



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

### Bava Kamma Daf Samach Ches

EIN HAGONEIV ACHAR HAGANAV MISHALEM TASHLUMEI KEIFEL

- **Rav** said, the second ganav is not chayuv keifel only if he stole it before the yi'ush of the original owner. However, after that yi'ush, the first ganav would be koneh the item, and if stolen from him then, the second ganav would be chayuv to pay keifel to the first ganav.
  - **Q: R' Sheishes** said, **Rav** is incorrect, based on a Braisa. The Braisa says, **R' Akiva** says, the reason the Torah gives an obligation for daled v'hey is because the sin has become strongly rooted at that time. Now, what case is **R' Akiva** talking about? If it was before yi'ush, the fact that he sells it does not make him be koneh it, so why would that make the theft more "strongly rooted"? Rather it must be discussing where this happened after yi'ush. However, if yi'ush makes the ganav be koneh, why would the ganav pay daled v'hey? He has shechted or sold his own animal!? **A:** We can say like **Rava**, that the "strongly rooted" means that he has done a second act in the theft (the actual theft, and then the shechting or selling, even though the selling would not be a valid sale) and that is why he must pay daled v'hey. Not because yi'ush made a kinyan.
  - **Q:** A Braisa says, the pasuk says "u'tvacho oy micharo", which teaches that just as the shechting is irreversible, so too the selling refers to one that is irreversible. Now, this can't be talking about before yi'ush, because a sale at that time would be reversible (because it is not a legally valid sale). It must be referring to after yi'ush, and we see that he pays daled v'hey, which shows that it is not considered to be his animals, which means that yi'ush does not make a kinyan!? **A:** We can say like **R' Nachman**, that the "reversible sale" of the Braisa refers to a sale for 30 days, but an invalid sale would be categorized as irreversible.
  - **Q:** A Braisa says, 1) if a ganav stole and another person stole the item from the ganav, the first ganav pays keifel to the owner and the second ganav only pays principal. 2) If a ganav stole and sold the item, and a second ganav steals the item from the buyer, the first ganav must pay dalaed v'hey and the second ganav pays keifel. 3) If a ganav steals an animal and shechts it, and a second ganav then stole the dead animal, the first ganav pays daled v'hey and the second ganav only pays for principal. Now, what is the circumstances of the second case? If it was before yi'ush, why would the second ganav pay keifel? A change of reshus (upon sale) without yi'ush is surely not a kinyan!? Rather, it must be that it was after yi'ush. Now, if yi'ush alone is koneh, why does the first ganav pay daled v'hey? He has sold his own animal!? Also, since we established that we are discussing after yi'ush, if yi'ush alone is koneh, in the first case of the Braisa the second ganav should have to pay keifel!? We see from here that yi'ush alone is *not* koneh, which refutes **Rav**!? **A: Rava** said, the Braisa is clearly not a correct Braisa as written, because the third case says that even after a shechita the second ganav only pays principal. Now, everyone agrees that a physical change would create a kinyan, so why would he not pay keifel!? Rather, we can say that the entire Braisa is discussing before yi'ush and we must switch the rulings of the second and third cases. The Braisa should be understood as follows. In the second case the second ganav only pays principal, because the sale without yi'ush is not a kinyan, and the second ganav therefore didn't steal from "its owner" and there is therefore no payment for keifel. In the third case, the second ganav pays keifel, because a physical change (i.e. the shechita) causes the first ganav to be koneh.
    - **R' Pappa** said, we do not have to switch the rulings of the cases, and the last case follows **B"S**, who hold that even a physical change does not make the ganav koneh.

- **Q:** If so, the first and second cases are talking about after *yi'ush*, and the Braisa is difficult according to **Rav!**? **A: R' Zvid** said, the entire Braisa is discussing before *yi'ush*, and the case is that there was no *yi'ush* when the ganav took it, but there was *yi'ush* after the sale by the ganav, and it is not because *yi'ush* is only *koneh* when there is also a change in *reshus*. The reason this case was given is because this is the only case that can result in both ganavim paying more than just principal.
- If a ganav sells a stolen animal before *yi'ush* of the owner, **R' Nachman** says he is *chayuv dalaed v'hey*, and **R' Sheishes** says he is *patur*. **R' Nachman** says, the pasuk says "micharo", without differentiating between before *yi'ush* or after *yi'ush*. **R' Sheishes** says, the act of selling is only effective after *yi'ush*. Therefore, if the sale is before *yi'ush*, the sale does not generate a payment for *dalaed v'hey*. The sale must be like a *shechita*, where his act is always effective (the animal is dead).
  - **R' Sheishes** said, my view can be seen in a Braisa, where **R' Akiva** says that the reason the Torah made an obligation of *dalaed v'hey* is because the *shechting* or selling deeply roots the *aveirah*. Now, the sale only has an effect after *yi'ush*, so based on this reason, it must be that *dalaed v'hey* will only come about after *yi'ush*.
    - **Rava** said this is no proof. **R' Akiva** means the obligation was put in place because he sinned yet again (the theft and then the sale).
  - **Q:** A Braisa says, the pasuk says "u'tvacho oy micharo", which teaches that just as the *shechting* is irreversible, so too the selling refers to one that is irreversible. Now, this can't be talking about before *yi'ush*, because a sale at that time would be reversible (because it is not a legally valid sale). It must be referring to after *yi'ush*, and we see that he pays *dalaed v'hey* only after *yi'ush*!? **A: R' Nachman** said, the "reversible sale" of the Braisa refers to a sale for 30 days, but an invalid sale would be categorized as irreversible.
  - **R' Elazar** also holds that *dalaed v'hey* is only paid if the sale was after *yi'ush*, because he says, we learn from the Torah that we presume that there is *yi'ush* after a theft, because there is *dalaed v'hey* after a theft, so it must be that there was *yi'ush*.
    - **Q:** Maybe the Torah means to obligate for *dalaed v'hey* even without *yi'ush*? **A:** The sale must be like the *shechting* – just like the act of *shechita* takes effect, so too, the sale must take effect, which it only does after *yi'ush*.
    - **Q:** Maybe the pasuk is talking about a case where we know he already had *yi'ush*!? **A:** Again, the sale must be like the *shechting* – just like the act of *shechita* brings an obligation for *dalaed v'hey* even if done before *yi'ush*, the obligation for a sale is the same thing.
  - **R' Yochanan** said to **R' Elazar**, we find that by kidnapping the ganav is *chayuv* if he sells the person even though there was no *yi'ush*!?
    - **Q:** We clearly see that **R' Yochanan** holds the ganav is *chayuv* if he sells the animal before *yi'ush*. What does he hold when it was sold after *yi'ush* (is the ganav *koneh* with *yi'ush*, and therefore he is not *chayuv*, or not)? **A: R' Yochanan** holds that he is *chayuv* even after *yi'ush*, and **Reish Lakish** says he is *patur*, because he is *koneh* with *yi'ush* and therefore sold or *shechted* his own animal.
      - **Q: R' Yochanan** asked **Reish Lakish**, a Mishna says, if a person stole an animal and was then *makdish* it to be brought as a *korbon*, and he then *shechted* or sold it, the halacha is that he has to pay *keifel* to the owner (since when it was stolen it was not yet *hekdesh*), but he does not pay *dalaed v'hey*, because at the time of the *shechita* or sale it already belonged to *hekdesh*. Now, this can't be talking about before *yi'ush*, because he couldn't make the animal *kadosh* if there was no *yi'ush*, since it doesn't belong to him. So, it must be talking about after *yi'ush*. Yet, we see that he only doesn't pay *dalaed v'hey* because it belonged to *hekdesh*. Otherwise he would have to pay, even though there was *yi'ush*!? **A: Reish Lakish** said, the case is where the owner made it *hekdesh* while it was in the hands of the ganav. That is how it became *hekdesh* even though there was no *yi'ush*.

- **Q: R' Yochanan** has said, if a person steals an animal, neither the owner nor the ganav can make it hekdesh. The ganav can't, because it doesn't belong to him and the owner can't, because it is not in his reshus!? **A: Reish Lakish** holds like the "tznu'in", who hold that the owner of a stolen item can make it hekdesh when it is in the reshus of the ganav.
- **Q:** If the owner was makdish it, it is not considered to be stolen from him, so why does the ganav pay keifel? **A:** The case is that the ganav was brought to Beis Din before it was given to hekdesh.
  - **Q:** What is the case? If Beis Din had ruled and said "Go and pay him", even if the owner wasn't makdish it at that point and the ganav then sold or shechted the animal, **Rava** says he wouldn't be chayuv daled v'hey, because he is then considered to be a gazlan instead of a ganav, and therefore would not pay daled v'hey!? **A:** The case is where they told him he is obligated to pay, but did not yet instruct him to pay. In that case he is still considered to be a ganav, and therefore would be chayuv for daled v'hey if he shechted or sold it then, if not for the fact that it was given to hekdesh.