

19 Elul 5776
Sept. 22, 2016



Bava Kamma Daf 114

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Selling to an Idolater

Rav Ashi said: We excommunicate a Jew who sells to an idolater a field bordering on a field owned by another Jew. What is the reason for this? If you think that it is because of the right of adjoining property owner (*bar mitzra – the neighbor has first rights to purchase the field*), did the Master not state that where he buys from an idolater or sells to an idolater, the rights of the adjoining property owner does not apply? It must therefore be because the neighbor might say to the seller, “You have placed a lion at my border (*because the idolater does not have to follow the Jewish halachos with respect to neighbors*). He therefore is excommunicated until he accepts upon himself the responsibility for any consequent loss that might result because of this sale. (114a)

Mishna

If tax collectors took his donkey and gave him another donkey, or if bandits robbed his garment and gave him another garment, then these are his, since the owners despaired of them (*yi’ush; and together with the change of domain, he acquires it*).

One who rescues things from a river, or from troops, or from bandits, the *halachah* is as follows: If (*we know that*) the owner despaired, these are his. And similarly regarding a swarm of bees: If the owner despaired, these are his.

Rabbi Yochanan ben Berokah said: A woman or a minor are believed to say, “This swarm of bees came out from here.”

A person may go into the field of his fellow to save his swarm of bees, and if he caused damage, he pays what he damaged. He may not, however, cut off a branch of the tree (*in order to save all his bees that are on the branch*) on condition of paying for its value. Rabbi Yishmael the son of Rabbi Yochanan ben Berokah says: He may even cut off the branch and pay for its value. (114a)

Acquiring through Despair

The *Gemora* cites a *braisa*: If he took something from the tax collector, he would be required to return it to the original owners. The *Gemora* explains the reasoning for this: This view maintains that despair by itself (*without paying for it, or without it undergoing a physical change*) does not transfer ownership and consequently the stolen article has at the beginning come into his possession illegally.

Others, however, read the *braisa* as follows: If he wants to return the stolen article given him by the tax collector, he should return it to the original owners. The *Gemora* explains the reasoning for this: This view maintains that despair by itself transfers ownership. However, if he says, “I do not want money which is not mine,” he should return it to the original owners.

The *Mishna* had stated: If tax collectors took his donkey and gave him another donkey, or if bandits robbed his garment and gave him another garment, then these are his, since the owners despaired of them.

Rav Ashi says: The *Mishna's* ruling applies only where the bandit was an idolater, but in the case of a Jewish bandit, this would not be so, as the owner surely thinks: "I will take the bandit to court tomorrow."

Rav Yosef asked on this: On the contrary, the reverse is more likely. In the case of idolaters, who usually administer the law forcibly, the owner does not give up hope, whereas in the case of Jews, who merely talk (*the Beis Din does not administer the law with force, or alternatively, perhaps it is not as the owner said, and rather, he should bring witnesses to verify his claim*), the owner has surely despaired.

Rather, Rav Ashi was referring to the concluding clause of the *Mishna*: One who rescues things from a river, or from troops, or from bandits, the *halachah* is as follows: If the owner despaired, these are his. This implies that it is only if we know that he despaired; otherwise, this would not be so. Rav Ashi explains that this is so if the bandits were idolaters, for they usually administer the law forcibly, whereas in the case of Jews, who merely talk (*the Beis Din does not administer the law with force, or alternatively, perhaps it is not as the owner said, and rather, he should bring witnesses to verify his claim*), the owner has surely despaired.

The *Gemora* cites a *Mishna*: In the case of hides belonging to a householder, mere thought (*that he plans on using them as a bed or tray, and he does not intend to do any further processing with it*) will render them capable of becoming *tamei*, whereas in the case of those belonging to a tanner, thought would not render them capable of becoming *tamei* (*for there is a good probability that he will decide to sell it, and the buyer will use it to make shoes*

with). Regarding those hides in the possession of a robber (*one who steals openly*), thought will not render them capable of becoming *tamei* (*for the owner, since he knows who stole it, will not despair of getting them back; the robber is therefore not regarded as the owner*), whereas those in the possession of a thief (*a ganav*), thought will render them capable of becoming *tamei*. Rabbi Shimon, however, says that the rulings are to be reversed: Regarding those hides in the possession of a robber, thought will render them capable of becoming *tamei* (*for the owner despairs of ever getting it back; this is because he assumes the robber is very powerful, by the fact that he is so brazen to steal openly*), whereas those in the possession of a thief, thought will not render them capable of becoming *tamei*, because the owners do not despair of getting their items back.

Ulla said: This difference of opinion exists only in a regular case (*where we do not know if the owner has despaired or not*), but where we definitely know that the owner has despaired, the opinion is unanimous that despair alone transfers ownership. Rabbah, however, said: Even where we definitely know that the owner has despaired, there is also a difference of opinion (*for the owner still plans on getting it back from the robber*).

Abaye challenged Rabbah: You should not contest the statement of Ulla, for in that *Mishna* we learned in accordance with him: because the owners do not despair of getting their items back. The reason is because they did not despair, but where they definitely despaired, the item would have become his.

Rabbah replied: We interpret the *Mishna* to mean that there is no despair on the part of the owners.

The *Gemora* asks on Rabbah from our *Mishna*: If tax collectors took his donkey and gave him another donkey, or if bandits robbed his garment and gave him another garment, then these are his, since the owners despaired

of them (*yi'ush; and together with the change of domain, he acquires it*). Now, who is the *Tanna* of our *Mishna* (*that does not differentiate between a tax collector – a gazlan, and bandits, who are ganavim*)? If it is the Rabbis, then the ruling regarding the *gazlan* (*the tax collector*) is problematic (*for the Rabbis hold that the owner will not despair*), and if it Rabbi Shimon, then the ruling regarding the *ganav* (*the bandits*) is problematic (*for he holds that an owner will not despair by a ganav*)!?

Now, according to Ulla, who holds that when it is definitely known that the owner has despaired, it transfers ownership, we can say that the *Mishna* is referring to a case where it was known that he despaired and it is unanimous (*that he acquires it*). However, according to Rabbah, who holds that they argue even when it is definitely known that the owner has despaired, the *Mishna* cannot be in accordance with the Rabbis or Rabbi Shimon!?

The *Gemora* answers: The *Mishna* can be discussing armed bandits (*who are considered gazlanim, for they steal openly*), and it is according to Rabbi Shimon (*who maintains that the owner despairs by a gazlan*).

The *Gemora* asks on Rabbah from the following *braisa*: If a thief, a robber, or an expropriator consecrates a stolen article, it is consecrated, and if he designates a portion of it as *terumah*, it is valid *terumah*, and if he sets aside a portion of it as *ma'aser*, it is valid *ma'aser*. [Evidently, this *Tanna* maintains that despair transfers ownership by a *ganav* and a *gazlan*, and that is why the *hekdesh, terumah* and *ma'aser* is valid.] Now, who is the *Tanna* of this *braisa* (*that does not differentiate between a gazlan and a ganav*)? If it is the Rabbis, then the ruling regarding the *gazlan* is problematic (*for the Rabbis hold that the owner will not despair*), and if it Rabbi Shimon, then the ruling regarding the *ganav* is problematic (*for he holds that an owner will not despair by a ganav*)!?

Now, according to Ulla, who holds that when it is definitely known that the owner has despaired, it transfers ownership, we can say that the *braisa* is referring to a case where it was known that he despaired and it is unanimous (*that he acquires it*). However, according to Rabbah, who holds that they argue even when it is definitely known that the owner has despaired, the *braisa* cannot be in accordance with the Rabbis or Rabbi Shimon!?

The *Gemora* answers: The *braisa* can be discussing armed bandits (*who are considered gazlanim, for they steal openly*), and it is according to Rabbi Shimon (*who maintains that the owner despairs by a gazlan*).

The *Gemora* asks: But if so, it is the same case as the robber!?

The *Gemora* answers: The *braisa* is teaching us two different cases of a robber.

Alternatively, we can answer that the *braisa* is following Rebbe's opinion, for we learned in a *braisa*: Rebbe says: A *ganav* is like a *gazlan*, and it has been established that Rebbe means that he is like a *gazlan* according to Rabbi Shimon (*that the owner despairs of recovering his stolen article, whether it was stolen by a thief or a robber, and therefore, the thief or the robber can consecrate the stolen article, since it is regarded as his*).

Rebbe had said: I say that a *ganav* is like a *gazlan*. The *Gemora* inquired: Did he mean that he is like a *gazlan* according to the Rabbis and he would not acquire the hides (*for the owner does not despair*), or did he mean that he is like a *gazlan* according to Rabbi Shimon and he would acquire the hides?

The *Gemora* attempts to resolve the inquiry from our *Mishna*: If tax collectors took his donkey and gave him another donkey, or if bandits robbed his garment and

gave him another garment, then these are his, since the owners despaired of them (*yi'ush*; and together with the change of domain, he acquires it). Now, who is the *Tanna* of our *Mishna* (that does not differentiate between a tax collector – a *gazlan*, and bandits, who are *ganavim*)? If it is the Rabbis, then the ruling regarding the *gazlan* (the tax collector) is problematic (for the Rabbis hold that the owner will not despair), and if it Rabbi Shimon, then the ruling regarding the *ganav* (the bandits) is problematic (for he holds that an owner will not despair by a *ganav*)!?

Now, if Rebbe meant that a *ganav* is like a *gazlan* according to Rabbi Shimon and he would acquire the hides, the *Mishna* can be following Rebbe's opinion, and that is why the *Mishna* rules that both a *ganav* and a *gazlan* acquire the stolen articles. However, if Rebbe meant that a *ganav* is like a *gazlan* according to Rabbis and he would not acquire the hides, who can the *Tanna* of the *Mishna* be? It cannot be Rebbe, Rabbi Shimon, or the Rabbis!?

The *Gemora* answers: The *Mishna* can be discussing armed bandits (who are considered *gazlanim*, for they steal openly), and he is in accordance with Rabbi Shimon (who maintains that the owner despairs by a *gazlan*).

The *Gemora* asks: But if so, it is the same case as the robber!?

The *Gemora* answers: The *Mishna* is teaching us two different cases of a robber.

The *Gemora* attempts to resolve the inquiry from the following *braisa*: If a thief, a robber, or an expropriator consecrates a stolen article, it is consecrated, and if he designates a portion of it as *terumah*, it is valid *terumah*, and if he sets aside a portion of it as *ma'aser*, it is valid *ma'aser*. [Evidently, this *Tanna* maintains that despair transfers ownership by a *ganav* and a *gazlan*, and that is why the *hekdes*, *terumah* and *ma'aser* is valid.] Now,

who is the *Tanna* of this *braisa* (that does not differentiate between a *gazlan* and a *ganav*)? If it is the Rabbis, then the ruling regarding the *gazlan* is problematic (for the Rabbis hold that the owner will not despair), and if it Rabbi Shimon, then the ruling regarding the *ganav* is problematic (for he holds that an owner will not despair by a *ganav*)! Now, if Rebbe meant that a *ganav* is like a *gazlan* according to Rabbi Shimon, then that is why the *braisa* rules that both a *ganav* and a *gazlan* acquire the stolen articles. However, if Rebbe meant that a *ganav* is like a *gazlan* according to Rabbis, who can the *Tanna* of the *braisa* be?

The *Gemora* answers: The *braisa* can be discussing armed bandits (who are considered *gazlanim*, for they steal openly), and it is in accordance with Rabbi Shimon (who maintains that the owner despairs by a *gazlan*).

The *Gemora* asks: But if so, it is the same case as the robber!?

The *Gemora* answers: The *Mishna* is teaching us two different cases of a robber.

Rav Ashi said to Rabbah: The following proof can be brought from that which Rebbe taught his son Rabbi Shimon: The *Mishna* is not referring to something that has an actual lien on it (the usual translation of "*achrayos*" – "*fiscal responsibility*"). Rather, even if it is a cow and he plowed with it, or if it was a donkey and he led it, they must return it due to the honor of their father. Now the reason why Rebbe obligates the inheritors to return this article is only on account of the honor of the father, but otherwise, they would not be obligated to return it. This proves that Rebbe meant that a *ganav* is like a *gazlan* according to Rabbi Shimon (and the owner despairs of getting it back by both of them; the despair together with the change of domain to the heirs is why they acquire it). This is indeed a valid proof. (114a – 114b)



Casual Talk

The *Mishna* had stated: Rabbi Yochanan ben Berokah said: A woman or a minor are believed to say, "This swarm of bees came out from here."

The *Gemora* asks: Are a woman and a minor qualified to testify?

Rav Yehudah answers in the name of Shmuel: The *Mishna* is referring to a case where the owner was chasing after his bees, and a woman or a minor happened to mention that the bees came from this place. [*They are not offering testimony; by the fact that the owner is chasing his bees and they mentioned casually where the bees came from, we can establish this fellow as the owner of the bees.*]

Rav Ashi said: We allow casual talk to be valid as testimony only with regards to testimony needed to permit a woman to remarry (*if we hear them talking about the death of So-and-So, we allow his wife to remarry*).

Ravina challenged him from our *Mishna* which allowed such testimony with regards to the bees!?

The *Gemora* answers: The swarm of bees is different (*and is treated leniently*) because they can only be acquired Rabbinically (*because they usually fly away*).

The *Gemora* asks: Is it true indeed that casual talk is not valid testimony for Biblical matters? But Rabbi Yehudah said in the name of Shmuel: It happened once that a man was talking casually and said, "I remember when I was a child and rode on my father's shoulder, they brought me out from school and removed my shirt and immersed me in a *mikvah* so that I could eat *terumah* in the evening." And Rabbi Chanina continued the man's report, "And my friends separated from me and called me

"Yochanan, the *chalah*-eater." And Rebbe elevated him to the *Kehunah* on the strength of his own testimony.

The *Gemora* answers that Rebbe was discussing Rabbinic *terumah*.

The *Gemora* asks from a different source: It was said over that a little boy happened to mention that him and his mother were taken captive amongst the idolaters. The child said, "When I went to draw water, or to gather wood, I had my mind on my mother," and Rebbe allowed her to marry into the *Kehunah* based upon his words (*that she had not been violated*)!?

The *Gemora* answers: They were lenient with respect to captives. (114b)

Yehoshua's Stipulations

The *Gemora* cites a *braisa*: Rabbi Yishmael the son of Rabbi Yochanan ben Berokah said: It is a condition of *Beis Din* that a person may go into his friend's field and cut off a part of his tree to save his swarm of bees. He must pay his friend for the part cut off. There is also a condition of *Beis Din* that a person carrying a wine barrel who sees a person carrying a leaking barrel of honey can spill out his wine to save the honey, and his friend must pay him for the wine. There is also a condition of *Beis Din* that a person, who sees that the donkey of his friend which is transporting flax has died, can unload his wood and offer his donkey for the transport, and his friend will pay for the wood left behind. The reason for these stipulations is because Yehoshua gave the Land to the Jewish people on these conditions. (114b)

Mishna

If one recognizes his utensils or his books in the possession of another, and a report of a burglary regarding him had spread in the city, the *halachah* is as



follows: The buyer swears to him how much he paid, and he takes that amount; and if not (*if there was no rumor*), he is not believed (*that it was stolen*), for I can say that he sold them to another, and this one brought them from him. (114b)

DAILY MASHAL

Rebbe – “I Say”

Rebbe had said: I say that a *ganav* is like a *gazlan*.

Many times in Shas, it is found that Rebbe used this terminology, “I say etc.” What was his intention with these words?

Reb Yosef Engel in Beis Haotzar explains that it is known that Rebbe was a tremendously humble person. The *Gemora* in Sotah (49a) states that when Rebbe died, humility ceased. Perhaps what Rebbe was saying was that it appears to him that the *halachah* is like this-and-this, but not that it is most definitely so.

He also writes that it is clear from the *seforim* of the students of the Baal Shem Tov that lofty people are constantly thinking that their words and actions are not emanating from their own power and strength; rather, it is all coming from the Ribbono shel Olam. In *kabbalah*, the *Shechinah* is referred to as “Ani,” “I.” This is the explanation in the *Gemora* Sukkah (53a) when Hillel said, “If I am here, then everyone is here.” The “I” did not refer to himself, for Hillel, we also know was extremely humble. Rather, he was referring to the *Shechinah*. This, perhaps, is what Rebbe was saying when he said, “I say.” The *Shechinah* which is inside of me is saying that the *halachah* is like this.

QUESTIONS AND ANSWERS FROM YESTERDAY’S DAF to refresh your memory

Q: When do we allow a woman to summon someone to court, and if he doesn’t appear, we excommunicate him?

A: Only if he is not presently in the city; he is returning home that day; he is not passing by the entrance of the court.

Q: Is one permitted to steal from an idolater?

A: No.

Q: Do you have to return a lost article of an idolater?

A: No.