



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

Bava Kamma Daf Tzaddik Hey

GAZAL PARAH ME'UBERES V'YALDA...

- A Braisa says, if a ganav steals a sheep and had it sheared, or a pregnant cow that then gave birth, **R' Meir** says he must return all the items that he stole (the sheep, the wool, the cow, the calf) along with any appreciation that took place. **R' Yehuda** says he returns just the sheep or the cow and then pays the value of the wool and the fetus as they were at the time of the stealing. **R' Shimon** says we view all the items as if they were appraised at the time of the stealing.
 - **Q:** What is the logic of **R' Meir**? Is it because he holds that a change does not effect a kinyan, or does he agree that in general a change does, and only when dealing with a ganav we penalize him by not allowing him to benefit from any appreciation? The difference between these reasons would be where the stolen item underwent a change and depreciated.
 - Maybe we can answer from a Mishna, which says, if a ganav stole an animal and it aged, or he stole a slave and it aged, he pays the value as it was at the time of the stealing. **R' Meir** says, with regard to slaves he can just return the slave as is (a slave is compared to land, and just as land cannot be halachically stolen, the same is true for slaves). This seems to suggest that with regard to the animal, he would agree that he pays the value at the time of the stealing. Now, if **R' Meir** truly holds that a change does not effect a kinyan, even in the case of the stolen animal he should be able to just return the animal! Rather, it must be that he holds a change does effect a kinyan, and the reason he holds the ganav must return the calf and the wool is a penalty so that he not benefit from the appreciation.
 - This is no proof. It may be that **R' Meir** was speaking according to the **Rabanan**, and saying "according to me that change does not effect kinyan, even the animal can be returned as is. However, according to you, at least agree with me that a slave can be returned as is, because he is like land!" The **Rabanan** answer, "we disagree, because we hold that a slave is considered to be moveable property, and as such cannot be returned in a depreciated state".
 - We can answer from a different Mishna, which says, if a person gave wool to a dyer to color for him, and it was dyed the wrong color, **R' Meir** says, he gives the owner of the wool the value of the wool as it was before it was dyed, and not the higher amount it is worth now that it is dyed. We clearly see that he holds that change does effect a kinyan, and it must be that in the case of the ganav the reason he must return all the items is for a penalty so that he not profit from the appreciation.
 - **Others** say that it was known that **R' Meir's** reason is because he holds that change effects a kinyan, and that in the case of the ganav the reason he must return the items is because of a penalty. The question was whether this penalty is only put in place for a meizid (for one who stole an item) or was it put in place even for a shogeg (e.g. someone who unknowingly bought the stolen item from the ganav)?
 - Maybe we can answer this from a Braisa. The Braisa says, there are 5 creditors who only collect from unencumbered properties, with one of them being a person who has a claim for produce and the improvement of produce, and another one being one who is collecting on a debt document that was written without a guarantee. This Braisa must follow **R' Meir**, because he is the one who

holds that if a document is written without a guarantee we do not assume it was a mistake of the sofer who wrote the document. Now, what is the case of “the improvement of produce”? The case must be where a ganav stole a field and sold it to a second person, who then improved the land, and the true landowner then goes to Beis Din and gets the land to be taken back for him. The buyer can sue the ganav for the purchase price from encumbered properties, but for the improvements that he made he can only collect from unencumbered property. We see that the buyer has the land and the improvements taken from him, so we see that the penalty is applied even to someone who acted b’shogeg.

- The Gemara said this is no proof. The case is that it was a talmid chochom who bought the land. He knew that land cannot actually be stolen, and therefore knew that since he bought it from someone who “stole” it, it was not a proper acquisition. In that way he was a meizid, not a shogeg.
- We can answer from a Mishna which says, if a person gave wool to a dyer to color for him, and it was dyed the wrong color, **R’ Meir** says, he gives the owner of the wool the value of the wool as it was before it was dyed, and not the higher amount it is worth now that it is dyed. Now, if we say that the penalty is applied to a shogeg as well, he should have to pay for the entire amount of the wool after it was dyed. We see that the penalty is only applied to a meizid.
SHEMA MINAH.
- In the Braisa quoted above, **R’ Yehuda** said he returns just the sheep or the cow and then pays the value of the wool and the fetus as it was at the time of the stealing. **R’ Shimon** said we view all the items as if they were appraised at the time of the stealing.
 - **Q:** What is the difference between these shitos? **A:** **R’ Zvid** said, they only argue in a case where the improvements are still attached to the stolen item. In that case, **R’ Yehuda** says they would belong to the true owner of the item, and **R’ Shimon** says they belong to the ganav. **A2:** **R’ Pappa** said, when the improvement is attached to the stolen item all would agree that it belongs to the ganav. The machlokes is whether the ganav gets the entire improvement or only a share of the improvement. **R’ Yehuda** holds the entire amount goes to the ganav. **R’ Shimon** says the ganav is only paid a rate as if he was hired to care for the stolen item during that time, and the rest of the value of the improvement goes to the owner of the item.
 - **Q:** Our Mishna said, if a ganav stole a cow, and it then got pregnant and gave birth, he need only pay the value of the cow as it was at the time of the stealing. This suggests that if it did not yet give birth, he would have to return the cow in its pregnant state. Now, according to **R’ Zvid**, he can say the Mishna follows **R’ Yehuda**. However, according to **R’ Pappa**, this doesn’t follow anybody! **A:** **R’ Pappa** would say, in truth even if it did not yet give birth the ganav would only pay the value as it was at the time of the stealing. The reason the Mishna gives the case of where it already gave birth is because that is the case that it gave in the first part of the Mishna.
 - There is a Braisa which states the view of **R’ Shimon** in the way that **R’ Pappa** said it.
 - **R’ Ashi** said, when he was by **R’ Kahana** the talmidim asked, according to **R’ Shimon**, who says that the ganav is given a share of the improvement, can the owner just pay him money equal to that value, or can the ganav insist on taking an actual portion of the improvement? He said that they answered based on **R’ Nachman in the name of Shmuel**, who says there are 3 people for whom we appraise the improvement and allow them to be bought out with money – a bechor can pay his brother for the improvement to the inheritance, a creditor can pay for the improvement the buyer made to a property that he is taking for his debt, and a creditor can pay orphans for the improvement they made to

inherited property. Based on this we would say that similarly, the owner can buy out the share of the ganav for money.

- **Q: Ravina** asked **R' Ashi**, how can you say that **Shmuel** says that a creditor has to pay for the improvement on the land that he is collecting for his debt? **Shmuel** has said that a creditor collects the improvements without paying for them!? **A: R' Ashi** said, **Shmuel** says he must pay for it when it is fully grown produce, but he does not have to pay for it if it is less than fully grown.
 - **Q:** We find that **Shmuel** would allow creditors to collect even fully grown produce without paying for that improvement!? **A: R' Ashi** said, if his debt equaled the value of the land with the improvement, he doesn't pay for it. If the debt was for less, he does pay for it.
 - **Q:** That makes sense according to the view that the buyer of the land cannot give money to the creditor instead of the land. However, according to the view that he can do that, why can't he tell the creditor, if I would have money I can take the whole field back, now that I don't, I should at least keep a piece of the field for the value of the improvements that you are taking from me, instead of you giving me money!? **A: R' Ashi** said, the case would be that the debtor had made that field an "apotiki", in which case all agree that the buyer cannot give money to the creditor in place of the field.