

ת'וב

Intro

Today we will Be"ה learn of בבא קמא דף ס"ב, and on Amud Bais begin פרק מרובה B'ezras Hashem. Some of the topics we will learn about include:

תקנת נגאל

The victim of a theft may swear as to the value of the stolen items and collect this amount. The Gemara discusses whether this also applies to אש, the value of items destroyed by another's fire, and מסור, the damage caused by an informant.

The Gemara differentiates between חמסן, someone who buys something forcibly, and גזלן, an ordinary thief.

गמל טעון

The liability for a fire caused by an animal whose load caught fire and caused damage.

A

תקנת נגאל

The differentiates between חמסן someone who buys something forcibly, and גזלן an ordinary thief.

גמל טעון פשtan

B

The Mishnah discusses the various penalties paid by a גנב, a covert thief. These include: כפל, a twofold payment, and ד', a fourfold payment for stealing and then slaughtering or selling a sheep, and a fivefold payment for doing this to an ox.

The Gemara also discusses

טוען טענת גנב בפקדון

A guardian who falsely swears that an object entrusted to him was stolen and his deception is then discovered, is liable for

תשומי כפל

And

טבח ומכר משלם

תשומי ארבעה וחמשה

He is also liable for these payments.

B

The Mishnah discusses the various penalties paid by a גנב - a covert thief

ארבעה וחמשה

a fourfold or fivefold payment.

כפל

a twofold payment

הטען טענת גנב בפקדון





1 So let's review...

The Gemara earlier brought the opinion of רבי יהודה who is liable for burning hidden items.

The Gemara now adds; since we know
אלו נשבעין ונוטלים
השכיר והנגזל

The victim of a theft may swear as to the value of the stolen items and collect this amount; similarly,
עשו תקנת נגאל באשׁ

The decree decreed that the victim of a fire may swear as to the value of the hidden items and collect this amount from the מציק.

The Gemara wonders:
Regarding a מסור, an informer, who is liable for the damage he causes according to the opinion of
דינין דין דגרמי

One is liable for more direct forms of causative damages;
And so the Gemara inquires;
עשו תקנת נגאל במסור או לא?

Did the also enact such a decree regarding the victim of an informer, allowing him to swear as to the value of the damages?
תינו?

The Gemara leaves the matter unresolved.

1

וכי יפה

מחחיב אנזקי טמון באשׁ

One is liable for burning hidden items.

אלו נשבעין ונוטלים
השכיר והנגזל

*The victim of a theft
may swear as to the value of the stolen items
and collect this amount - similarly,*

עשו תקנת נגאל באשׁ

*The decree decreed that the victim of a fire
may swear as to the value of the hidden items
and collect this amount from the מציק.*

The Gemara wonders:

*Regarding a מסור - an informer
who is liable for the damage he causes
according to the opinion of*

*דינין דין דגרמי
One is liable for more direct forms
of causative damages;*



עשו תקנת נגאל במסור או לא?

*Did the also enact such a decree regarding
the victim of an informer,
allowing him to swear as to the value of the damages?*

תיכון



2 A related inquiry:

ההוא גברא
דבטש בכסתא דחבריה
שדייה בנהרא

Someone kicked another person's money box into the river;

אתא מורייה ואמר
הכי והכי הויל בגוה

And the victim submits a claim as to the contents of the box;

אי דקא טעין זוי
משלם כל מה שבתוכו
שכן דרכ בני אדם

He is believed to name the amount of money, since it is usual to keep money in the box. However,

אי דקא טעין מרגניתא

If he claims to have kept a jewel in the box, the Gemara wonders

מי מנה איינש' מרגניתא בכסתא או לא

Is it usual to keep jewels in a money box?

תיקן

This too is left unresolved.

2



דבטש בכסתא דחבריה

שדייה בנהרא

Someone kicked another person's money box into the river;

איל אויל ואויג

הכי והכי הויל בגוה

The victim submits a claim as to the contents of the box;

אי דקא טעין

מרגניתא

If he claims to have kept a jewel in the box

מי מנה איינש'

מרגניתא

בכסתא או לא

Is it usual to keep jewels in a money box?



אי דקא טעין

זוזי

**משלם כל מה
שבתוכו**

שכן דרכ בני אדם

He is believed to name the amount of money since it is usual to keep money in the box.



3

An additional scenario:

טעין כסא דכספה בבריה

If someone claims to have had a silver goblet in his home;

אי איינש אמיד הוא

דאית להה כסא דכספה

If he is deemed sufficiently wealthy to own a silver goblet;

אי איינש מהיכנא הוא

למפקדי איינש גביה

Or if he was known to be a trustworthy person who receives expensive items for safekeeping;

משתבע ושקיל

He may swear and collect from the;

ואילא

לאו כל כמיינה

Otherwise, his claim is not believed.

3

טעין כסא דכספה בבריה

If someone claims to have had a silver goblet in his home;

אי איינש

מהיכנא הוא

דמפקדי איינש

גביה

Or he is known as a trustworthy person who receives expensive items for safekeeping;

אי איינש

אמיד הוא

דאית להה

כסא דכספה

If he is deemed sufficiently wealthy to own a silver goblet;

משתבע ושקיל

He may swear and collect from the;

ואילא

לאו כל כמיינה

Otherwise, his claim is not believed.



- 4 The Gemara digresses to differentiate between various forms of thievery; מה בין גזל לחטף And explains that they both forcibly take the item from its owner; however, חטף יহיב דעתו גזל לא יהיב דעתו As opposed to a thief, a thief [חטף] pays for the item. Nevertheless, he is also considered a thief and must return the item; and cannot be compared to the ruling תלואה זבן זבינה גני If someone was coerced to sell, the sale is binding; because in that case אמר רוצחה אני The seller ultimately consented. However, in the case of a thief, לא אמר רוצחה אני The owner never consented.
- =====

4

מה בין גזל לחטף?

They both forcibly take the item from its owner; however...

חטף **גזל** **לא יהיב דעתו** **יהיב דעתו**

תלוי גזלה עכמי קניין גנין
*If someone was coerced to sell
the sale is binding;*

*Because in that case
אמר רוצחה אני
The seller consented.*

*However, in the case of a thief,
לא אמר רוצחה אני
The owner never consented.*



5

Zugt di Mishnah

גַּז שִׁיצָא מִתְחַת הַפְּטִישׁ וְהַזֵּבֶב

A blacksmith is liable for damage caused by a spark he created by striking his hammer.

The Mishnah continues

גַּמְלָשָׁה טֻוֹן פְּשָׁתָן וְעַבְרָר בְּרִשׁוֹת הַרְבִּים

If a camel laden with flax passed through a public thoroughfare,

וְנִכְנֵס פְּשָׁתָנוּ לְתוֹךְ הַחֲנוֹת

וְדַלְקָנוּ בְּנָרוֹ שֶׁל חָנוֹן

וְהַלְדִּיק אֶת הַבִּירָה

And the flax protruded into a shop, caught fire from a flame in the shop, and burned down a building;

בָּעֵל גַּמְלָשָׁה

The owner of the camel is liable, because he's negligent in overloading the camel.

The Gemara earlier on דף כ"ב explains that according to רבי יוחנן who says

אֲשֶׁר מֵשֶׁם חָצֵי

Fire is considered, his direct action;

And so in this case the fire is חָצֵי שֶׁל גַּמְלָשָׁה, directly caused by the camel.

However, according to ר' יeshua ben Levi who says

אֲשֶׁר מֵשֶׁם מַכְוָנוֹ

One is only liable for a fire that spreads if he owns it; In this case, the owner of the camel does not own the flame; why is he liable?

Therefore, the Gemara explains that the Mishnah is discussing

כְּגוֹן שָׁעַמְדָה וּסְכָסָכה

The camel stood still, and the flax directly lit the entire building.

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5

גַּז שִׁיצָא מִתְחַת הַפְּטִישׁ וְהַזֵּבֶב חִיב

A blacksmith is liable for damage caused by a spark he created by striking his hammer.

גַּמְלָשָׁה טֻוֹן פְּשָׁתָן וְעַבְרָר בְּרִשׁוֹת הַרְבִּים

If a camel laden with flax passed through a public thoroughfare,

**וְנִכְנֵס פְּשָׁתָנוּ לְתוֹךְ הַחֲנוֹת
וְדַלְקָנוּ בְּנָרוֹ שֶׁל חָנוֹן
וְהַלְדִּיק אֶת הַבִּירָה**

And the flax protruded into a shop, caught fire from a flame in the shop, and burned down a building;

בָּעֵל גַּמְלָשָׁה

The owner of the camel is liable, because he's negligent in overloading the camel.

לְגַדְלָה
לְגַדְלָה

אֲשֶׁר מֵשֶׁם חָצֵי מַמְוָנוֹ

One is only liable for a fire that spreads if he owns it; In this case, the owner of the camel does not own the flame; why is he liable?



יכְּגוֹן
יְמִיעָן

אֲשֶׁר מֵשֶׁם חָצֵי

Fire is considered, his direct action; In this case the fire is חָצֵי שֶׁל גַּמְלָשָׁה, caused by the camel.



כְּגוֹן שָׁעַמְדָה וּסְכָסָכה

The camel stood still, and the flax directly lit the entire building.

6 The Mishnah continues

הניח חנוני נרו מבחו^ץ
חנוני חייב

If the shopkeeper left the flame outside in the רה"ר, the shopkeeper is liable, because he's considered a פושע, negligent.

However, the Mishnah concludes

רבי יהודה אומר
בנر חנוכה פטור

If the shopkeeper left a Chanukah light in the רה"ר he is exempt, and the Gemara offers two explanations for why he is פטור:

1.

ניר חנוכה
מצוחה להניחה בתוך עשרה

It is preferable to leave the הנירה within ten טפחים of the ground, and so he acted properly by placing his light there.

Therefore, we do not say that he is liable because
הוה ליה لأنוחה למעלה מגמל ורכבו

He should have placed it above the height of a camel and its load.

2.

אפילו למעלה מעשרה

One may place the הנירה higher. However, he is because

כיוון דברמצוות קא עסיק
כולי האי לא אטרוחה רבנן

The did not want the חכמים to be burdensome, and so they permitted him to place it lower.

The Gemara concludes however,
ניר חנוכה שהניחה למעלה מעשרים אמה

פסולה כסוכה וככמו
אמאות 20.

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הדרן עלך הכו^{נס}

We have ב"ה completed the sixth Perek of בבא קמא, and we begin the seventh Perek, ב'ezras Hashem.

7 The Mishnah discusses the various penalties paid by a גנב, a covert thief. These include:

ככל, a twofold payment, and

ארבעה וחמשה, a fourfold or fivefold payment.

The Mishnah now describes when these payments apply:

6

הניח חנוני נרו מבחו^ץ חנוני חייב

If the shopkeeper left the flame outside in the רה"ר, the shopkeeper is liable, because he's considered a פושע, negligent.

ו כי יתרכפ תיאו

בניר חנוכה פטור

If the shopkeeper left a Chanukah light in the רה"ר he is פטור

(2) אפילו למעלה מעשרה

However, he is because

כיוון דברמצוות קא עסיק
כולי האי לא אטרוחה רבנן

The did not want the חכמים to be burdensome, and so they permitted him to place it lower.

(1) ניר חנוכה מצוחה להניחה בתוך עשרה

He acted properly by placing his light within ten טפחים of the ground.

Therefore, we do not say that he is liable because
הוה ליה لأنוחה
למעלה מגמל ורכבו
He should have placed it above the height of a camel and its load.

The Gemara concludes however,
ניר חנוכה שהניחה למעלה מעשרים אמה
פסולה כסוכה וככמו

הדרן עלך הכו^{נס}

7

מורבה

The Mishnah discusses the various penalties paid by a גנב - a covert thief

ארבעה וחמשה

a fourfold or
fivefold payment.

כפל

a twofold
payment

8

Zugt di Mishnah

מורובה מודת תשלומי כפל

מודת תשלומי ארבעה וחמשה

The payment of is more widely applied than the payment of:

ארבעה וחמשה כפל נוהגת

בין דבר שיש בו רוח חיים

ובין דבר שאין בו רוח חיים

One pays for stealing either live or inanimate objects;

ומודת תשלומי ארבעה וחמשה

איינה נוהגת אלא בשור ושה בלבד

One only pays fourfold for stealing, and then selling or slaughtering a sheep, and pays fivefold for doing this to an ox,

שנאמר

As the Pasuk specifies

'כִּי יָגַנְבֵּב אִישׁ שׂוֹר אוֹ שָׂה וְטַבְּחוֹן אוֹ מְכַרְוֹן וּגְ

The Mishnah concludes

אין הגונב אחר הגונב

משלם תשלומי כפל

ולא הטובח ולא המוכר אחר הגונב

משלם תשלומי ארבעה וחמשה

One is not liable for any of these payments if he steals a previously stolen item from another thief. The Gemara will return to this last subject on ז"ז.

8

מְרוּבָה מְדֻת תְּשָׁלּוּמֵי כְּפֶל

מְמִדָּת תְּשָׁלּוּמֵי אַרְבַּעַה וְחַמִשָּׁה

The payment of **כפל** is more widely applied than the payment of:
ארבעה וחמשה**שתשלומי כפל נוהגת****בין דבר****שיש בו רוח חיים****ובין דבר****שאין בו רוח חיים**One pays fourfold for stealing,
and then selling or
slaughtering a sheep,
and pays fivefold for doing
this to an ox,כִּי יָגַנְבֵּב אִישׁ שׂוֹר אוֹ
שָׂה וְטַבְּחוֹן אוֹ מְכַרְוֹן**אין הגונב אחר הגונב
משלם תשלומי כפל****ולא הטובח ולא המוכר אחר הגונב
משלם תשלומי ארבעה ו חמישה**One is not liable for any of these payments
if he steals a previously stolen item
from another thief.

9 The Gemara cites a ruling of רבי יוחנן

הטעון טענת גנב בפקדונ
משלם תשלומי כפל

A guardian who falsely swears that an item entrusted to him was stolen and is then discovered to have it, is liable for like an ordinary thief. Furthermore,

טבח ומכר משלם תשלומי ד' וזה

If he also slaughtered or sold it before he was discovered, he is liable for ד' וזה.

The Gemara at first says that our Mishnah supports this ruling, because

מדת תשלומי כפל נוהגת

בין בגנוב בין בטוען טענת גנב

ומדעת תשלומי ד' וזה איננה נוהגת

אלא בגנוב בלבד

לא קטני

The Mishnah does not differentiate between 'between' and 'and' regarding this Halachah; which indicates that he is equally liable; and as Tosfos explains,

קטני מרובה

The expression 'between' is equivalent to saying 'only', expressly stating that this is the only distinction and there are no others?

However, the Gemara answers that this proof is inconclusive, because

תנא ושייר

The expression 'between' is NOT equivalent to 'only', and so we can propose that the Mishnah did not list all distinctions and there may be others.

9

כ"י י"ג ע"ז הטעון טענת גנב בפקדונ משלם תשלומי כפל

*A guardian who falsely swears
that an item entrusted to him was stolen
and is then discovered to have it,
is liable for like an ordinary thief.*

*Furthermore,
טבח ומכר משלם תשלומי ד' וזה*

*If he also slaughtered or sold it before he was discovered,
he is liable for ד' וזה.*

Our Mishnah supports this ruling - because

**מדת תשלומי כפל נוהגת
בין בגנוב בין בטוען טענת גנב
ומדעת תשלומי ד' וזה איננה נוהגת
אלא בגנוב בלבד
לא קטני**

*The Mishnah does not differentiate
between 'between' and 'and' regarding this Halachah;
which indicates that he is equally liable*

*As Tosfos explains,
קטני מרובה*

*The expression 'between' is equivalent to saying 'only',
expressly stating that this is the only distinction
and there are no others.*

*The Gemara answers,
this proof is inconclusive, because*

תנא ושייר

*The expression 'between' is not equivalent to 'only',
and so we can say that the Mishnah did not list all
distinctions and there may be others.*