



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

Bava Metzia Daf Tes Vuv

- **Rava and Rabbah bar R' Huna** each explained the Braisa that says the amount claimed by a victim of theft from the ganav for lost principle can be collected from encumbered properties. Now, this amount is not an obligation written in a document, and therefore should not be collected from encumbered properties!? **A:** The case is that the ganav was found guilty in Beis Din and he then sold his field. In that case, because he was obligated by Beis Din, it allows for collection from the sold field.
 - **Q:** If so, even the amount for the stolen produce should be collectible from that sold field!? **A:** The case is that he was sued in court regarding the principle amount of the field, but not for the produce. This is the way it is normally done – first one is sued for the principle, and afterwards he is sued for the produce.
- **Q:** How could **R' Nachman** have said that **Shmuel** holds that if one buys stolen land from a ganav, he is only entitled to payment for the principle value, but not for the improvements to the land? We find that **Shmuel** told **R' Chinina bar Shilas** that when writing a document of sale he should ask the seller whether he is willing to obligate himself for payments of lost principle, improvements, and produce, from his best property, and if he is, it should be written into the document. Now, this can't be talking about a case of where the land is repossessed by a creditor, because **Shmuel** says that a creditor is entitled to repossess improvements to the field, but not produce. Therefore, it must be talking about a field that was stolen and sold, and is then repossessed by the true owner, and we see that he is entitled to payment for improvements and produce!? **A:** **R' Yosef** said, the case is where the ganav is paying for everything with land, and the payment for the improvement therefore doesn't look like ribis.
 - **Q: Abaye** asked, we find that even types of ribis that are only assur D'Rabanan may not be paid back with land!? **A: R' Yosef** said, that is in the case of an actual loan. Here we are dealing with a purchase transaction, in which case the laws of ribis are more lenient.
 - **Others** say that **R' Yosef** said, the case where the ganav would pay for the improvement would be where he made a kinyan at the time of the sale to obligate himself to pay for the improvement to the land. In such a case it does not appear as ribis.
 - **Q: Abaye** asked, we find that even types of ribis that are only assur D'Rabanan may not be paid back even if such a kinyan was made!? **A: R' Yosef** said, that is in the case of an actual loan. Here, we are dealing with a purchase transaction, in which case the laws of ribis are more lenient.
- We have learned that **Shmuel** said that a creditor is entitled to repossess improvements to the field. **Rava** said, this must be correct, because the language used in a document is that the seller agrees to defend and pay for the land and all improvements. Therefore, it must be that the improvements can be taken away by his creditor. **R' Chiya bar Avin** asked **Rava**, does that mean, that in a gift document, where this language is not used, the creditor of the one giving the gift may not take the improvements? **Rava** said, that would be correct. **R' Chiya** asked, that would mean that the power of a gift is stronger than that of a sale!? **Rava** said, that is correct as well.
 - **R' Nachman** said, there is a Braisa that supports **Shmuel**, but **R' Huna** explains the Braisa differently. The Braisa says, if a field is repossessed from a purchaser, he collects the principle value even from encumbered properties, and the value for the improvements only from unencumbered properties. Now, since he collects for the improvements, it must be that the creditor was allowed to take the improvements. **R' Huna** said, the Braisa is talking about a buyer who bought stolen property from a gazlan.
 - **Q:** A Braisa says, if a buyer of a field improves the field, and it is then repossessed by a creditor of the seller, when the buyer collects for his loss, if the value of the improvements is more than the expense it cost to make the improvements, then he

collects the excess improvements from the seller, and the expense for the improvement from the creditor. If the expense was more than the value of the improvement, he only collects from the creditor for the expenses up to the value of the improvement. Now, how will **Shmuel** understand this Braisa? If it is talking about where the seller had stolen the land, then why is the seller paying for the improvements in the first part of the Braisa? If the case is where it was not stolen, and a creditor of the seller is repossessing the land, why is the creditor paying for any of the improvements? **Shmuel** said a creditor takes the improvements without having to pay for them!? **A:** Either we can say the seller had stolen the land, but he is paying back with land, or he had made a kinyan obligating himself to reimburse for the improvements as well (and we said above that it does not look like ribis in those cases), or we can say that it is talking about where the land is being repossessed by a creditor of the seller, and the reason he has to pay for it in this Braisa is that we are discussing produce that is ready to be harvested. In that case he would have to pay for it.

- **Q:** We find that **Shmuel** would often allow creditors to collect from the produce ready to be harvested of the field of a purchaser of their debtor!? **A:** He allowed it when the amount of the debt was equal to the value of the land with the produce. The Braisa that says he must pay is where the debt is equal to the value of the land without the produce. Therefore, he must pay for the produce that he takes along with the land.
 - **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:** 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.
- If a person realizes that a seller is offering stolen property for sale, and he buys it and improves it, and it is then repossessed by the true owner, **Rav** said, he gets reimbursed from the seller for the amount he paid, but not for the amount he improved. **Shmuel** said, he is not entitled to reimbursement for anything.
 - The machlokes is, **Rav** holds that the buyer knows the property is not the seller's, so he must be giving him the money as a deposit, and therefore gets that back. **Shmuel** holds that the buyer knows that the property is not the seller's, so he must be giving him the money as a gift, and therefore he is not entitled to its return.
 - **Q:** They already argue about this elsewhere!? We have learned, that if a man gives kiddushin to his sister, **Rav** says since the kiddushin is obviously not valid, she must return the money to him, and **Shmuel** says the sister may keep the money as a present. The Gemara explains, **Rav** holds that everyone knows that kiddushin with a sister is ineffective, and he must have given her the money to guard for him. The reason he didn't tell her this outright is because he felt that she would not accept the money to guard it for him. **Shmuel** holds that everyone knows that kiddushin with a sister is ineffective, and he must have given her the money as a gift. The reason he didn't tell her this outright is because he felt that she would be embarrassed and would not accept the gift. This is the same logic used in the machlokes here as well!? **A:** Both machlokes are necessary. If we would only say the case of the stolen property, we would say that **Rav** says it is a deposit there, because people don't give gifts to strangers, but in the case of his sister, maybe he would agree with **Shmuel** that it is a gift. If we would only say the case of kiddushin, we would say that **Shmuel** holds that way there, because a person gives gifts to his sister, but in the case of the stolen field maybe he agrees with **Rav**. That is why both cases are needed.
 - **Q:** According to the logic of **Rav or Shmuel**, how does the "buyer" go and use the land and consume the produce!? **A:** He rationalizes to himself that the ganav is anyway in possession of the land and eating the produce, and therefore

there is no difference if he does so until it is repossessed. He figures, once it is repossessed his money will then become a deposit according to **Rav**, or a gift according to **Shmuel**.

- **Rava** paskened:
 - When property is purchased from a ganav, and the buyer did not know it was stolen property, he may sue for the value of the purchase price and for the value of any improvement he made to the land. This is so even if it was not explicitly said by the seller that he would be entitled to reimbursement for the improvements.
 - When the buyer knows it is not the seller's property, but he bought it anyway, he has the right to sue for the purchase price, but not for improvements to the property.
 - If a document is missing a provision for achrayus, it is deemed to be a mistake of the sofer. This is true whether it is a loan document or a purchase document.
- **Shmuel** asked **Rav**, if after selling the stolen property the ganav went and bought the land from the true owner, can the ganav then go and repossess the land from his buyer or not? **Rav** said, the ganav sold to the buyer any rights that he may eventually get in the land, and he therefore may not take it from the buyer.
 - **Q:** Why would the ganav purchase the land after the fact? **A:** **Mar Zutra** said, it is because he doesn't want to be called a ganav when the land is eventually repossessed. **R' Ashi** said, it is because it keeps him as a man of his word.
 - The difference between them would be where the buyer died. According to **Mar Zutra**, the ganav would no longer care if the land was taken away from the buyer's heirs, and according to **R' Ashi** he still wouldn't want it repossessed, because he wants to remain a man of his word.
 - **Q:** According to **Mar Zutra** he should still be concerned that the heirs will call him a ganav!? **A:** The difference between them would be where the ganav died. According to **Mar Zutra**, since he has died he no longer cares if he is called a ganav. According to **R' Ashi**, he would still want to be known as a man of his word.
 - **Q:** According to **Mar Zutra** he should still be concerned that the buyer will refer to his heirs as the "heirs of a ganav"!? **A:** The difference between them would be where the ganav gave the property away as a gift. According to **R' Ashi**, even the giving of a gift which is then repossessed would be a concern for someone wanting to be known as a man of his word. According to **Mar Zutra**, if he were to be called a ganav, he would reply "what have I stolen from you?".