



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

### Bava Kamma Daf Kuf Tes Vuv

- If a ganav stole something and sold it, and the ganav was then caught, **Rav in the name of R' Chiya** said the owner only has a claim against the ganav. **R' Yochanan in the name of R' Yannai** said, the owner also has a claim against the buyer (he can take back the item without paying him for it).
  - **R' Yosef** said they don't argue – **R' Yochanan** is discussing where they were sold before yi'ush and **Rav** is discussing where it was sold after yi'ush, and they both hold of **R' Chisda** (mentioned previously that if a ganav steals and gives it to another to consume before yi'ush, both parties are chayuv).
    - **Q: Abaye** asked, in explanation of a Mishna regarding the gifts that must be given to a Kohen **Rav** seems to say that a buyer who was charged by the butcher for the pieces that the butcher should have given to a Kohen, any claim made by the Kohen to get his portions can only be made against the butcher, not the buyer, and that is similar to a case of before yi'ush!? **A: R' Yosef** said, he meant that he can *also* make a claim against the butcher. We would think that Kohanic gifts can't be "stolen", and therefore the butcher could never be said to have "stolen" anything and should be patur. **Rav** therefore teaches that he is chayuv.
  - According to **Abaye**, who says that they do argue, he would explain that they argue in the halacha of **R' Chisda**.
  - **R' Zvid** said, the case is where the owners were first meya'ish when the stolen items were in the hand of the buyer. The machlokes is that **R' Yochanan** says that yi'ush followed by change in possession creates a kinyan, but the reverse order will not. **Rav** holds that even the reverse order creates a kinyan.
  - **R' Pappa** said, all agree that the stolen item would have to be returned to the owner. The machlokes is whether the buyer may make a claim for payment from the owner (referred to as "the remedy of the marketplace") or whether his only option is go after the ganav. **Rav** says he may only go after the ganav, and **R' Yochanan** says he may go after the owner as well.
    - We find that **R' Huna**, who was **Rav's** talmid, held the buyer can go after the owner!? **A:** The ganav in the case that he paskened that way would never have the ability to pay back the purchaser, so in that case he allowed the purchaser to seek payment from the owner.
    - **Rava** said, if the buyer bought the item from a known ganav, we would never allow him to collect from the owner, because he should have known that he may be buying a stolen item.
    - If a ganav stole and used the items to pay a debt we do not allow the lender to seek payment from the owner if the items are taken away, because we tell him that he did not give money for these good, and there was therefore no expectation that he would be getting these items. If the ganav used stolen items worth 200 as a pledge for a loan of 100 we do apply the "the remedy of the marketplace". If the items were equal in value to the loan, **Ameimar** says we do not apply "the remedy of the marketplace" and **Mar Zutra** says that we do.
      - If the stolen property is sold for its true value we do apply "the remedy of the marketplace". If they were worth 100 and he sold them for 200, **R' Sheishes** says we do not apply "the remedy of the marketplace", and **Rava** says that we do.

- The Gemara paskens that in all these cases we do apply “the remedy of the marketplace”, except for when the stolen items are given to a creditor of the ganav as payment for a debt.
- **Ravina’s** father in law lent 4 zuz to a person. The debtor stole a garment and gave it to him as payment, at which time **Ravina’s** father in law advanced him another 4 zuz. He then found out it was stolen and the owner wanted it back. **Ravina** said, with regard to the first 4 zuz of repayment, the owner does not have to pay for that, but with regard to the 4 zuz of the new loan, the owner does have to pay, because he it is considered to have been a pledge. **R’ Kohen** asked, maybe the garment was only given as repayment and was not given as security at all!? The question was asked to **R’ Avahu**, and he said the halacha is as **R’ Kohen** said.
- A stolen book was sold to one person for 80, who then sold it to a second person for 120. **Abaye** told the owner to take the item and give the second person 80, and the second person can then go and collect 40 from the first person. **Rava** asked, surely in this case we should apply “the remedy of the marketplace” and not require the second person to have to go and collect!? Rather, **Rava** said, the owner must give 120 to the second person, he can then go and collect 40 from the first person, and must then collect the remaining 80 from the ganav.

#### MISHNA

- If a person’s jar of honey broke, and another person with a jug of wine spilled out his wine so that he can catch and save the more expensive honey for the other person, he is only reimbursed for his time and the use of his keili, not for the value of the wine. However, if the owner of the wine said “I will save your honey if you pay for the wine I will lose”, then the owner of the honey must pay for the wine.
- If a river swept away the donkey (worth 100) of a person and the donkey (worth 200) of another person, and the first person let his get lost and instead went and saved the other donkey, he only gets paid for his time. However, if he said, “I will save your donkey, but you must pay me for my donkey”, the second person would have to pay for the donkey.

#### GEMARA

- **Q:** Why is he not paid for his wine? He should be able to tell the owner of the honey, your honey was lost, and I was koneh it from hefker and should therefore own all the honey!? We see this concept in a Braisa that says, that if someone has a barrel that is leaking, he should not say that the wine or oil in it should be terumah or maaser for other produce, because it is now considered to be hefker, and if he does say so, it is not effective! **A:** It is like **R’ Yirmiya** said elsewhere, that there is a netting around the keili of honey, and therefore it gets lost slowly, not all at once, and is therefore not considered to all be of hefker.
  - **Q:** How could the Braisa say that his statement of terumah or maaser would be ineffective? Another Braisa says, if a person is about to get robbed he should not quickly say that the money he has with him should take on the maaser status of produce he has somewhere else, since that money is about to be lost. However, if he did say so, it will be effective!? **A:** The Braisa with the ganav is discussing a case where he could save the money.
    - **Q:** If so, why can’t he make it maaser even l’chatchila? **A:** The case is that he can only save it with difficulty.
    - **Q:** A Braisa says that one may designate the tamei contents of a broken or uncovered (from which one may not drink) wine barrel as terumah, even though they will now be lost, but may not do so for oil, because of the loss it will cause the Kohen!? **A:** **R’ Yirmiya** said, the case is that there is a netting around the barrel which prevents an immediate loss.
    - **Q:** That explains the case of the broken barrel. What about the case of the uncovered barrel, which can’t be used to drink or even to sprinkle as a deodorizer!? **A:** He can pour uncovered wine through a strainer, which would

make it mutar to drink, as explained by **R' Nechemya**. Further, we would have to say that it was poured very slowly, through a cloth, because even **R' Nechemya** says, if the wine was mixed after being uncovered, it would be assur even after being poured through a strainer.

- **Q:** The Braisa can't be following **R' Nechemya**, because he says that one may not separate terumah from one tamei thing for another except when dealing with demai!? **A:** We will say that the Braisa is dealing with demai.
- **Q:** Why is oil said to create more of a loss than wine? The same way tamei oil of terumah has a use as fuel for a fire, tamei wine of terumah has a use to be sprinkled as a deodorizer!? **A:** We are dealing with new wine, which doesn't have enough of a fragrance to be used as a deodorizer. We also wouldn't let a Kohen hold onto tamei terumah wine in order to age it, because we are afraid that he may come to drink it. With oil we don't have this concern, because he can put it into a dirty keili, which he would never drink from. Putting wine into such a keili would render it useless as a deodorizer.
  - We find that whether we must be concerned that leaving the tamei terumah around will lead to the Kohen eating it is actually a machlokes between **B" S and B" H**.