore, the Gemara earlier (81b) presented a list of ten conditions which Yehoshua set as guidelines for society as the Jews inherited the land. The Gemara asks why the list of ten conditions does not include the three rules of R' Yishmael which we find here. The Gemara answered that the list of ten did not include statements made by an individual. Once again, notes Ri"ף, it seems that the Gemara feels that these rulings of R' Yishmael are not the halacha.

Rosh, however, notes that the Mishnah on 115a is dealing in a case where the wine owner dumps his wine voluntarily. That is where the Rabbanan say that he only gets paid for his time. However, R' Yishmael rules that he gets paid for his wine when the honey owner compels the wine owner to save his honey. Here the wine owner receives payment for his wine. Regarding the omission of R' Yishmael's rules from the list of ten conditions on 81b, even if we rule according to R' Yishmael, the list simply did not include those conditions mentioned by an individual. ■

HALACHAH Highlight

Taking possession of a stolen object from the thief

המציל מן הנהר או מן הגייס או מן הלסטיין

Someone who salvages an object from a river, an army or armed robbers

The Gemara relates that a person who salvages an object from a thief is permitted to keep that object. Later authorities note that a ruling in Shulchan Aruch seems inconsistent with this statement of the Gemara. Shulchan Aruch¹ rules that a change of ownership (שינוי רשות) applies only when the thief gives the stolen object to another person but if someone was to forcibly take the stolen object from the thief it is not considered as if the object has undergone a "change of ownership." Why then is a person who salvages a stolen object permitted to keep that object if there has not been a "change of ownership?" Taz² suggests that the Gemara refers to a case where the thief knowingly gave the stolen object away and when the Gemara uses the phrase, "salvaged" it means he salvaged it from the thief by appeasing him to give it away. If, however, it was forcefully taken away from the thief it would be necessary to return the object to its owner since it has not yet gone through a change of ownership.

Nesivos Hamishpat³ asserts that the Gemara refers to a case where the object was taken forcefully from the thief and nevertheless it is permitted for the person who took it to keep it. The ruling in Shulchan Aruch that taking the object from the thief does not constitute a change of ownership applies only when the owner gives up hope of recovering the object (יאוש) after it has reached the hands of the thief. The reason is that when the thief took possession of the object there was an obligation to return the object to its owner, since the owner had not yet lost hope of recovering the object and therefore it is prohibited for other people to take possession of that item. In contrast, the case of our Gemara refers to where the owner gave up hope of recovering the object even before the thief took possession of it, i.e. he was frightened by the thief to abandon the object. Accordingly, the thief was merely the indirect

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criminal acquires the hides or in both cases he does not acquire the hides.

On the third attempt the Gemara demonstrates that Rebbi's intent was that the criminal does acquire the hides.

6) Clarifying the Mishnah

The Gemara clarifies why the term וכן was used to introduce the halacha of the swarm of bees.

The circumstance in which a woman or child is believed regarding the origin of a swarm of bees is explained.

7) Casual talk – מסיח לפי תומו

R' Ashi asserts that casual talk is only valid to permit a woman to remarry.

A number of attempts are made to refute this ruling but each one is unsuccessful due to the unique characteristic of that case.

8) Cutting a neighbor's branch to recover your swarm of bees

A Baraisa is cited that presents the source for R' Yishmael the son of R' Yochanan ben Berokah's ruling that it is permitted to cut down a friend's branch to retrieve one's bees.

9) MISHNAH: The Mishnah discusses the halacha of one who discovers his property in the possession of others and claims it was stolen from him.

10) Clarifying the Mishnah

The exact circumstances when the claimant is believed to say that the objects were stolen from him are clarified.

The explanation that the thieves were seen tunneling out of the claimant's house is unsuccessfully challenged.

Rava adds another qualification to the Gemara's explanation of the Mishnah. ■

cause of the owner's losing possession of his object rather than a thief and as such it is considered a lost object that could be acquired by others. ■

1. שו"ע חור"מ סי' שס"א סע' ה'

2. ט"ז שם סע' ה' וסי' שס"ח סע' א'

3. נה"מ סי' שס"א ■

STORIES Off the Daf

Buyer beware

נטלו ליסטים כסותו

Two Jews once hired the same non-Jewish washerwoman. Unfortunately, she got things somewhat confused and did not return all of their clothes. One man received every garment except for one towel. In place of his ordinary towel, he was given a very distinctive towel. When he confronted the washerwoman and insisted that although he had given her a towel, this towel was not his property, the non-Jewish laundress absolutely denied that this could possibly be.

In the face of this, the man had little

choice but to accept the distinctive towel as a replacement for his own lost towel.

The other gentleman who had given in his wash fared much worse. The washerwoman neglected to return several of his garments. Once again, when she was confronted with her mistake she denied it and the Jew could do nothing about it since he had no proof that would stand up in a court of law. The only thing he could do was tell her that she was certainly wrong and that he would never use her services again.

After a short time, this man heard about the other Jew's experience and he approached him and explained that he had actually lost a distinctive towel. When he gave clear simanin, the man who had received the towel admitted that it was surely

his but he refused to return it.

He was adamant, "When the washerwoman gives me back my misplaced towel, I will return yours!"

When this case was presented to the Terumas Hadeshen, ז"ל¹, he ruled that the towel must be returned to the original owner. "This seems quite obvious. On Bava Kamma 114 we find that if armed robbers took someone's garment and gave him another person's garment, the second set of garments is his since the owner clearly gave up on the garments ever being returned.

"Clearly this is only true in a case of theft. In our case, where the owner most definitely did not give up on his property, the towel must be returned!"¹ ■

1. תרומת הדשן סימן ש"ט