



Daf In Review – Weekly Chazarah

Maseches Bava Kamma, Daf 70 – Daf 85

Daf In Review is being sent l'zecher nishmas R' Avrohom Abba ben R' Dov HaKohen, A"H
v'l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

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- We previously mentioned that **Rav** says, the principal payment made by a ganav is the value of the item at the time it was stolen, and the payment for keifel and for daled v'hey are made based on the item's value at the time he is brought to Beis Din. **Rav** learns this from the extra words in the pasuk "geneiva" and "chayim".
 - **R' Sheishes** said that **Rav** is incorrect, because a Braisa says, if a ganav stole a lean animal and fattened it up, he pays keifel and dalaed v'hey based on the value when it was lean at the time it was stolen! The Gemara says, this case is different because the ganav can say, I fattened it up and you will now take payment!?
 - **Q:** A Braisa says, if a ganav stole a fattened animal and it then became lean, he must pay the keifel and daled v'hey based on the value at the time he stole it. This refutes **Rav**!? **A:** That case is different, because at the time that the animal starts to become weaker it is as if the ganav has already partially shechted the animal at that point, which is why we use that earlier point in time for the valuation. When **Rav** said his halacha, it was in reference to a case where there was a change in market price for animals, not because of something that happened to this particular animal.
 - **Q:** What would the case of **Rav** be? If the case is where it was initially worth one zuz and at the time he shechted it, it was worth 4 zuz, and **Rav** is saying that the principal amount paid need only be one zuz, he would seem to argue on **Rabbah**, who says that if someone stole a barrel of wine worth one zuz, and it then broke when it was worth 4 zuz, if he purposely broke it or drank it, he must pay 4 zuz. If not, he only pays one zuz!? **A:** **Rav** agrees with **Rabbah**. What **Rav** is talking about is a case where it was initially worth 4 zuz and was later worth only one zuz. In this case, the payment for the principal is valued at 4 zuz, and the keifel payment and daled v'hey payments are valued at 1 zuz.
 - **R' Chanina** taught a Braisa that can be a proof to **Rav**. The Braisa says, if a shomer said the item being watched was stolen from him, and he swore to that, and then admitted that he himself stole the item for himself, **R' Yaakov** says, if he admitted to this before witnesses testified that he stole it, he is chayuv to pay the principal, a fifth, and to bring an Asham. If the witnesses came before the admission, he pays keifel and brings an Asham, because the payment for the fifth is taken care of by his keifel payment. The **Chachomim** say, we learn from the pasuk that the obligation to pay for the fifth only applies when a payment for the simple principal must be made (not if keifel or other payments are also made). **R' Shimon ben Yochai** says, a fifth and an Asham are never paid and brought when keifel is paid. Now, what is the case that **R' Yaakov** says that the payment for a fifth will equal the keifel payment? It must be that initially the item was worth 4 zuz, and later it was only worth one zuz, so that the principal payment is for 4 zuz, and the keifel payment would be for one zuz, which is the same amount as a payment for a fifth would be. We see that this follows **Rav**.
 - **Rava** said, this is no proof. It may be that even later the item was worth 4 zuz, and the keifel payment is therefore also 4 zuz. The reason this equals the payment for the fifth is because the case is where the shomer swore 4 times that it was stolen from him, and we learn from the pasuk that he must pay a fifth for each false oath that he made.
 - The Braisa said, the **Chachomim** say, we learn from the pasuk that the obligation to pay for the fifth only applies when a payment for the simple principal must be made (not if keifel or other payments are also made).
 - **Q:** Why is it that the **Chachomim** say there would be no payment for the fifth based on the pasuk, but would say that the Asham must be brought, when it too is mentioned in

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that same pasuk!? **A:** They hold that the word “es” separates the Asham obligation, and it therefore applies even where there is payment for more than the principal.

- **R’ Shimon ben Yochai** holds that an asham is also not brought when there is payment other than principal. He says the word is written with the conjunctive “v’es”, which therefore connects the different parts of the pasuk. The **Rabanan** say that if it was meant to be combined the pasuk should not have written “es” or “v’es”. **R’ Shimon** says the word “es” was necessary to act as a division between hekdesch money and non-hekdesch money. The letter “vuv” then comes and connects all the parts of the pasuk.
- **R’ Illa** said, if a ganav stole a lamb and it matured into a ram, or a calf that matured into an ox, it is considered to have undergone a physical change in his possession, and he is koneh it. If he then shechts or sells it, he is considered to have sheched or sold his own animal.
 - **R’ Chanina** asked **R’ Illa**, a Braisa says, if a ganav stole a lamb and it matured into a ram, or a calf that matured into an ox, he is subject to keifel or daled v’hey based on the value at the time that he stole it. Now, if it is considered his own animal, why would he be chayuv to pay dalaed v’hey? He has sheched or sold his own animal!? **R’ Illa** said, it makes equally no sense to say that he is not koneh it, because if he is not koneh it, why does he pay based on the value at the time it was stolen? It should be based on the current value!? **R’ Chanina** said, the reason he does not need to pay based on current values is because the ganav can say “I didn’t steal a ram from you, I stole a lamb”!?
 - **Q: R’ Zeira** asked, why isn’t the ganav koneh the ram or ox by the fact that it changed in name? **A: Rava** said, we see from pesukim that even a calf is called an ox, and even a lamb is called a ram. Therefore, there is no true name change that has taken place.
 - **Q:** How does **R’ Illa** answer the Braisa that seems to refute him? **A: R’ Sheishes** said, he will say that the Braisa follows **B”S**, who say that a ganav is never koneh the stolen item based on a change to the item. We see this in a Braisa where **B”S** darshen a pasuk to teach that the payment given to a zonah which then underwent a change (she was paid in wheat, and it was turned into flour) may still not be used for a Korbon. We see that they hold that it is still considered to be the original item, and would therefore hold the same in our case.
 - **Q: R’ Illa and R’ Chanina** only argue whether the physical change causes the ganav to be koneh. However, they both agree that when payment is made, it is made based on the price at the time of the theft. This seems to refute **Rav**, who said that the keifel and daled v’hey payments are made based on the value at the time they go to Beis Din? **A: Rav** holds that when he pays with the item he stole (he stole a lamb, and gives lambs for the keifel or daled v’hey payments) he pays based on the value at the time of the theft. However, if he pays with money, he pays based on the value at the time that they go to Beis Din.

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- **Rabbah** said, the concept that if an item that was stolen underwent a change, it becomes acquired by the ganav (and he would then have to pay for the item, but not return the actual item), is well established from a pasuk and from a Mishna. A pasuk says “v’heishiv es hagzeila *asher gazal*”, which teaches that if it is in the form as it was when it was stolen, he must return it. If not, he must give money equal to its value. A Mishna says that if someone stole wood and made it into a keili, or stole wool and made it into clothing, he pays the value of the raw material, and does not need to return the finished product. We see that a change results in the ganav being koneh the item.
- **Rabbah** continues, with regard to the owner of the stolen item having “yi’ush”, the **Rabanan** have said that it also results in the ganav being koneh the item. However, we do not know if this is D’Oraisa or only D’Rabanan. On the one hand it may be D’Oraisa, just like a lost item becomes the property of the finder if the owner had yi’ush, so too a stolen item becomes the property of the ganav when stolen. On the other hand it may be that this is only D’Rabanan, because it is different than a lost item, which the finder has in his possession in a permitted way, unlike the ganav, who has the item only by means of stealing. It may be that the **Rabanan** allowed the ganav to keep the item and only pay the money to encourage them to do teshuva and pay for the

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item (as opposed to having to spend the effort to return the actual item). **R' Yosef** said, *yi'ush* is not *koneh* a stolen item, *even* D'Rabanan.

- **Q: R' Yosef** asked **Rabbah**, a Mishna says, if one stole chametz and it remained in his possession over Pesach (which makes it *assur* to benefit from), the *ganav* can simply return the actual chametz to the owner. Now, if *yi'ush* causes the *ganav* to be *koneh*, as soon as Pesach arrives (and the chametz becomes *assur*) the owner certainly has *yi'ush*. It should therefore become the property of the *ganav*, and he should have to pay the value of the chametz (from before Pesach) to the owner!? **A: Rabbah** said, I only said my principle when the owner has *yi'ush* and the *ganav* wants to be *koneh*. In this case, the *ganav* does not want to be *koneh*, and that is why he is not *koneh*.
- **Q: Abaye** asked **Rabbah**, we learn from the pasuk of “*korbono*” that a stolen animal may not be used for a *korbon*. This can't be talking about where he stole the animal and tried to make it *kadosh* before *yi'ush*, because we wouldn't need a pasuk to teach that, because he can't even make it *kadosh*! Rather, it must be talking about after *yi'ush*, and we see that *yi'ush* doesn't create a *kinyan*!? **A: Rava** said, we find a similar *drasha* regarding a *zav* making “*mishkavo*” (his couch) *tamei*, which teaches that he would not make a stolen couch *tamei*. The case can't be where he stole the material and made it into a couch, because in that case it would certainly become his couch. Rather, it must be talking about where he stole the couch in its completed state. Similarly, the case of the *korbon* is talking about where he stole an animal that was already made *kadosh* by the owner. If the *ganav* uses it as a *korbon* before *yi'ush* of the owner, it would be *passul*.
- **Q: Abaye** asked **R' Yosef**, a Mishna brings a *machlokes* between the **T”K** and **R' Shimon** whether the thought of a *ganav* to use a stolen piece of leather in its present state, without further processing, gives it the status of being a finished product and susceptible to *tumah*. The *machlokes* is only whether the owner has *yi'ush* before the *ganav* made the decision to use as is. We see from here that *yi'ush* clearly creates a *kinyan* for the *ganav*!? **A: R' Yosef** said, the Mishna is discussing where the leather was cut, and it is the cutting that makes the *ganav* be *koneh* – not the *yi'ush*.
 - **Q: Rabbah bar R' Chanan** asked, the preceding Mishna discusses leather used as a tray, in which case there is no cutting of the leather. Presumably the Mishna with the *ganav* is discussing the same. If so, there is no cutting, and we see that *yi'ush* creates a *kinyan*!? **A: Rava** said, **R' Yosef** was not able to answer the challenge from this Mishna for 22 years. When he became *Rosh Yeshiva* he answered, that just as a physical change creates a *kinyan*, so too a name change creates a *kinyan*. Therefore, since there was a name change from “a piece of leather” to “tray”, that is what creates the *kinyan*, not the *yi'ush*.
 - **Q:** A beam that is built into a ceiling changes in name from “beam” to ceiling”, and yet a Mishna says that if one stole a beam and built it into a ceiling, the **Rabanan** said that he does not need to return it (and can instead pay the value) so as to make it easier to do *teshuva*. Based on what was just said, since there is a change in name he should not have to return the actual beam, because he was *koneh* it! Not to help for *teshuva*!? **A: R' Yosef** said, we find a *Braisa* which learns from *pesukim* that a beam retains its name of a “beam” even after it is put into a ceiling. Therefore, there is no true name change. **A2: R' Zeira** said, a change that is reversible is not called a true change, and since if the beam is removed from the ceiling it will again be called a beam, it is not considered to be a true name change, and would therefore not cause a *ganav* to be *koneh* it.

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- **Q:** The Gemara had said that a change of name to an item makes it be considered a different item, and this change will make a *ganav* be *koneh* the item. The Gemara now asks, this is not so! When a block of wood is carved into a pipe, it is first called a block of wood and is then called a pipe. Yet, a *Braisa* says, if a piece of wood is hollowed into a pipe and then stuck into the ground, water that flows through it will make a *mikvah* *passul*, but if a piece of wood is first attached to the ground and then made into a pipe, water that flows through it will not make a *mikvah* *passul* as if the water flowed through a *keili*, because it is considered part of the ground.

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Now, if you hold that change of name is a legally significant occurrence, then it should make the mikvah passul even if it was first put in the ground, and then made into a pipe!? **A:** The ability of water that flowed through a keili to make a mikvah passul is only D'Rabanan, and the **Rabanan** were therefore meikel in this case and considered the pipe that is attached the ground as not being a keili (even though it underwent a name change).

- **Q:** If it is true that they were meikel, why is the mikvah passul when it is first made into a pipe and then stuck into the ground? **A:** In that case it was a keili before being stuck into the ground, and was therefore passul to be used for the mikvah water. Sticking it into the ground will not remove that psul.
- **Q:** A Braisa says, if a ganav, gazlan, or chamsan (one who grabs an item from someone else, but pays for it) makes the item hekdesch, it becomes assur b'hana'ah, if they make it terumah, it is terumah, and if they make it maaser, it is maaser. Now, one cannot make something that is not his into hekdesch, terumah, or maaser. Therefore, the case must be where he did this after the owner had yi'ush, and this refutes **R' Yosef**, who said that yi'ush does not make the ganav to be koneh the item!? **A:** In that case there is also a change in name (it was first chullin and then became hekdesch, was first tevel and then became terumah or maaser), and that is why the ganav is koneh.
- **R' Chisda in the name of R' Yonason** said, we learn that a physical change of an item will make the ganav be koneh, from the pasuk. The pasuk says "v'heishiv es hagzeila *asher gazal*", which teaches that if it is in the form in which he stole it (*asher gazal*), he must return it. If not, he must pay for its value.
 - **Q:** Those words are needed to teach that if a man who is a shomer stole and swore falsely that he did not steal, and then died, his heirs must only pay for the principal and not for the additional fifth!? **A:** To teach that the pasuk could have said "v'heishiv es gezeilo", and not "*asher gazal*". Because it wrote it the way it did, we can learn both drashos.
 - **Others** say, **R' Chisda in the name of R' Yonason** said, we learn that a physical change of an item will *not* make the ganav be koneh, from the pasuk. The pasuk says "v'heishiv es hagzeila", which teaches that it must be returned in all circumstances.
 - **Q:** What about the extra words "*asher gazal*"? **A:** These words teach that the heirs do not add the payment of the 5th for the stealing of the one who died.
- **Ulla** said, we learn that yi'ush does not create a kinyan from a pasuk. The pasuk lists passul korbanos and mentions a stolen animal, a lame animal, and a sick animal. This compares a stolen animal to a lame animal and teaches that a stolen animal is permanently passul. This shows that the ganav is not koneh it even with yi'ush of the owner. **Rava** said, we learn it from the pasuk of "korbano" – it must be *his* korbon. Now, before yi'ush, the ganav could not even make it kadosh. Therefore, the pasuk must be talking about after yi'ush, and the pasuk teaches that the ganav is not koneh.
 - **Q:** **Rava** earlier explained that the pasuk can be discussing where an animal that was already designated as a korbon was stolen, and therefore is still talking about before yi'ush!? **A:** Either we can say that **Rava** retracted from his statement, or we can say that one of these statements was made by **R' Pappa**, not **Rava**.

UMIDAS TASHLUMEI ARBA'AH VACHAMISHA...

- **Q:** Why don't we learn a gezeira shava on the word "shor" from Shabbos and learn that just as there all animals and birds are included, the same is for daled v'hey? **A:** **Rava** said, the pasuk says "shor" and "seh" twice, to teach that only an ox and sheep are subject to daled v'hey.
 - **Q:** Which mention of "shor" and "seh" is extra (to make this drasha)? If it is at the end of the pasuk where it says he must pay 5 cattle in the place of the shor and 4 sheep in place of the sheep, and the pasuk could have instead said "5 cattle instead of it and 4 sheep instead of it", that would not have worked, because we would think that 9 animals must be paid for each stealing and shechting!? You can't say that one of the phrases of "instead of it" are extra, because a Braisa says that this teaches that animals of the same condition as the animal stolen must be paid. **A:** Rather, the shor and seh of the beginning of the pasuk are extra. The pasuk could have said, "If a person steals and shechts it or sells it" (instead of "if a person steals a shor or seh").

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- **Q:** If it would have said that, we would have thought he is only chayuv if he stole and shechted an ox *and* a sheep!? **A:** The word “utvacho” (and he shechted it) is written in the singular, which would mean that only one animal must be stolen and shechted.
- **Q:** Still, we would think that he is only chayuv for the selling if he steals and sells an ox and a sheep!? **A:** The word “oy mecharo” (or he sold it) is written in the singular, which would mean that only one animal must be stolen and sold.
- **Q:** Still, we would think that he must steal both animals, and then shecht one and sell one!? **A:** The pasuk says “oy mecharo” – *or*.
- **Q:** Still, we would think that he must steal both animals, and needs to shecht or sell only one, and leave the other as is? **A:** Rather, we must say that “shor” of the end of the pasuk and “seh” of the beginning of the pasuk are extra. The pasuk could have said “If one steals a shor and shechts it or sells it, he must pay 5 cattle in its place and 4 sheep in the place of a sheep”. Why are the additional mentions of shor and seh needed? It teaches that dalaed v’hey *only* applies to a stolen ox or sheep.

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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

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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 daled 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 daled 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 daled 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 daled 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 daled 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 daled 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 daled 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 hekdes), but he does not pay daled v'hey, because at the time of the shechita or sale it

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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 daled 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.

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- The Gemara previously quoted **R' Yochanan**, who said, if a person steals and the owner did not have yi'ush, the ganav can't make the item hekdesh, because it is not his, and the owner can't make the item hekdesh, because it is not in his possession.
 - **Q:** We know that **R' Yochanan** always follows an anonymous Mishna, and there is an anonymous Mishna that says, people would leave marks by their produce that was "kerem rivai" (4th year vineyard that must be eaten in Yerushalayim, similar to maaser sheini), orlah (which is assur b'hana'ah), and land that had a person buried there (all these marks were placed so that if someone would take produce from these fields, he would know that it had to be treated with certain restrictions). **R' Shimon ben Gamliel** said these marks only must be left during shmitta, where people are allowed to take produce from any field. However, in any other year, the marks need not be left, because anyone who would take produce would be stealing, and we don't need to make a mark to prevent a thief from eating prohibited food. The "tznu'in" (the tzaddikim) would take money and say "whatever was taken from this field (of netah rivai) should become redeemed onto this money", in which case the produce becomes permitted and the money gets the restriction of the produce. Now, we see that the Mishna says this can take place after the produce is no longer in the owner's possession. This is an anonymous Mishna that says not like **R' Yochanan**!? Even if you want to say that the Tanna of that part of the Mishna is **R' Shimon ben Gamliel**, and **R' Yochanan** does not pasken like an anonymous Mishna when it is a singular view, that in incorrect, because **Rabbah bar bar Chana in the name of R' Yochanan** said that whenever **R' Shimon ben Gamliel** is mentioned in a Mishna, the halacha follows him except for 3 specific cases!? **A:** We have to change the words of the Mishna to say, the tznu'in would take money and say "whatever produce *will be* taken from this field should be redeemed on this money". Therefore, it was done while still in his possession.
 - **Q:** We find that **R' Yochanan** said that the tznu'in and **R' Dosa** say the same concept, and a Braisa says, **R' Yehuda** says, in the morning the owner of a field should stand by the field and say

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“whatever the poor people take today I am hereby making hefker” (this is said in case a poor person mistakenly takes a stalk with more than 2 ears of grain). **R’ Dosa** says the owner of the field does this in the evening and says “whatever the poor people *took* today is hereby hefker”. Now, since **R’ Dosa** is referring to where the produce is no longer in his possession, the tznu’in were doing that as well (since **R’ Yochanan** said they are saying the same concept). If so, the Mishna refutes **R’ Yochanan!**? **A:** We must reverse the views of **R’ Yehuda** and **R’ Dosa**.

- **Q:** Why must we reverse the views in the Braisa? Why don’t we instead say that **R’ Yochanan** said that it is **R’ Yehuda** and the tznu’in who say the same concept? **A:** The views in the Braisa must be reversed for another reason anyway. According to the Braisa, **R’ Yehuda** will hold of the concept of breirah (he is making hefker the stalks that will be taken later), and we find in a Mishna that **R’ Yehuda** does *not* hold of breirah. Therefore, the views in the Braisa must be reversed in any case.
- **Q:** We have now said that the views of the Braisa must be reversed, because if not there will be a contradiction in the statements of **R’ Yehuda**. If the views of the Braisa are reversed, in which case **R’ Yochanan** holds like **R’ Dosa** who says the person says “whatever *will be* picked...”, means that **R’ Yochanan** holds of breirah. However, we find that **R’ Yochanan** does *not* hold of breirah!? **A:** The views of the Braisa should not be reversed, and the tznu’in and **R’ Dosa** both refer to the case of where he says “whatever *was* picked”. This would mean that **R’ Yochanan** is not following the anonymous Mishna of the tznu’in. The reason he does not follow it is because there is another anonymous Mishna that says differently. The Mishna says, if a second ganav steals the item from the first ganav, the second ganav does not pay keifel. Now, we can understand why he doesn’t pay keifel to the first ganav, because the first ganav is not the owner, and the pasuk says keifel is paid when “v’gunav mibeis ha’ish”. But, why won’t he pay keifel to the owner? It must be because it is not in his possession, and we see from this Mishna that lack of possession is a deficiency in ownership.
- **Q:** Why does **R’ Yochanan** see more fit to follow this anonymous Mishna instead of the anonymous Mishna involving the tznu’in? **A:** This Mishna is supported by a pasuk. The pasuk says “v’ish ki yakdish es beiso kodesh LaShem”. This teaches that just as one’s house is in his possession, so too anything he makes kodesh must be in his possession.
- **Abaye** said, if **R’ Yochanan** would not have said that the tznu’in and **R’ Dosa** say the same concept, I would say that the tznu’in would agree with **R’ Dosa**, because if the **Rabanan** enacted for the benefit of a ganav, they surely did so for the poor people, but that **R’ Dosa** would not agree with the tznu’in, because the **Rabanan** only enacted for the poor people, but not for a ganav.
- **Rava** said, if **R’ Yochanan** would not have said that the tznu’in and **R’ Dosa** say the same concept, I would say that that Tanna that taught the view of the tznu’in is **R’ Meir**, because he holds that maaser is considered to be the money of Hashem, and yet it is considered to be in the person’s possession for purposes of redeeming the produce. We learn a gezeirah shava from maaser to netah rivai, which teaches that although netah rivai is not in the person’s possession, he may still redeem it as well. However, with regard to the “leket” (stalks taken by the poor people), since we don’t have that gezeirah shava, we would say that if it is not in his possession he cannot redeem it.
- **Ravina** said, if **R’ Yochanan** would not have said that the tznu’in and **R’ Dosa** say the same concept, I would say that that Tanna that taught the view of the tznu’in is **R’ Dosa**. This would explain why **R’ Yochanan** does not follow that anonymous Mishna, because he does not follow an anonymous Mishna that is the view of a singular Tanna.

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- In **Nehardai** they said, we do not write a power of attorney for someone to collect moveable property. **Ameimar** explained to **R' Ashi**, the reason is based on **R' Yochanan**, who says that an owner can't give something away if it is not in his possession, and in order for one to be power of attorney, he must be given ownership of the item. Since he can't be given ownership, he can't be made power of attorney.
 - **Others** say, in **Nehardai** they said that we do not write a power of attorney to collect moveable property from someone who has already told Beis Din that the item belongs to him. The reason this is not done is because it looks like a lie (to create the power of attorney, the plaintiff gives all rights in the property to the shaliach who is to become the power of attorney, but the defendant has already said that the item does not belong to the plaintiff). However, if the defendant had not yet denied the claim, we would write a power of attorney.
- **Nehardai** said, if a power of attorney appointment document did not say "go to Beis Din, get the money, and keep it for yourself", it is not effective, because if he does not get an ownership stake the defendant can tell him that he has no standing to conduct the case.
 - **Abaye** said, even if he is only given a share of the money, that is sufficient, because since (miguy) he has standing for part of the case, he has standing for the entire case.
 - **Ameimar** said, if the power of attorney won the case and seized the assets for himself, we cannot take them away from him. **R' Ashi** said, since the plaintiff said he will reimburse the power of attorney for all expenses, we see that he didn't mean to give him all the money. Rather, he meant to make him into a shaliach. **Others** say that **R' Ashi** said that because he accepted all expenses, they are partners.
 - The difference between the two versions of **R' Ashi** is whether he can seize half the assets (if he is a partner he could, if he is a shaliach he cannot).
 - The Gemara paskens that he is a shaliach.

MISHNA

- If it was established by two witnesses that a person stole and then sold or shechted the animal, or if the sale or shechita was witnessed by two other witnesses, the ganav must pay daled v'hey.
- If a ganav stole and sold the animal on Shabbos, or if he stole and sold it for avodah zarah, or if he stole and shechted it on Yom Kippur, or if he stole from his father and sold it or shechted it and his father then died, or if he stole and shechted and then made it hekdesch, in all these cases he will have to pay daled v'hey.
- If he stole and then shechted to use its meat for refuah purposes, or to feed dogs, or if he shechted and the animal was found to be a treifah, or if he shechted a chullin animal in the Azarah, in all these cases he must pay daled v'hey. **R' Shimon** says that in these last 2 cases he would be patur from paying (because the meat is not fit to be eaten and the shechita is therefore not considered to be a valid shechita).

GEMARA

- **Q:** Our Mishna seems not to follow **R' Akiva**, because he says in a Braisa that the pasuk of "davar" teaches that testimony is only valid when it establishes the entire "matter", and in the Mishna the witnesses only testify to the theft or to the shechting, not both!? **A:** **Abaye** said, the Mishna can follow **R' Akiva**. **R' Akiva** would agree that if two people testify that a woman was married and another 2 testify that she was then mezaneh, that we would accept their testimony. The reason is, that although the second witnesses need the testimony of the first set, the first set does not need the testimony of the second set. The same is true in our Mishna. Although the second witnesses (of the sale or shechita) need the testimony of the first set, the first set does not need the testimony of the second set.
 - **Q:** What do the **Rabanan** darshen from the word "davar"? **A:** They use it to teach a case where witnesses were trying to establish a girl as being an adult, and one witness saw a hair on her knuckle and the other witness saw a hair on her stomach. The pasuk teaches that these two cannot combine for a set of witnesses that saw two hairs.

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- **Q:** That case does not even need the pasuk, because each is only testifying to one hair, meaning that there is no full testimony to even half the “matter”!? **A:** The pasuk teaches that if 2 witnesses say they saw one hair on her knuckle and 2 others say they saw one hair on her stomach, that they cannot combine for a full testimony.

GANAV UMACHAR B'SHABBOS...

- **Q:** A Braisa says that if he stole it and then sold it on Shabbos he would be patur!? **A: Rami bar Chama** said, the Braisa is talking about where as part of the sale the buyer told the ganav “cut off a branch of my fig tree for yourself (as payment), and the animal will then become koneh to me” (since he would be chayuv misah for doing so, he would be patur from paying).
 - **Q:** If the buyer would try and sue for the ganav to follow through with his delivery of the sale, Beis Din would not tell the ganav that he must do so, since the ganav is chayuv misah. If so, the sale is not considered to be a sale at all!? **A: R' Pappa** said, the case is where the buyer told the ganav “throw the animal into my chatzer, and I will thereby be koneh” (and since he is chayuv for Shabbos, he will not be chayuv to pay for the daled v'hey).
 - **Q:** This would only follow **R' Akiva**, who says that something thrown in the air is as if it has landed, and therefore, as soon as it reaches the airspace of the buyer he is chayuv for Shabbos and the sale is complete. However, according to the **Rabanan**, the sale is complete as soon as it enters the airspace, but he is not chayuv for Shabbos until it lands, so the sale should be considered a good sale (since it happened before the issur Shabbos)!? **A:** The case is where the buyer said, “I will not be koneh the animal until it lands in my chatzer”, in which case the sale and the issur happened at the same time.
 - **Rava** said, we can answer like **Rami bar Chama**. The halacha is that animal given to a zoneh for znus may not be brought as a korbon. Now, this animal given for znus would have this status even if a person gave the animal to a zoneh who was his mother. Clearly, the mother would not be able to collect that money in court (because the man would be put to death for the act), and yet the payment gets that status as payment for a zoneh. Similarly, although the buyer couldn't sue the ganav regarding the sale (because the ganav is chayuv misah), it still has the status of a sale.

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GANAV V'TAVACH B'YOM HAKIPPURIM...

- **Q:** Why is this person chayuv in daled v'hey? Even though he is not chayuv misah for shechting on Yom Kippur, he is chayuv malkus, and we pasken that one who gets malkus for an action does not have to also pay!? **A:** The Mishna is following **R' Meir**, who says that one who gets malkus does pay.
 - **Q:** If the Mishna follows **R' Meir**, why is he patur when he shechts on Shabbos? A Braisa clearly says that **R' Meir** holds that if one steals an animal and shechts it on Shabbos he is chayuv for daled v'hey!? **A:** That Braisa is no proof, because it was said in the name of **R' Yochanan**, that the Braisa is discussing where he had someone else shecht it for him. Since the ganav is not chayuv misah in this case, he has to pay. However, even **R' Meir** agrees that if he would be chayuv misah he would be patur.
 - **Q:** How can it be that the shaliach does the aveirah of the shechita and the ganav has to pay for daled v'hey? **A: Rava** said, although in general that is a good logic, regarding the halacha of daled v'hey the pasuk compares shechting to selling, which teaches that just as he is chayuv for selling, even though it happens through another person, he is also chayuv for shechting even if it happens through another person. **A2:** The Yeshiva of **R' Yishmael** taught a Braisa that says that the word “oy” in the pasuk teaches that the ganav is chayuv even if a shaliach does the shechita. **A3:** The Yeshiva of **Chizkiya** taught a Braisa that says that the word “tachas” in the pasuk teaches that the ganav is chayuv even if a shaliach does the shechita.
 - **Q: Mar Zutra** asked, how can it be that if the ganav himself would have done it (the shechita) he would be patur, but because he gave it to a shaliach he is chayuv? **A: R' Ashi** said, if the ganav did it himself he

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wouldn't be patur, rather he wouldn't pay based on "kam lei bidirabah minei". Now that someone else did it, where there is no "kam lei...", he must pay.

- **Q:** If the Braisa is discussing where the shechita was done by a shaliach, why do the **Rabanan** say that the ganav is patur from paying the daled v'hey? **A:** The **Rabanan** of the Braisa is **R' Shimon**, who says that a shechita that is not valid is not even considered to be a shechita at all.
 - **Q:** A Mishna clearly says that a shechita done on Shabbos, although the shochet would be chayuv misah, is a valid shechita!? **A:** He holds like **R' Yochanan Hasandler**, who says that an animal shechted on Shabbos b'meizid may never be eaten by anybody.
 - **Q:** According to the view that **R' Yochanan Hasandler** is based on a D'Oraisa, that is why the **Rabanan** of the Braisa say he is patur. However, according to the view that he is based on a D'Rabanan, why did the Braisa say he is patur? **A:** They meant to say he is patur on the other cases – when he shechts for avodah zara, or when he shechts the shor sentenced to die.
- **Q:** Why does **R' Meir** hold that the ganav who stole and shechted the animal for avodah zarah is chayuv for daled v'hey? At the very beginning of the cutting it becomes assur, and the remaining part of the shechita is therefore no longer considered shechting the animal of the owner (because it became assur b'hana'ah)!? **A:** **Rava** said, the case is where the ganav said he means to worship the avodah zara with the end of the shechita. Therefore, it does not become assur until that time.
- **Q:** When he steals and shechts a shor that was sentenced to death, since the animal is assur b'hana'ah, it is not as if he shechted the animal of the owner!? **A:** **Rava** said, the case is that the owner had given the ox to a shomer, where it killed a person and was sentenced to death, and the ganav stole it from there. **R' Meir** holds like **R' Yaakov** that if the animal is returned to the owner by the shomer, the shomer is considered to have returned the animal and would not be chayuv for anything further, and he also holds like **R' Shimon**, who says that something that can cause a benefit of money is considered to be money. In this case, the shomer could have saved money by simply giving back the animal, even though it is assur b'hana'ah. Therefore, the ganav's act of shechting causes this loss and he must pay daled v'hey to the shomer.
- **R' Kahana** said, I asked **R' Zvid**, from the fact that **R' Shimon** disagrees with 2 cases at the end of the Mishna, it would suggest that he agrees with the rest of the Mishna. If so, how can we say that the Mishna only follows **R' Meir** (who says one who is chayuv malkus is also chayuv any monetary punishment for that act)? **R' Zvid** answered, when **R' Shimon** argues on the last 2 cases, he means to agree with the other two cases in that segment (shechting for purposes of refuah, or to feed to a dog), but not to the other segments of the Mishna.

GANAV MISHEL AVIV V'TAVACH UMACHAR...

- **Rava** asked **R' Nachman**, if a ganav stole an ox belonging to partners and shechted it, and then admitted his act to one of the partners (which makes him patur from the daled v'hey to that partner), what is the halacha? Do we say that the pasuk says he is chayuv "five cattle", and not 5 half cattle, and therefore he is totally patur, or do we say that the pasuk means for him to be chayuv even if it would only be for half of 5 cattle? **R' Nachman** said, the pasuk means that he must be chayuv for 5 full cattle, and would be patur if half the obligation was removed.
 - **Q:** The Mishna said that if he steals from his father, shechts the animal, and his father then died, he would be chayuv in daled v'hey. Now, when his father died it is as if he admitted the act to himself, and therefore is only chayuv to his brothers for their share, and yet the Mishna says he is chayuv!? **A:** The case of the Mishna is where his father took him to Beis Din, and he was therefore chayuv to pay before his father died.
 - **Q:** This would mean that if his father hadn't taken him to Beis Din he would be patur. If so, when the Mishna wants to contrast and give a case in which he would be patur, why does it give the case of where his father died before he shechted it? Why not give the case of where he shechted it while his father was alive, but his father had not taken him to Beis Din? **A:** **R' Nachman** answered, it could have given this other case, but it gave this case because it was more similar in style to the earlier case.

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- In the morning **R' Nachman** retracted his statement and said that he is chayuv even if it is for only half of the 5 cattle. He explained, the reason he was mistaken the night before was because he did not properly examine the matter.
 - **Q:** If so, why is he patur if he shechted the animal after the father died? **A:** After the father died, the ganav himself is a part owner, and therefore it is not considered to be a shechita which is entirely assur.