

A ט"ז

Intro

Today we will learn בע"ה of בבא קמא דף קט"ז  
Some of the topics we will learn about include.

The previous Mishnah taught

שטף נחל חמורו וחמורו חבירו

שלו יפה מנה ושל חבירו מאתים

If the river washed away two people's donkeys, one was worth 100 Zuz, and the other was worth 200 Zuz.

והניח זה את שלו והציל את של חבירו

אין לו אלא שכרו

If the בעל מנה abandoned his own less expensive donkey to rescue his friend's more expensive donkey, the מאתים בעל מנה pays him only for his efforts but not a מנה for the loss of his donkey.

ואם אמר לו אני אציל את שלך ואתה נותן לי את שלי

חייב ליתן לו

If the בעל מנה stipulated beforehand that he shall be reimbursed completely, the בעל מאתים must pay him a מנה for the loss of his donkey.

A

שטף נחל חמורו וחמורו חבירו  
שלו יפה מנה  
ושל חבירו מאתים

הניח זה את שלו  
והציל את של חבירו  
אין לו אלא שכרו

אם אמר לו אני אציל את שלך  
ואתה נותן לי את שלי  
חייב ליתן לו

ירד להציל  
ועלה שלו מאליו מהו

B

The Gemara here asks if

ירד להציל ועלה שלו מאליו מהו

If the בעל מנה rescued the מאתים donkey, and then his donkey emerged on its own, does the בעל מאתים pay him the מנה or not?

OR

ירד להציל ולא הציל מהו

If the בעל מנה attempted to rescue the מאתים donkey but was not successful, does the בעל מאתים pay him the מנה for his donkey or not?

The Braisa's Halachah of

שיירא שהיתה מהלכת במדבר ועמד גייס וטרפה

ועמד אחד מהן והציל

If a group of people were traveling through the desert, and a band of thieves robbed them, but then one person in the group recovered all the money,

הציל לאמצע

He returns the money to each respective owner.

ואם אמר אני אציל לעצמי

הציל לעצמו

But if this person stipulated to them that he keep all the money that he recovers, he keeps all the money for himself.

B

ירד להציל ולא הציל מהו

שיירא שהיתה מהלכת במדבר  
ועמד גייס וטרפה  
ועמד אחד מהן והציל

הציל לאמצע

ואם אמר אני אציל לעצמי  
הציל לעצמו

**C** פועל יכול לחזור בו  
אפילו בחצי היום  
A Jewish worker can quit his job even in the middle of the  
workday, because the Pasuk states  
כי לי בני ישראל עבדים  
ולא עבדים לעבדים  
All Yidden are servants only to Hashem.  
But a Yid does not become a servant to another Yid, who  
is also a servant to Hashem.

The Mishnah's Halachah of  
הגוזל שדה מחבירו ונטלוה מסיקין  
If a person stole someone's field, and the government then  
confiscated the field from the גזלן; it depends;

אם מכת מדינה היא  
אומר לו הרי שלך לפניך  
If other fields were also taken, the גזלן does not need to pay  
the owner for the field.

אם מחמת הגזלן  
חייב להעמיד לו שדה אחר  
If they took the field because of the גזלן, he does pay the  
owner for the field, as the Gemara explains even if the גזלן  
did not actually steal the field, but rather

דאחוי אחווי  
He indicated to the officials to take this field. He is חייב  
because as Tosfos explains the Mishnah holds  
דאין דינא דגרמי  
One is liable for damages that were caused indirectly.

**C**

פועל יכול לחזור בו  
אפילו בחצי היום

הגוזל שדה מחבירו  
ונטלוה מסיקין

דאין דינא דגרמי

## 1 So let's review ...

The previous Mishnah taught

שטף נחל חמורו וחמורו חברו  
שלו יפה מנה ושל חברו מאתים

If the river washed away two people's donkeys, one was worth 100 Zuz, and the other was worth 200 Zuz.

והניח זה את שלו והציל את של חברו  
אין לו אלא שכרו

If the בעל abandoned his own less expensive donkey to rescue his friend's more expensive מאתים donkey, the בעל pays him only for his efforts but not a מנה for the loss of his donkey.

ואם אמר לו אני אציל את שלך ואתה נותן לי את שלי  
חייב ליתן לו

If the בעל stipulated beforehand that he'll save the בעל's donkey if he will be reimbursed completely, the בעל must pay him a מנה for the loss of his donkey.

## 1


 משנה

**שטף נחל חמורו וחמור חברו  
שלו יפה מנה ושל חברו מאתים**

*If the river washed away two people's donkeys,  
one was worth 100 Zuz,  
and the other was worth 200 Zuz.*

**והניח זה את שלו והציל את של חברו  
אין לו אלא שכרו**

*If the בעל abandoned his own less expensive donkey  
to rescue his friend's more expensive מאתים donkey,  
the בעל pays him only for his efforts  
but not a מנה for the loss of his donkey.*

**ואם אמר לו אני אציל את שלך ואתה  
נותן לי את שלי  
חייב ליתן לו**

*If the בעל stipulated beforehand  
that he'll save the בעל's donkey  
if he will be reimbursed completely,  
the בעל must pay him a מנה for the loss of his donkey.*

2 The Gemara asks  
 בעא מיניה רב כהנא מרב  
 ירד להציל ועלה שלו מאליו מהו  
 מאתים What is the Halachah if the בעל מנה rescued the donkey, and then his donkey emerged on its own, does the בעל מנה have to pay him the מנה or not?

As Rashi explains, do we say  
 מעיקרא דאפקריה כאבוד דמי  
 ומחייב לו האיך לשלומי  
 והדר זכה ליה מרי מהפקירא  
 Since the בעל מנה was initially מייאש and his donkey became liable, at that time, to pay him for the donkey that he lost. Now, even though the הפקר recovered his donkey, it is not considered his original donkey, but rather a הפקר donkey which he now acquires. Therefore

חייב ליתן לו

OR

כיון דסליק סליק

The בעל מנה was committed to pay the מנה only if the donkey actually drowned, but since the donkey did not drown,

אין לו אלא שכרו

2  
  
**בעא מיניה רב כהנא מרב  
 ירד להציל ועלה שלו מאליו מהו**

**What is the Halachah  
 if the בעל מנה rescued the מאתים donkey,  
 and then his donkey emerged on its own,  
 does the בעל מנה have to pay him the מנה or not?**

*As Rashi explains, do we say  
 מעיקרא דאפקריה כאבוד דמי  
 ומחייב לו האיך לשלומי  
 והדר זכה ליה מרי מהפקירא  
 Since the בעל מנה was initially מייאש  
 and his donkey became הפקר,  
 the בעל מנה became liable, at that time,  
 to pay him for the donkey that he lost.*

*Now, even though the בעל מנה recovered his donkey,  
 it is not considered his original donkey,  
 but rather a הפקר donkey which he now acquires.*

**כיון דסליק סליק**

OR

**חייב ליתן לו**

**The בעל מנה was committed to pay the מנה  
 only if the donkey actually drowned,  
 אין לו אלא שכרו - but since the donkey did not drown,**



3

רב answered  
חייב ליתן לו  
Because  
משמיא רחימו עליה  
His donkey was considered lost, and this is a new gift  
from Heaven.

The Gemara asks further  
בעא מיניה רב מרבי  
ירד להציל ולא הציל מהו  
What is the Halachah if the בעל מנה attempted to rescue  
the donkey but was not successful; does the בעל  
pay him the מנה for his donkey or not?

רבי answered  
אין לו אלא שכרו  
The בעל מנתים pays him only for his efforts but not for his  
donkey, because  
לא עביד שליחותיה  
He did not fulfill the task that he undertook to rescue the  
donkey.  
However, in the Braisa's case of  
השוכר את הפועל להביא כרוב ודורמסקנין לחולה  
והלך ומצאו שמת או שהבריא  
If a person hired a worker to bring cabbage for a sick  
person, and by the time he got there the patient died or  
recovered and the cabbage was not needed;  
נותן לו שכרו משלם  
He must pay the worker the full amount, because  
עביד שליחותיה  
He did fulfill the task that he undertook to bring cabbage.  
=====

3

רבי  
חייב ליתן לו

Because  
משמיא רחימו עליה  
His donkey was considered lost,  
and this is a new gift from Heaven.

?

כעא מיניה רב מרבי

ירד להציל ולא הציל מהו  
If the בעל מנתים attempted to rescue the donkey  
but was not successful;  
does the בעל מנתים pay him the מנה for his donkey

?

רבי  
אין לו אלא שכרו

The בעל מנתים pays him only for his efforts  
but not for his donkey, because

לא עביד שליחותיה  
He did not fulfill the task that he undertook  
to rescue the donkey.

However

השוכר את הפועל להביא כרוב  
ודורמסקנין לחולה  
והלך ומצאו שמת או שהבריא  
If a worker was hired to bring cabbage for a sick person,  
and by the time he got there the patient died  
or recovered and the cabbage was not needed;

נותן לו שכרו משלם  
He must pay the worker the full amount, because

עביד שליחותיה

4 The Gemara cites a Braisa  
 שיירא שהיתה מהלכת במדבר  
 ועמד עליה גייס לטורפה  
 A group of people were traveling through the desert, and a  
 band of thieves threatened to rob them, and they appeased  
 them with a ransom;  
 מחשבין לפי ממוון  
 ואין מחשבין לפי נפשות  
 Each person pays a percentage of the ransom money in  
 proportion to his assets - the rich pay more and the poor  
 pay less - but they do not pay equally per person, because  
 this was  
 סכנת ממוון  
 A danger to their assets but not also to their lives;  
 However  
 ואם שכרו תייר ההולך לפנייהם  
 מחשבין אף לפי נפשות  
 If they hired a guide to lead them through the desert, each  
 person pays equally, because this was  
 סכנות נפשות  
 A danger to their lives if they were to become lost;  
  
 The Braisa however adds,  
 ולא ישנו ממנהג החמרין  
 They should not deviate from the accepted norms of the  
 caravans in this area.  
 =====

4

**שיירא שהיתה מהלכת במדבר  
 ועמד עליה גייס לטורפה**  
*A group of people were traveling through the desert,  
 and a band of thieves threatened to rob them,  
 and they appeased them with a ransom;*

**חשבין לפי ממוון  
 ואין מחשבין לפי נפשות**  
*Each person pays a percentage of the ransom money  
 in proportion to his assets  
 but they do not pay equally per person, because this was*

**סכנת ממוון**  
*A danger to their assets but not also to their lives;*

**ואם שכרו תייר ההולך לפנייהם  
 מחשבין אף לפי נפשות**  
*If they hired a guide to lead them through the desert,  
 each person pays equally, because this was*

**סכנות נפשות**  
*A danger to their lives if they were to become lost;*

**ולא ישנו ממנהג החמרין**  
*They should not deviate from the accepted norms  
 of the caravans in this area.*

5 The Gemara proceeds with a Braisa  
 שיירא שהיתה מהלכת במדבר ועמד גייס וטרפה  
 ועמד אחד מהן והציל  
 If a group of people were traveling through the desert and  
 a band of thieves robbed them, and then one person in the  
 group recovered all the money;  
 הציל לאמצע  
 He must share the money with the others.  
 ואם אמר אני אציל לעצמי  
 הציל לעצמו  
 But if this person stipulated to them that he is recovering  
 for himself, he keeps all the money for himself.

5

**שיירא שהיתה מהלכת במדבר  
 ועמד גייס וטרפה  
 ועמד אחד מהן והציל**  
*If a group of people were traveling through the desert  
 and a band of thieves robbed them  
 and then one person in the group recovered the money*

**הציל לאמצע**  
*He must share  
 the money with  
 the others.*

**ואם אמר  
 אני אציל לעצמי  
 הציל לעצמו**  
*But if this person stipulated  
 that he is recovering  
 for himself,  
 he keeps all the money.*



**6** The Gemara asks  
היכי דמי  
What is the case?  
אי דיכול להציל  
אפילו סיפא נמי לאמצע  
If the other people were also able to recover their money,  
then even if he did stipulate, he must share with them,  
because there was no יאוש, they did not despair of  
recovering their money.  
ואי דלא יכול להציל  
אפילו רישא נמי לעצמו  
And if the other people were not able to recover their  
money, then even if he did not stipulate, he keeps all the  
money for himself, because there was יאוש, they did  
despair of recovering their money.

**7** The Gemara offers three explanations:  
1.  
רמי בר חמא says,  
הכא בשותפין עסקינן  
This is a case in which the members of the group were all  
partners. Therefore, it depends;  
אמר  
If he stipulated that he is recovering for himself;  
פליג  
He broke off from the partnership, as the Halachah is  
שותף חולק שלא לדעת חבריו  
In the event of a potential loss, one partner can break off  
from the partnership without the consent of the others.  
Therefore, as Rashi explains, the interpretation of הציל  
לעצמו depends on the following;  
If the others are יכול להציל, there was no יאוש; and הציל לעצמו  
means he can keep up to the amount of his interest in the  
partnership.  
If the others are לא יכול להציל, there was יאוש; and הציל לעצמו  
means he can keep everything he recovers.

However,  
לא אמר  
לא פליג  
If he did not stipulate, he did not break off from the  
partnership, and  
הציל לאמצע  
Even בלא יכול להציל, even though there was יאוש, he must  
share with the others, because as Rashi explains;  
אורחא למטרח אכולה עיסקא  
Partners go out of their way for one another, and it's  
assumed that his intention was to recover for all partners.

**6**

**פיט דמי**

<p><b>ואי דלא יכול להציל אפילו רישא נמי לעצמו</b></p> <p><i>And if the other people were not able to recover their money, even if he did not stipulate, he can keep all the money for himself, because there was יאוש.</i></p>	<p><b>אי דיכול להציל אפילו סיפא נמי לאמצע</b></p> <p><i>If the other people were also able to recover their money, even if he did stipulate, he must share with them, because there was no יאוש.</i></p>
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**7**

**רמי בר חמא**

**הכא בשותפין עסקינן**  
*This is a case where the group were all partners.*  
*Therefore, it depends;*  
**אמר**  
*If he stipulated that he is recovering for himself;*  
**פליג**  
*He broke off from the partnership, as the Halachah is*  
**שותף חולק שלא לדעת חבריו**  
*In the event of a potential loss,  
one partner can break off from the partnership  
without the consent of the others.*  
*Therefore, as Rashi explains,  
the interpretation of הציל לעצמו depends on the following;*  
**יאוש** *If the others are יכול להציל, there was no יאוש;  
and הציל לעצמו means he can keep  
up to the amount of his interest in the partnership.*  
**יאוש** *If the others are לא יכול להציל, there was יאוש;  
and הציל לעצמו means he can keep  
everything he recovers.*  
**אמר** *However,*  
**לא אמר – לא פליג**  
*If he did not stipulate,  
he did not break off from the partnership, and*  
**הציל לאמצע**  
*Even בלא יכול להציל, even though there was יאוש,  
he must share with the others,*  
*As Rashi explains;*  
**אורחא למטרח אכולה עיסקא**  
*Partners go out of their way for one another,  
and it's assumed that his intention was  
to recover for all partners.*



8

2.

הכא רבא

הכא בפועלין עסקינן

This person was hired to work for the entire group. And as

Rashi adds this is a case of

הפקר לא יכול להציל

Therefore, it depends;

אמר

הדר ביה

If he stipulated, it is considered that he quit; and as רב says

פועל יכול לחזור בו

אפילו בחצי היום

A worker can quit his job even in the middle of the

workday, because the Pasuk states

כי לי בני ישראל עבדים

The Yidden are servants only to Hashem

ולא עבדים לעבדים

But a Yid does not become a servant to another Yid, who

is also a servant to Hashem.

Therefore,

הציל לעצמו

He keeps all the money, because it was הפקר and he was

not their worker.

However

לא אמר

לא הדר ביה

If he did not stipulate, he remains their worker, and

הציל לאמצע

As their worker, he recovered for all of them equally.

8

2

רבא

הכא בפועלין עסקינן

This person was hired to work for the entire group.

And this is a case of

לא יכול להציל

and it's הפקר

Therefore, it depends;

אמר - הדר ביה

If he stipulated, it is considered that he quit;

and as רב says

פועל יכול לחזור בו

אפילו בחצי היום

A worker can quit his job even in the middle of the workday,

because the Pasuk states

כי לי בני ישראל עבדים

ולא עבדים לעבדים

הציל לעצמו - Therefore

He keeps all the money, because it was הפקר

and he was not their worker.

However

לא אמר - לא הדר ביה

If he did not stipulate, he remains their worker, and

הציל לאמצע

As their worker he recovered for all of them equally.



9

3.

כשיכול להציל ע"י הדחק

The other people were able to recover their money only with difficulty.

And as Rashi adds;

באיניש דעלמא

He is an independent person; Therefore, it depends;

גלי דעתיה

לעצמו

If he stipulated that he's recovering for himself and the others were שותק, they were silent, he keeps it, because as Rashi explains

גלו דאייאוש ולא בעו כמסר נפשייהו  
Their שתיקה indicates that they were מייאש and they do not want to overexert themselves. However

Rashi explains

גלו דאייאוש ולא בעו כמסר נפשייהו

Their שתיקה indicates that they were מייאש and they do not want to overexert themselves. However

לא גלו דאייאוש

לאמצע

If he did not stipulate, they all share equally, because

לא גלו דאייאוש

There is no indication that they were מייאש.

And as Rashi explains however in a case of

יכול להציל

Even if

גלי דעתיה

It is לאמצע, because

בסתמא לא אייאוש

They were not מייאש since they do not need to exert themselves.

=====

9

3

רב א"ל

**כשיכול להציל ע"י הדחק**

The other people were able to recover their money only with difficulty.

And as Rashi adds;

**באיניש דעלמא**

He is an independent person;

Therefore, it depends;

**גלי דעתיה – לעצמו**

If he stipulated that he's recovering for himself and the others were שותק, they were silent, he keeps it,

because as Rashi explains

**גלו דאייאוש ולא בעו כמסר נפשייהו**

Their שתיקה indicates that they were מייאש and they do not want to overexert themselves.

However

**לא גלי דעתיה – לאמצע**

If he did not stipulate, they all share equally, because

**לא גלו דאייאוש**

There is no indication that they were מייאש.

As Rashi explains however in a case of  
**יכול להציל**

Even if גלי דעתיה – it is לאמצע, because

**בסתמא לא אייאוש**

They were not מייאש since they do not need to exert themselves.

10 Zugt Di Mishnah

הגוזל שדה מחבירו ונטלוה מסיקין

If a person stole someone's field, and the government then confiscated the field from the גזלן, it depends;

אם מכת מדינה היא

אומר לו הרי שלך לפניך

If other fields in this province were also taken and this was not because of the גזלן, the גזלן does not need to pay the owner for the field.

אם מחמת הגזלן

חייב להעמיד לו שדה אחר

If they stole the field because of the גזלן, he does pay the owner for the field.

As the Gemara explains, even if the גזלן did not actually steal the field, but rather

דאחוי אחוויי

He indicated to the officials to take this field.

And he is חייב, because, as Tosfos explains, the Mishnah holds

דאין דינא דגרמי

One is liable for damages that were caused indirectly.

10

משנה

הגוזל שדה מחבירו ונטלוה  
מסיקין

*If a person stole someone's field,  
and the government then confiscated the field  
from the גזלן*

אם מכת מדינה היא

אומר לו הרי שלך לפניך

*If other fields in this province were also taken and  
this was not because of the גזלן,  
the גזלן does not need to pay the owner for the field.*

אם מחמת הגזלן

חייב להעמיד לו שדה אחר

*If they stole the field because of the גזלן,  
he does pay the owner for the field.*

*As the Gemara explains,  
even if the גזלן did not actually steal the field,  
but rather*

דאחוי אחוויי

*He indicated to the officials to take this field.*

*And he is חייב, because, as Tosfos explains,  
the Mishnah holds*

דאין דינא דגרמי

*One is liable for damages  
that were caused indirectly.*