



Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

Bava Kamma Daf Kuf Yud Daled

MISHNA

- If a tax collector took someone's donkey and gave him back a different donkey, or if robbers took his garment and gave him another garment instead, he may keep what he is given, because we can assume that the owners of these items were meya'ish.
- If someone saves an item from a river, or from an army, or from robbers, if the owners were meya'ish, he may keep the items. Similarly, if a person finds a swarm of bees, if the owner was meya'ish, he may keep the bees.
 - **R' Yochanan ben Broka** says, a woman or a minor is believed to say that the swarm came out of a particular place.
 - A person may walk into someone else's field to save his own swarm of bees, and if he damaged the field, he must pay for what he damaged. However, he may not cut off a branch even though he intends to pay for it. **R' Yishmael the son of R' Yochanan ben Broka** says, he may even cut off the branch of a tree and then pay for that.

GEMARA

- A Braisa says that if he took a donkey from the tax collector he must give it back to its true owner (not like our Mishna said).
 - This Braisa holds that yi'ush alone does not make a kinyan, and therefore when he took it, it still belonged to the original owner, and it was assur for him to have.
 - **Others** say, the Braisa meant that if he wants to return it, he should return it to the original owner. This version holds that yi'ush on its own creates a kinyan, but if he says I don't want to have something that is not truly mine, he should return it to the original owner.

HAREI EILU SHELO MIPNEI SHEHABAALIM...

- **R' Ashi** said, this is only true if they are non-Jewish robbers. If they are Jewish robbers the owner is not meya'ish, because he thinks that he will take them to Beis Din the next day.
 - **Q: R' Yosef** asked, the opposite would make more sense! By a non-Jew he is not meya'ish, because he can take him to a non-Jewish court who will force him to give it back, but if it is a Yid he is meya'ish, because Beis Din doesn't force to follow their ruling!?
 - **A: R' Ashi's** statement must have been made in reference to the end of the Mishna, which said that if he saved an item from a robber, then "if the owners were meya'ish, he may keep it". This suggests that we don't assume he was meya'ish. On this, **R' Ashi** said, we don't assume yi'ush by a goy, because the Yid will take him to the non-Jewish court who will force him to return the item. However, if the robber is a Yid, he is meya'ish, because Beis Din does not enforce its ruling.
- A Mishna (regarding a piece of leather becoming susceptible to tumah by the person who has it thinking that he will no longer improve that piece of leather) brings a machlokes where the **T"K** holds people are not meya'ish when a gazlan steals something from them but are meya'ish when a ganav steals from them, and **R' Shimon** says the reverse. On that machlokes, **Ulla** said, they only argue where we don't know if in fact the owner was meya'ish, but if we know that he was, all would agree that the robber would be koneh, because yi'ush alone creates a kinyan. **Rabbah** said they even argue where we know that he was meya'ish. **Abaye** said to **Rabbah**, don't argue with **Ulla**, because the Mishna says like him. The Mishna says "because the owners were not meya'ish". This would mean, if we knew that they were meya'ish the robber would be

koneh. **Rabbah** said, we understand the Mishna as if it says “because there is no yi’ush to the owners” (even if they say they were meya’ish, we don’t believe that they truly were).

- **Q:** Our Mishna said that we can assume the owner of the donkey or the garment is meya’ish. Who is the Tanna of the Mishna? If the Mishna follows the **Rabanan**, why do they say he is meya’ish by the tax collector, who is a gazlan? If it is **R’ Shimon**, why is he meya’ish in the case of the ganav? Now according to **Ulla**, we can say the Mishna is referring to where we *know* he was meya’ish, and can then follow all shitos. However, according to **Rabbah**, who does the Mishna follow!? **A:** He would say the Mishna follows **R’ Shimon** and is referring to armed robbers, not a true ganav.
 - **Q:** If so, that is the same case of gazlan, like the tax collector!? **A:** The Mishna lists two different types of gazlanim.
- **Q:** A Braisa says, a ganav and a gazlan, their giving to hekdesch is valid, their terumah is valid, and their maaser is valid (presumably because the owner is meya’ish). Who is the Tanna of the Braisa? If the Braisa follows the **Rabanan**, why do they say he is meya’ish by the gazlan? If it is **R’ Shimon**, why is he meya’ish in the case of the ganav? Now according to **Ulla**, we can say the Braisa is referring to where we *know* he was meya’ish, and can then follow all shitos. However, according to **Rabbah**, who does the Braisa follow!? **A:** He would say the Braisa follows **R’ Shimon** and is referring to armed robbers, not a true ganav.
 - **Q:** If so, that is the same case of gazlan!? **A:** The Braisa lists two different types of gazlanim.
 - **A:** We can also say the Braisa follows the view of **Rebbi**, who holds that the person robbed by a gazlan or a ganav are both meya’ish.
- **Q:** We just mentioned that **Rebbi** holds that a ganav is like a gazlan. Does he mean like a gazlan according to the **Rabanan**, in which case he is also not koneh, or does he mean like a gazlan according to **R’ Shimon**, in which case he is koneh? **A:** Our Mishna said, if a tax collector took a donkey and gave the person a different donkey in return or if a robber took a garment and gave the person a different garment in return, he may keep it because the owner of that garment was surely meya’ish. Who is the Tanna of the Mishna? If the Mishna follows the **Rabanan**, why do they say he is meya’ish by the tax collector, who is a gazlan? If it is **R’ Shimon**, why is he meya’ish in the case of the ganav? Now, if **Rebbi** meant that a ganav is like a gazlan according to **R’ Shimon**, we can say that the Mishna follows **Rebbi**, and that is why he is koneh in both cases. However, if he means that a ganav is like a gazlan according to the **Rabanan**, our Mishna would seem not to follow anybody!?
 - The Gemara says, this is no proof. It may be that the Mishna follows **R’ Shimon** and is referring to armed robbers, not a true ganav.
 - **Q:** If so, that is the same case of gazlan, like the tax collector!? **A:** The Mishna lists two different types of gazlanim.
 - **Q:** Maybe we can answer from a Braisa. The Braisa says, a ganav and a gazlan, their giving to hekdesch is valid, their terumah is valid, and their maaser is valid (presumably because the owner is meya’ish). Who is the Tanna of the Braisa? If the Braisa follows the **Rabanan**, why do they say he is meya’ish by the gazlan? If it is **R’ Shimon**, why is he meya’ish in the case of the ganav? Now, if **Rebbi** meant that a ganav is like a gazlan according to **R’ Shimon**, we can say that the Braisa follows **Rebbi**, and that is why he is koneh in both cases. However, if he means that a ganav is like a gazlan according to the **Rabanan**, our Braisa would seem not to follow anybody!?
 - The Gemara says, this is no proof. It may be that the Braisa follows **R’ Shimon** and is referring to armed robbers, not a true ganav.
 - **Q:** If so, that is the same case of gazlan, like the tax collector!? **A:** The Braisa lists two different types of gazlanim.
 - **R’ Ashi** told **Rabbah**, we can answer from the following. We have learned that **Rebbi** taught his son **R’ Shimon**, that when the Mishna says “real property” it is referring to anything that is intact and recognizable as being the stolen property, and it must be returned for the honor of their father. We see, that if not for the honor of their father

they would not have to return it. This shows that **Rebbi** holds that a ganav is like **R' Shimon's** view of a gazlan, and that is why the owner was meya'ish. **SHEMA MINAH.**

V'CHEIN NECHIL SHEL DEVORIM

- **Q:** What does this case of the bees add to the previous examples of saving from a river, robbers, etc.? **A:** Bees are only owned by a person D'Rabanan. Therefore, we would think that a person would be quicker to be meya'ish, and we can even assume that he would be meya'ish. The Mishna therefore teaches that even with bees, he may only keep them if he *knows* the owner was meya'ish.

AMAR R' YOCHANAN BEN BROKA NE'EMENES ISHA V'KATAN...

- **Q:** A woman and a minor are not fit to be witnesses!?! **A: R' Yehuda in the name of Shmuel** said, the case is where the owner is chasing after the bees, and the woman or minor says, without knowing they are being relied upon, that the bees came out of a particular location.
 - **R' Ashi** said, the concept that we accept as valid testimony when someone says something without knowing they are being relied upon is valid testimony only to permit a woman to remarry. **Ravina** asked him, in the case of the bees we believe them in this scenario as well!?! The Gemara says, the case of the bees is different because it is only a kinyan D'Rabanan.
 - **Q:** Is there no case where we rely on such testimony D'Oraisa? We find that **R' Yehuda in the name of Shmuel** said it once happened that **Rebbi** allowed a person to eat terumah based on his saying, without realizing he would be relied upon, that he was a Kohen!?! **A:** That was only for terumah D'Rabanan.
 - **Q:** We find that **Rebbi** or **R' Yehoshua ben Levi** once allowed a woman who was captured to marry a Kohen based on the testimony, without knowledge of reliance, of her son, that she was not raped by her captors!?! **A:** We are meikel for a woman who was captured.

AVAL LO YAKOTZ ES SOCHO...

- **R' Yishmael the son of R' Yochananben Broka** says, that it was enacted by Yehoshua that the owner of bees that took up living in another person's tree may cut a branch of that tree off to take back his bees and pay for the loss he causes, and it was enacted that one should spill out his wine to use his barrel to save the more expensive honey of someone else that will otherwise be lost and pay for the loss he causes, and that one should unload his wood off his donkey to save the more expensive flax of someone else and pay for the loss he causes.

MISHNA

- If someone recognizes his keili or his sefer in the hands of another person, and there was a rumor that this owner had been robbed, and the person who has it claims he was a purchaser, he must swear as to what he paid for the item and the owner pays that amount and takes the item back. If there was no knowledge of any robbery to this person, he is not believed to say that the items were stolen from him. Instead, we assume that he sold them to someone else who then sold them to this person.

GEMARA

- **Q:** Even if there is a rumor of robbery, why are we not concerned that he truly sold it and *himself* spread the rumor of robbery? **A: R' Yehuda in the name of Rav** said, the case is where people who were at his house saw him get up in middle of the night, screaming that he was robbed.
 - **Q:** Maybe this was an act as part of the plan to get his sold items back? **A: R' Kahana in the name of Rav** said, the case is that we also found a tunnel dug into his house, and people were seen escaping with bags of goods from his house in middle of the night, and people were saying that he was robbed.
 - **Q:** Maybe only keilim were stolen, and not his sefarim? **A: R' Chiya bar Abba in the name of R' Yochanan** said, the case is that the people saw that sefarim were taken as well.

- **Q:** Maybe only small sefarim were taken and he is claiming that large sefarim were taken? **A: R' Yose bar Chanina** said, the case is that the people were able to identify which sefarim were stolen.
 - **Q:** Maybe they were old sefarim and the person was claiming new sefarim? **A: Rav** said, the case is that the people recognize the keilim and the sefarim as belonging to the person making the claim.
 - **Q:** How could **Rav** have said that they used a tunnel for the robbery and still hold them chayuv? **Rav** has said that if robbers use a tunnel to steal items they are patur from having to return the items, because they were koneh them with the way that they risked their lives by stealing in this way!? **A:** That is only when they entered using a tunnel. The case here is where they only left with the tunnel, and therefore did not enter with the realization of risking their lives.
- **Rava** said, when we said that we need people to have seen which sefarim were stolen, that only applies to a person who often sells his sefarim. However, if one does not do so, even without that level of testimony he will be believed.
 - **Q:** Why are we not concerned that even this person needed some money and therefore went and sold his items? **A: R' Ashi** said, the fact that people say he was robbed is enough to counter that concern.