Daf In Review – Weekly Chazarah

Maseches Bava Metzia, Daf י – Daf טז

Daf In Review is being sent l'zecher nishmas R' Avrohom Abba ben R' Dov HaKohen,

A"H vl'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

--------------------------------------Daf י---10--------------------------------------

- **R' Nachman and R' Chisda** both said, if a person picks up a lost item with intent to be koneh for someone else, the other person is not koneh. The reason is, the person picking up the item is like one who takes limited assets of a debtor on behalf of one of his creditors, leaving nothing for the rest to collect from, and the halacha in that case is that the person is not koneh for the creditor.
    - **Q: Rava** asked **R' Nachman**, a Braisa says if a worker was hired for a specific task and as he was working he found a lost item and picked it up, it is his to keep. However, if he was hired for the day and found an item and picked it up, the item would belong to the one who hired him. We see from here that a person could pick up a lost item on behalf one someone else!? **A: R' Nachman** said, this case is different, because the hand of a worker is like an extension of the hand of his employer. Therefore, it is as if the employer himself picked up the item.
        - **Q: Rav** has said that a worker can quit at any point. If so, how can you say that he is considered "owned" to the point that his hand is an extension of the employer's hand? **A: R' Nachman** said, it is true that he may quit, since he is not the employer's slave, but so long as he doesn't quit, his hand is considered to be an extension of the hand of the employer.
- **R' Chiya bar Abba in the name of R' Yochanan** said, that if a person picks up a lost item with intent to be koneh for someone else, the other person is koneh. If you will ask that our Mishna says that the one who lifted the found item for the person on the animal may then decide to keep it for himself, that is not difficult. The Mishna is talking about where the one on the animal said "give it to me" and didn't say "be koneh it for me". Therefore, no kinyan was made when it was lifted for him.

MISHNA

- If a person saw a lost item and threw himself on top of it, and another person came and grabbed it from under him, the second person is koneh.

GEMARA

- **Reish Lakish in the name of Abba Kohen Bardila** said, a person's 4 amos are koneh for him in every place. This is based on a takanah of the **Rabanan** to prevent people from coming to fight with each other.
    - **Q: Abaye** said that **R' Chiya bar Yosef** asked on this from a Mishna in Peyah, and **Rava** said that **R' Yaakov bar Idi** asked on this from a Mishna in Nezikin (our Mishna). **Abaye** explained, the Mishna says that if someone throws himself onto peyah he is not koneh!? **A:** The Mishna is talking about where he did not say that he wants to be koneh with his 4 amos.
        - **Q:** If the **Rabanan** instituted this kinyan, why would he have to say that he wants to be koneh with it? **A:** Since he threw himself onto the peyah, he shows that he wants to be koneh with this falling, and not with his 4 amos. **A2: R' Pappa** said, the enactment of 4 amos was only instituted in public areas, not in someone else's field (like the case of peyah, which is located in someone else's field).
    - **Q: Rava** asked, if the **Rabanan** enacted a kinyan of 4 amos, why is the first person in our Mishna not koneh? **A:** The Mishna is talking about where he did not say that he wants to be koneh with his 4 amos.
        - **Q:** If the **Rabanan** instituted this kinyan, why would he have to say that he wants to be koneh with it? **A:** Since he threw himself onto the item, he shows that he wants to be koneh with this falling, and not with his 4 amos. **A2: R' Sheishes** said, the enactment of 4 amos was only instituted in a side street, not in a main thoroughfare of reshus harabim where there are many people.

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        - **Q: Reish Lakish** said it was instituted in "every place"!? **A:** That was meant to include the side of the reshus harabaim, not the actual reshus harabim.
- **Reish Lakish in the name of Abba Kohen Bardila** said, a ketanah cannot be koneh (her get) with chatzer or with 4 amos. **R' Yochanan in the name of R' Yannai** said, she can be koneh with chatzer and with 4 amos.
    - The machlokes is that **R' Yochanan** holds that the kinyan of chatzer works as a kinyan made by her receiving something in her hand. Therefore, just as she can be koneh with her hand, she can be koneh with her chatzer. **Reish Lakish** holds that chatzer works as a shaliach. Therefore, just as a ketanah cannot appoint a shaliach, she also cannot be koneh with her chatzer.
        - **Q:** A Braisa says that a ganav can be koneh by stealing something into his chatzer. Now, if chatzer works as a shaliach, the ganav should not be koneh, because we have a principle that there is no shaliach for an aveirah (and the sender would be patur). Therefore, we see that the kinyan of chatzer is not based on shlichus!? **A: Ravina** said, we only say there is no shlichus for an aveirah when the shaliach himself is chayuv for doing such an aveirah. However, when dealing with a chatzer, there would be shlichus for an aveirah, and the sender would therefore be chayuv.
            - **Q:** If so, if a person tells a married woman or a slave (who are not chayuv to pay for what they steal) to steal for him, the sender should be chayuv!? **A:**The woman and the slave are considered chayuv for the stealing, it is only that in their current status they don't have money to pay with. However, as we have learned in a Mishna, if the woman would get divorced, or the slave would be freed, they would then have to pay for what they stole. That is why the sender is not chayuv in that case.
            - **A: R' Sama** said, we only say there is no shlichus for an aveirah when the shaliach has free will to do, or not to do, the shlichus. With regard to a chatzer, where the "shaliach" has no choice but to do the shlichus, the sender would be chayuv for the aveirah.
            - **Q:** What is the difference between the answers of **Ravina and R' Sama**? **A:** A difference would be where a Kohen made a Yisrael a shaliach to be mekadesh a divorced woman for him. Another case would be where a man made a woman a shaliach to cut of the peyos of a minor. According to **R' Sama**, since the shaliach has free will, the sender would be patur. According to **Ravina**, since the shluchim are not subject to these laws, the sender would be chayuv.
        - **Q:** A Braisa says that we learn that the chatzer of a woman can be koneh her get for her from the words "v'nossan b'yadah". We see that chatzer is compared to her hand, not to her shaliach!? **A:** With regard to a get all agree that chatzer works like her hand. The machlokes is regarding a found item. **R' Yochanan** holds that we learn the case of a found item from a get, and **Reish Lakish** says that we do not learn from get. **A2:** With regard to a ketanah all agree that we learn a found item from get. The machlokes is regarding a katan – **R' Yochanan** says we learn katan from a ketanah, and **Reish Lakish** says that we do not. **A3:** They all agree that a ketanah's chatzer can be koneh her get, but not a found item. **R' Yochanan**, who said her chatzer is koneh, was talking about a get, and **Reish Lakish**, who said it is not koneh, was talking about a found item.

--Daf י"א---11--

MISHNA

- If a person sees people running through his field to go get an item that they found, or running after an injured deer, or after birds that cannot fly, and he says "my field was koneh it for me", his field is koneh it for him. If the deer was not injured and was running normally, or if the birds were flying, and he said "my field was koneh it for me", he has said nothing.

GEMARA

Daf In Review – Weekly Chazarah

- **R' Yehuda in the name of Shmuel** said, the person's field can be koneh only if he is standing at the side of the field.
  - **Q: R' Yose the son of R' Chanina** said, a person's field can be koneh for him even without his knowledge!? **A:** That is only when the chatzer is guarded. If it is not guarded, then if he is standing by the side of the field he can be koneh. If not, he cannot be koneh.
    - We can prove this from a Braisa. The Braisa discusses whether a bundle of produce becomes "shikcha" when it is first forgotten by the workers, and later forgotten by the owner, when he is already in the city. The Gemara explains the Braisa to mean that if the workers forgot the bundle when the owner was in the field it does not become shikcha, because he is next to his field and can therefore be koneh the bundle. However, if the workers forgot the bundle when the owner was in the city it would become shickcha, because he is not next to his field, and therefore he cannot be koneh the bundle. This is exactly what the Gemara said above.
  - **Ulla and Rabbah bar bar Chana** each also said that a person's field can be koneh for him only if he is standing at the side of the field.
    - **Q: R' Abba** asked **Ulla**, a Mishna tells of the time that **R' Gamliel** was on a ship and realized that he forgot to take maaser off of his produce back home. He immediately designated a portion for maaser rishon and said "it is hereby given to **Yehoshua**, and the place underneath it is rented to him (so that he can be koneh it with kinyan chatzer)". He then did a similar exercise with the maaser ani to **R' Akiva**. Now, **R' Yehoshua and R' Akiva** were not by the side of the field, and still we see that they were koneh!? **A: Ulla** responded by saying that **R' Abba** seems not to understand anything. When **R' Abba** repeated this to the **Rabanan**, one of them explained to him, that case is not difficult to understand, because **R' Gamliel** was being makneh it to them with kinyan agav, not with kinyan chatzer.
    - **R' Zeira** accepted this answer of the **Rabanan**, but **R' Abba** did not. **Rava** said **R' Abba** was correct for not accepting the answer for the following reason. Rather than use kinyan agav, why didn't **R' Gamliel** simply use kinyan chalipin? It must be that chalipin could not have been done, because **R' Gamliel's** rights in the maaser were not considered to be a monetary right, which could be the subject of a kinyan. For that same reason, he could not have used kinyan agav either!? The Gemara says, this is not so. Although it could not be the subject of chalipin, it could have been the subject of kinyan agav.
    - **R' Pappa** said, the reason they did not have to be standing by the side of the field in **R' Gamliel's** case is because there was someone being makneh it to them. However, when dealing with a found item, since there is no one else being makneh it to them, they must be standing by the side of their field in order to be koneh. We can see this from our Mishna that says that the person can be koneh the found items in his field. **R' Yirmiya in the name of R' Yochanan** explained the Mishna that this is only if he can run after the animal and catch it before it leaves his property. **R' Yirmiya** then asked, would he also have to be able to run after it and reach it if the item was being given to him as a gift, in order for his field to be koneh for him? **R' Abba bar Kahana** said that there is a difference between a found item and an item being given as a gift. Presumably, the difference is that the gift has someone being makneh it to him, whereas the found item does not.
      - **Q: R' Simi** asked **R' Pappa**, in the case of a get the husband is being makneh it to the wife, and still **Ulla** said her chatzer is only koneh it if she is standing by the side of the chatzer!? **A:** The case of get is different, because she is koneh it even against her will.
        - **Q: R' Sheishes the son of R' Idi** asked, it should be a kal v'chomer!? If regarding a get, which can even be given to her against her will, her chatzer is only koneh it if she is standing at the side of her chatzer, then a gift, which cannot be given to a person against his will, surely he should have to be standing at the side of his chatzer in order for his chatzer to be koneh!? **A:** Rather, **R' Ashi** said, the ability of a chatzer to be koneh is learned from the ability of a person's hand to

be koneh, but is no worse than shlichus. Therefore, regarding a get, which is considered a bad thing for the woman, the chatzer cannot act as her unappointed shaliach and be koneh for her, because we cannot be koneh something that is bad for a person without their will. But, if she is there, the chatzer becomes an extension of her hand and is koneh for her. Regarding a gift, which is beneficial for her, even if she is not there the chatzer acts as her shaliach to be koneh for her, because we are koneh a beneficial thing for a person even if the person is not there.

- **Q: Rava** asked, what is the halacha if someone throws a wallet into one door and it flies through the house and exits another door? Do we say that when an item enters an airspace in which it is not destined to land it is considered as if it landed or not? **A: R' Pappa** (or **R' Adda bar Masna**, or **Ravina**) said to **Rava**, that would seem to be the case of our Mishna regarding the deer running through the property, and **R' Yirmiya in the name of R' Yochanan** explained the Mishna that this is only if he can run after the animal and catch it before it leaves his property. **R' Yirmiya** then asked, would he also have to be able to run after it and reach it if the item was being given to him as a gift, in order for his field to be koneh for him? **R' Abba bar Kahana** said that there is a difference between a found item and an item being given as a gift. We see that although the animal is running through the field without stopping and then exits the field, the owner can still be koneh. The same should be for the wallet that flies through the house, and the owner should be koneh there as well.
    - **Rava** said, our Mishna is not a proof, because an animal that is running through is in contact with the ground, and is therefore considered to be resting on the ground. However, when the wallet is thrown through the house, it may be that it is not considered to come to rest in the house and the owner would therefore not be koneh.

--------------------------------------Daf יב---12--------------------------------------

MISHNA

- The finds of a person's minor son or daughter, of his non-Jewish slaves and maidservants, and of his wife, belong to him. The finds of his adult sons and daughters, of his Jewish slaves and maidservants, and of his wife who he divorced although he has not yet paid her kesubah, belong to them.

GEMARA

- **Shmuel** said, why is it that the find of a minor goes to his father? Because when a minor finds something he immediately brings it to his father, and doesn't keep it (and when he lifts it, he has in mind to be koneh for his father).
    - **Q:** Does this mean that **Shmuel** holds that a minor is not koneh anything for himself D'Oraisa? A Braisa says, if a worker was hired to harvest a crop, his son may collect the leket behind him. If he gets a percentage of the crop, his son may not do so. **R' Yose** says, in both cases his son and wife may collect the leket behind him. **Shmuel** paskens like **R' Yose**. Now, if we say that a minor could be koneh for himself, it makes sense that he can take the leket from behind his father, because he is koneh it for himself and he then gives it to his father. However, if he is not koneh for himself, it is as if his father is taking the leket from the field, which he may not do, because he owns a share of the field and is considered to be a rich person who is ineligible to take leket!? **A: Shmuel** holds that a minor is koneh for himself. When he explained the Mishna to mean that a minor is not koneh for himself, he was explaining according to the Tanna of the Mishna, but he himself does not hold that way.
        - **Q:** Does **R' Yose** really hold that a minor is koneh for himself D'Oraisa? In a Mishna he says that a minor is only koneh a find D'Rabanan, so as not to lead to fights!? **A: Abaye** said, the reason that **R' Yose** allows the minor son to collect leket behind his father is not because he is koneh for

himself, but rather because the other poor people are meya'esh from the leket in that field, because they think that the son will collect the leket behind his father. Therefore, it becomes hefker for all to take, and the worker himself may be koneh.

- **Q: R' Adda bar Masna** asked **Abaye**, is a person allowed to bring a lion onto his property to scare the poor people away (i.e. how can he let his son collect after him to make the poor people be meya'esh)? **A:** Rather, **Rava** said, the **Rabanan** gave a minor the ability to be koneh the leket in this case even though he truly cannot be koneh something for himself. The reason is that all the poor people want this enactment, so that when they are hired out as workers their sons will be able to collect the leket behind them.

- **Shmuel** (who explains the Mishna in this way) argues on **R' Chiya bar Abba** who said in the name of **R' Yochanan** that "katan" in the Mishna does not refer to a minor, rather it refers to a child who is still supported by his father, and "gadol" in the Mishna does not refer to an adult, rather it refers to a child who is no longer supported by his father. Based on this, the reason the father gets the son's finds is because the **Rabanan** gave it to him since he supports this child. It has nothing to do with the child's actual ability to be koneh.

METZIAS AVDO V'SHIFCHASO HA'IVRIM…

- **Q:** Why do the Jewish slaves keep the finds? They should be treated like a worker, and a Braisa says, if a worker was hired for the day (not just for a particular task), then any find he takes belongs to his employer!? **A: R' Chiya bar Abba in the name of R' Yochanan** said, the Mishna is dealing with a servant who is a skilled diamond cutter. Therefore, the master does not want him stopping his work to pick up a find (his work is typically more valuable than any find). However, if he does come across a find that is very valuable, since the master never planned on having him stop working to pick up a find, the find does not go to the master, but rather stays with the slave. **A2: Rava** said, the Mishna is dealing with a servant who picked up a find while he continued to work (since he did not take off any time from work, he can keep the find for himself). **A3: R' Pappa** said, the Braisa that says the finds go to the employer is dealing with a situation where the worker was hired to look for finds.
- **Q:** What is the case of the Jewish maidservant? If she is already a naarah, she should have already gone out free!? If she is still a ketanah, then if she has a father, her finds go to him, and if she has no father she should have gone out free upon her father's death based on a kal v'chomer of **Reish Lakish**!? **A:** The case is that she has a father, and when the Mishna says it belongs to her, it means that it does not belong to her master. However, in actuality it does not belong to her, but rather belongs to her father.

METZIAS ISHTO

- **Q:** If he divorced her it is obvious that she keeps her own finds!? **A:** The Mishna is talking about a case where her divorce is a safek. In such a case **R' Zeira in the name of Shmuel** has said that the husband must continue to support her, and therefore we would think that he continues to be entitled to her finds. However, the reason a husband gets the finds of his wife is so that there not be any feelings of animosity created by her keeping her finds while she is being supported by him. In this case there is anyway animosity, and therefore no reason for him to get her finds.

MISHNA

- If a person finds a promissory note, **R' Meir** says, if it provides for a lien on real property, he may not return it to the creditor, because Beis Din will collect from the debtor's real property based on this promissory note. If it does not provide for a lien on real property, he may return it to the creditor, because Beis Din will not collect based on this document. The **Chachomim** say, in either case it may not be returned to the creditor, because Beis Din will collect from the debtor based on this document.

GEMARA

- **Q:** What is the case of the Mishna? If the debtor admits that he owes this debt, why can't it be returned to the debtor even when there is a lien on real property? If the debtor does not admit to it, why can we return it to the creditor? Even though Beis Din will not collect from encumbered property based on this document, they will collect from unencumbered property!? **A:** The case is that the debtor admits to the debt. However, we are

concerned that the document was written (and dated) to be used in Nissan, but was not actually used until Tishrei. In that case, any purchaser of his land between Nissan and Tishrei will be subject to have his land collected from him improperly (since they purchased the land before the loan actually took place).

  - **Q:** If we have such a concern, we should have this concern for every loan document that is brought to Beis Din for collection!? **A:** A regular note brought to Beis Din does not come under suspicion, and we are therefore not concerned. This note comes under suspicion based on the fact that it was lost. Therefore, we have the concern.

---------------------------------------Daf יג---13---------------------------------------

- **Q:** The Gemara stated that there is a concern that a loan document was written in anticipation of a loan in Nissan, but was not actually used until Tishrei, thus improperly creating a lien on properties sold between Nissan and Tishrei. The Gemara asks, a Mishna says that we may write and sign a loan document at the request of the debtor even if the creditor is not present. How can that be done? Why are we not concerned that it will not be used until a later time and will therefore improperly create liens? **A: R' Assi** said, The Mishna is talking about a document in which the debtor gives the creditor an immediate lien against his real estate, even if the loan is never given. Therefore, any lien would be proper.
  - **Q:** If so, why does our Mishna say that if a found promissory note allows for a lien on real property it may not be returned, and we explained that the case is where the debtor admitted to the debt, and the reason it may not be returned to the creditor is out of concern that it was prepared in advance of the actual loan, thereby creating an improper lien? Let us look into the document and make a determination – if it is a document where the debtor gave an immediate lien, it is not a problem to return it to the creditor, and if it is not such a document, we explained that the Mishna would not allow such a document to be written without the creditor present!? **A: R' Assi** would say, although such a document may not be written if the creditor is not present, in our Mishna, where there is suspicion about the document since it was lost and then found, we must be concerned that the document was improperly written without the creditor being present and therefore creates an improper lien.
  - **Abaye** said, the reason a promissory may be prewritten is because when the document is signed, the borrower's property is subject to a lien beginning at that time, even if the loan is not given at that date, and even if it is not the type of document where the debtor gives an immediate lien. **Abaye** says we must say this, and not like **R' Assi's** answer, because if we are not allowed to prewrite a document, there would be no reason for us to be concerned that such a document was prewritten.
    - **Q:** A Mishna says, if someone found a get, a shtar shichrur, a document stating the gift of a dying man or of a healthy man, or a receipt for a loan payment, he may not return them to the named recipient, because we are concerned that they were written to be given, but were never actually given. Now, according to **Abaye**, even if it was never given, once it was signed it created the obligation in the document, and it should be given to the recipient!? **A: Abaye** only says that once it was actually given. However, if it was never given, we would not say this.
    - **Q:** Our Mishna said, if someone finds a promissory note which provides for a lien on his properties, it may not be returned to the creditor. We explained that the Mishna is discussing where the debtor admits to taking the loan and still owing the loan, and the reason it can't be given to the creditor is because we are concerned that it was prewritten before the loan was given. Now, according to **R' Assi**, this was explained above. However, according to **Abaye**, the lien was created when the document was signed, and therefore the document should be returned to the creditor!? **A: Abaye** would say, the reason we don't give it to the creditor in the Mishna is because we are concerned that the loan was truly repaid, and that the creditor and debtor devised a plan to now go and take the real estate from purchasers.
      - **Q:** Are we to say that **Shmuel** can't hold like **Abaye**, because **Shmuel** is not concerned that a loan was repaid and that the parties are then planning to claim it wasn't paid just to get the property from the purchasers? **A: Shmuel** will say the Mishna is discussing where the debtor does not admit that the debt is owed.

- **Q:** If the debtor does not admit to the loan, why does the Mishna say that the document is returned to the creditor if it doesn't provide for a lien on his properties? Although the document could not be used to collect from encumbered property, it could still be used to collect from unencumbered property, so why do we give it to the creditor!? **A: Shmuel** is following his view from elsewhere, that **R' Meir** holds, if a document is written without "achrayus" (providing for a lien), it cannot be used to collect from encumbered *or* unencumbered property.
- **Q:** Then what is the purpose of giving it to the creditor altogether? **A: R' Nosson bar Oshaya** said, it can be used to cover a bottle.
- **Q:** Why give it to the creditor for that use rather than the debtor? **A:** The debtor says the document is false, so clearly it is not his to use.

- **R' Elazar** said, the machlokes between **R' Meir and the Rabanan** in our Mishna is where the debtor does not admit to owing the loan. In that case, **R' Meir** holds that a document written without achrayus cannot be used to collect encumbered or unencumbered properties, and it therefore can be returned to the creditor, since he can't use it to collect anyway. The **Rabanan** holds that such a document could be used to collect from unencumbered property, and therefore it cannot be returned to the creditor. However, if the debtor admits to owing the money, all would agree that it would be returned to the creditor, and all would agree that we are not concerned that it was truly paid off and there is now a plan to try and defraud the purchasers of the real estate. **R' Yochanan** said, the machlokes is in a case where the debtor admits to owing the money. **R' Meir** says the document written without achrayus would only allow collection from unencumbered property. Therefore we return it to the creditor. The **Rabanan** say that even such a document can be used to collect from encumbered property. Therefore, the document cannot be returned.
  - There is a Braisa that says like **R' Yochanan**, and refutes **R' Elazar** on one point, and **Shmuel** on two points. The Braisa says, **R' Meir** says, if someone finds a loan document that has achrayus, even if both parties agree that it is a valid document, it may not be returned. If there is no achrayus, then if the debtor admits to owing the money, it is returned to the creditor, if he does not admit to it, it is not returned to either party. This is based on the fact that **R' Meir** says a loan document with achrayus can be used to collect even from encumbered property, whereas if it does not have achrayus it can only be used to collect from unencumbered property. The **Chachomim** say, even if written without achrayus it may be used to collect from encumbered property.
    - This Braisa refutes **R' Elazar** on one point, because he says that **R' Meir** says a document without achrayus cannot be used to collect even from unencumbered property, and he also says that **R' Meir and the Rabanan** agree that we are not concerned for a plan to defraud the purchasers. The Braisa says that **R' Meir** says a document without achrayus can be used to collect from unencumbered property, and says that all agree that we are concerned for a plan to defraud, because the Braisa says that even when both parties agree, it may not be returned to either party. We see that the Braisa is concerned for the defrauding of the purchaser.
      - **Q:** This is a refutation on two points, not one!? **A:** They are both based on the fact that he says the machlokes is when the debtor does not admit to owing the loan. That is why it is considered to be one.
    - The Braisa also refutes **Shmuel** on two points. One point is the same way that it refutes **R' Elazar**, because he also says that machlokes in the Mishna is where the debtor does not admit to owing the loan. The second point is that **Shmuel** says we are never concerned that a loan has been paid, and the Braisa says that we are concerned.

--------------------------------------Daf יד---14--------------------------------------

- **Shmuel** said, the reason the **Rabanan** hold that even if a document was written without achrayus, it may still be used to collect from encumbered properties is because they hold that the absence of achrayus is assumed to be a mistake on the part of the sofer (he forgot to put it in), but it was surely meant to be put in.
  - **Q: Rava bar Iti** asked **R' Idi bar Avin**, we find that **Shmuel** says, in order for a sofer to insert a lien in a document of sale of a property (i.e. in case the field gets taken away from the buyer because of a debt of the seller, the buyer will have a lien on other properties of the seller to make up for his loss), he must specifically be told by the seller to put it into the document. Must we say that whoever said the first statement of **Shmuel** could not have also said this one? **A:** With regard to a loan, no one would lend money without achrayus, and therefore if it is missing, it must have been an error on the part of the sofer. However, with regard to a purchase, people do purchase things with risk for a discounted price, and therefore it may be that no acharyus was meant to be included in this sale.
    - In fact, we find that **Shmuel** himself gave this exact distinction as an explanation, when he was adjudicating an actual case of a purchase of land that was written without achrayus.
  - **Abaye** said, if Reuven sold a field to Shimon with a guarantee and a creditor of Reuven then comes and tries to take that field, Reuven is allowed to go and try to prevent the creditor from doing so. The creditor cannot tell Reuven that he has no standing to do so, because Reuven says, if you take this from Shimon he will come to me for reimbursement.
    - **Others** say that Reuven may do so even if he did not sell with a guarantee, because he can say that he doesn't want Shimon having any complaints against him.
  - **Abaye** said, if Reuven sold a field to Shimon without a guarantee, and someone then came forth stating that the field was his and not Reuven's, the Halacha is that if Shimon did not yet make a kinyan chazaka on the field he can still back out and not pay for it. Once he did make the kinyan he can no longer back out, because he has bought a field without a guarantee, accepting the risks that come along with that.
    - The kinyan is made as soon as he walks the boundary of the field.
    - **Others** say that even if it was purchased with a guarantee he still cannot back out once he made the kinyan, because Reuven can tell him, show me the document that the field was taken from you and then I will pay you.
- If someone sold a field to a buyer, and it turns out that it was not the seller's field to sell (i.e. it was a stolen field), and the true owner then came and repossessed the field, **Rav** says the buyer has the right to reimbursement for the money that he spent on the purchase *and* for the amount of his improvements to the field. **Shmuel** says he has a right to the money of the purchase, but not for the improvements to the field.
  - **Q:** They asked **R' Huna**, what if the seller had stated at the time of the sale that he would reimburse for any improvements to the land if the land was ever taken away, would **Shmuel** say the buyer could get that money in that case? Is the reason of **Shmuel** based on that the seller did not specify he would pay for improvements, but if he did the buyer would collect it, or is it that since the land was never the seller's, the money given as the "purchase" was truly a loan, and taking back more than that amount would appear as ribis, and therefore even in this case he cannot take more than the principle amount? **A:** At first **R' Huna** said yes, then he said no, and he remained unsure. The Gemara says that **R' Nachman in the name of Shmuel** said, that he would not be entitled to payment for the improvement in this case, because it would appear like he is taking ribis on a loan.
    - **Q: Rava** asked **R' Nachman**, a Mishna says that we do not collect for the produce that was consumed, or for the improvement to the land, or for the food of a man's wife and daughters from encumbered properties, for the benefit of the world. Now, this suggests that although it may not be collected from encumbered properties, it is collected from unencumbered properties, and one of the items listed is the improvement done to the land. Presumably the case is where the land was purchased from a seller that had stolen the land and the land was then repossessed!? **A:** The case is where the land was repossessed by a creditor of the seller.
      - **Q:** It can't be discussing a creditor, because **Shmuel** has said that a creditor would not collect the ripe produce, and the Mishna says that it is collected!? Clearly that case is talking about a seller who had stolen the land. If so, the later cases must be discussing

that as well!? **A:** We can say that the earlier case is referring to stolen land and the later case is talking about land repossessed by a creditor.

- **Q:** A Braisa says, what is the case of being paid for improvement to the land? If someone steals land and it is repossessed, he collects the amount for the field even from encumbered properties, but collects the amount for the improvements to the field only from unencumbered properties. Now, this can't be understood as written, because a gazlan is not compensated when the property is taken away from him! Rather, we must say that the case is that the gazlan sold the field, and when the field is repossessed from the buyer, he is entitled to compensation for the purchase price *and* for the improvements to the field!? **A: R' Nachman** answered, you had to change the understanding and wording of the Braisa. I will say that it should be changed to state that it is referring to a creditor of the seller, and not stolen land.
- **Q:** A Braisa says, what is the case of being paid for consumption of produce? If someone steals land and it is repossessed, he collects the amount for the field even from encumbered properties, but collects the amount for the produce only from unencumbered properties. Now, this can't be understood as written, because a gazlan is not compensated when the property is taken away from him! Rather, we must say that the case is that the gazlan sold the field, and when the field is repossessed from the buyer, he is entitled to compensation for the purchase price *and* for the improvements and produce of the field!? We see we do not say that these additional payments look like ribis!? **A: Rava** said, the case here is where a person stole a field full of produce, consumed all the produce, and then damaged the field by digging ditches all around the field. When the true owner of the field comes to repossess the (depreciated) field, he collects the principle amount even from the encumbered properties of the gazlan, but collects the amounts for the stolen produce only from the gazlan's unencumbered properties. **A2: Rabbah bar R' Huna** said, the case is where a person caused another person's field to be taken away by the government, in which case the person who caused this to happen is chayuv to pay the owner for the field. It is that case that the Braisa is saying that for the principle amount of the field he may even collect from encumbered properties, but for the amount of produce that was taken with the field, he can only collect from unencumbered properties. [**Rava** did not say like this, because the words of the Braisa suggest that the field was not taken by a government type of confiscation. **Rabbah bar R' Huna** did not say like **Rava**, because he says that the words of the Braisa suggest that the field was not damaged along the way]. **A3: R' Ashi** said, the Braisa is discussing where the field was stolen and the ganav then consumed all the produce and then sold the field. The owner then came and repossessed the field. The Braisa is saying, when the buyer wants to get his money back for the field, he may even collect that amount from encumbered properties. The Braisa then means to say that when the true owner of the field wants to collect for the produce that was stolen and consumed, he may only collect from unencumbered properties.

---------------------------------------Daf טו---15---------------------------------------

- **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 in 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 in 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?".

--------------------------------------Daf טז---16--------------------------------------

- If after the ganav sold the stolen property, he then bought it from the owner and sold it to someone else, or he gave it to his son, or he gifted it to someone, it is obvious that he didn't buy it with intent to leave it by the first buyer. If the ganav inherited the land (rather than buy it), it is also clear that since he put no effort into getting the land, he did not get it to leave by the buyer. If the ganav was a creditor of the owner and took that land as payment for his debt, we make a determination – if he could have taken some other property but insisted on taking that one, it shows he wanted it to leave it by the buyer. However, if it was the only property available to take, we say that he really wanted money and took that property, because it was the only one available, and he did not do so to leave it by the buyer. If the land was given to him as a gift, there is a machlokes between **R' Acha and Ravina** – one says it is the same as if he inherited the land (since it came effort free), and the other says that the only reason he would have gotten it as a gift is if he spent effort and did a favor for the owner. Therefore, we say that he exerted that effort in order to get this property so that it stay by the buyer.
- **Q:** Until what point in time do we view the ganav's purchasing the property as an attempt to make himself seem trustworthy and have the property remain with the buyer? **A: R' Huna** says until he is brought to Beis Din to be sued. **Chiya bar Rav** says until a document of seizure was issued to be used by the buyer against the ganav. **R' Pappa** says until they have begun to announce the sale of the ganav's properties to be used for payment of the buyer's claim.
- **Q: Rav** had said that if the ganav buys the land from the true owner after he had already sold it to someone else, he may not then repossess it from the buyer. **Rami bar Chama** asked, how was the buyer ever koneh the property? The document of sale to him was a fraud, and as such could not act as a kinyan!? **A: Rava** said, the case is where the buyer told the ganav "I fully trust you that you will give me the property". With the pleasure in knowing that the buyer trusts him like that, the ganav is makneh the property to him when he buys it from the true owner.
    - **Q: R' Sheishes** asked, a Braisa says, if someone sells what he will inherit from his father, or what he will catch in his net, it is not a valid sale. If he sells "what I will inherit from my father today" or "what I will catch in my net today", it is a valid sale. We see from the first two cases that a future sale is invalid, so why does it work in this case? **A: Rava** said, in our case the buyer has full confidence that the ganav will get the property for him. In the cases of the Braisa, the person is not confident.
        - **Q:** What is the difference between the first cases and the second cases of the Braisa? **A: R' Yochanan** said, the second case is talking about where the seller needs money for his father's impending death (for the costs of burial), and it is a valid sale for the sake of the honor of his father. The case of "what I catch in my net today" is a valid sale so that the person can have money with which to live.
    - **R' Huna in the name of Rav** said, if one says to another, "The field that I am about to buy I am now giving to you and should be effective retroactively from now", it is a valid transfer.

        - **Rava** said, this would make sense if the seller did not specify a field. However, if he specified a field it should be invalid, because how can he know that he will ultimately acquire that particular field? However, **Rav** has said this ruling even regarding a case where he specified the field! This would seem to follow the view of **R' Meir** who says in a Braisa that if someone give kiddushin and says that it should take effect after he or she converts or is freed from being a slave, or after his or her spouse dies, or after she gets chalitza, the kiddushin takes effect. Now, the case of a woman is like a case of identifying a particular field, and we see that **R' Meir** says the future transaction has an effect.
- **Shmuel** said, if a loan document in which the borrower obligates himself to the amount of the loan whether or not the loan is actually made (called a "hakna'ah") is found, it should be returned to the creditor. There is no concern that maybe the loan wasn't actually made, because he has obligated himself even if it was not made. The only other possible concern is that the loan was already repaid, but we are not concerned that it was repaid, because if it was, the document would have been torn up.
    - **R' Nachman** said, his father was a sofer for **Shmuel's** Beis Din, and he remembered hearing when he was 6 or 7 that the Beis Din said a hakna'ah document should be returned to the creditor.
    - **R' Amram** said a Mishna can be used to prove that we are not concerned for repayment. The Mishna says, any document that records an act of Beis Din should be returned to the creditor. This shows that we are not concerned that the document may have been paid. **R' Zeira** said, this is no proof. The Mishna is not referring to loan documents. It is referring to documents allowing repossession of assets, which are not subject to being paid off.
        - **Q: Rava** asked, in Nehardai they said, and **Ameimar** has said that even such documents are subject to repayment, because the underlying obligation can still be repaid, so this does show that we are not concerned for a repayment!? **A: Rava** said, the reason we are not concerned for repayment in the Mishna is because he brought it on himself by not destroying the document of repossession when he paid, or asking for a new document showing that he has paid and now has legitimate title to the land. However, when dealing with a loan document, it is possible that he paid and the creditor told him he will give him back the document the next day. That is why we do have to be concerned for repayment, and why the Mishna cannot be used as a proof for **Shmuel**.
    - **R' Avahu in the name of R' Yochanan** said, if one finds a loan document, even if it has a certification from Beis Din, it may not be returned to the creditor. Certainly, if it was not certified it may not be returned, because we say the underlying loan never took place. Rather, even if it was certified – meaning the signatures of the witnesses were certified, it may still not be returned, because we are concerned that it may have been repaid.
        - **Q: R' Yirmiya** asked **R' Avahu**, a Mishna says that any document that records an act of Beis Din should be returned to the creditor!? **A: R' Avahu** said, the Mishna is discussing the specific case of where the debtor is a proven liar, and that is why his claim of repayment is not believed.
            - **Q: Rava** asked, just because he was once proven as a liar, does that mean he will never repay his loans? He should be believed if he says that he did!? **A:** Rather, **Rava** said the Mishna is not referring to loan documents. It is referring to documents allowing repossession of assets, which are not subject to being paid off, as **R' Zeira** said above.