



т"оэ

Intro

Today we will בע"ה learn דף ס"ה of אסכת בבא קמא of מסכת בבא קמא of the topics we will learn about include.

גניבה

קרן

כפל

If a person stole an object and it was still בעין, intact, he is obligated to return the actual object; and he also pays כפל, an additional amount of the object's value. If the object was not קרן anymore, he pays the owner, דרן, the principal amount of the object's value, and כפל בעין.

טביחה ומכירה

תשלומי ארבעה וחמשה

If he stole an animal and then slaughtered or sold the animal, he pays a total of four or five times the animal's value.

Whether these payments are paid בעין שגנב, according to the object's original value, or בשעת העמדה בדין, according to its present value; Might depend on whether its fluctuation in value was due to

השמינה, the thief's fattening the animal; עמינה והכחישה, the thief's weakening the animal; OR יוקרא ווולא, a change in market value.



В

בר's distinction of

קרן

כעין שגנב

The principal amount is paid according to the animal's value at the time of the theft. However

תשלומי כפל ותשלומי ארבעה וחמשה

כשעת העמדה בדין

The additional amounts are paid according to the animal's value at the time Bais Din issued their verdict.

And the Gemara explains when this distinction applies;

שינוי קונה

A thief acquires the stolen item if it undergoes a significant, physical change. The Gemara brings a מחלוקת whether

טלה ונעשה איל

An animal maturing is also considered such a change. Similarly,

שינוי השם

A change that designates a new name for the object is also effective.

The Gemara's conclusion is that the concept of שינוי קונה is actually a Machlokes בית שמאי and בית הלל;









C

אתנ

An animal used as payment for זנות, becomes disqualified from being a Korban.

קרן וחומש ואשם

If a guardian swears falsely that an item was stolen, and then admits to taking it himself, he pays 125% of the item's value and brings an אשם גזילות.









So let's review ...

The Mishnah at the beginning of the Perek mentioned three possible payments for theft: קרן, reimbursement of the principal;

תשלומי כפל, the twofold payment of a covert thief; and התשלומי ד' וה, the fourfold and fivefold payment of one who after the stealing an ox or sheep, then slaughtered or sold it.



The Gemara now discusses how to calculate these payments if it changed in value:

אמר רב

קרן

כעין שגנב

The principal is paid according to the object's value at the time of the theft. However,

תשלומי כפל ותשלומי ארבעה וחמשה

כשעת העמדה בדין

The additional amounts are paid according to the object's value at the time Bais Din issued their verdict.

And the Gemara explains:

כי קאמר רב ביוקרא וזולא הוא דקאמר

רב's Halachah applies only in a case in which the market value decreased; for example;

דמעיקרא שויא ד'

ולבסוף שויא זוזא

At the time of the גניבה the animal was worth four זוז, and by the time of העמדה בדין the value decreased to one זוז.

The קדן is paid according to the former price of four וזו and the כפל and ד' are paid according to the current price of one וזי, because the Pasuk of גייבה states

אם המצא תמצא בידו הגניבה וגו

חיים שנים ישלם

The words גניבה and חיים teach

אחייה לקרן כעין שגנב

The גנב must restore the object to its worth at the time it was stolen - which refers to the קדן; but the Pasuk does not include 'ד' וה מחל מחל 'ד'.

The Gemara explains however that ירב's Halachah does not apply in the reverse case, where the value increased; דמעיקרא שויא זווא

ולבסוף שויא ד' זוזי

At the time of the גניבה the animal was worth one אוי, and later the value increased to four אוו.









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Rather it would depend on the factors established by right in a just such a case:

תברה או שתייה

'משלם ד

If the גנב intentionally broke the object, or drank the wine, even the קרן is paid according to the current price of four אוו, because as Rashi cites the Gemara in Masechta בבא מציעא;

דכל כמה דאיתא בעינא ברשותא דמרא קיימא

וברשותא דמרא הוקרה

When the גנוב initially stole the object and it was intact, since the must return the actual object, it is considered in the owner's jurisdiction, and the owner acquired the gain of its increased value; and therefore

וההיא שעתא דתברא קגזיל לה

When the גוב later broke the object, only then was the object removed from its owner. Therefore, the קרן is paid according to the current price, because the מעשה גויבה occurred now when he broke the object, but not before when he initially took the object.

However איתבר ממילא

משלם זוזא

If the object broke on its own, the קרן is paid according to the former price of one או, because the מעשה גניבה occurred at the time he stole the object and it was then only worth one אוז.

Accordingly, in א'רכ case, if the animal was lost on its own, the β is paid according to the former price of one או, because the מעשה גניבה was earlier when he stole the animal.

However, if the גגב also slaughtered or sold the animal, the קרן is paid according to the current price of four אוז, because the מעשה was now through the הטביחה ומכירה.

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The Gemara explains that ירב Halachah also does not apply in the Braisa's cases of

כחושה והשמינה

When the גוב initially stole the animal it was lean, but then the גוב fed the animal and it became fat, and its value increased; משלם תשלומי כפל ותשלומי ארבעה וחמשה

בעין שגנב

There, even קרן והר מחל ביל הי החל כידל, and certainly הקרן, is paid according to the former low value but not the current high value;

משום דא"ל אנא פטימנא

ואת שקלת

The גנב can claim that his efforts caused the increase; and therefore, this gain belongs to him and not to the owner.

And if it was in the reverse

שמינה והכחישה

When the גוב initially stole the animal it was fat, but then the גוב abused the animal and it became lean and its value decreased; משלם תשלומי כפל ותשלומי ארבעה וחמשה

כעין שגנב

There even the כפל and ד' וה', and certainly the קרן, are paid according to the former high value, but not the current low value, because

דאמרינן ליה מה לי קטלה כולה

מה לי קטלה פלגא

The מעשה גניבה was before, and his causing the decrease in value is equivalent to killing the animal.

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כחושה והשמינה

When the גנב stole the animal it was lean, but then he fed the animal and it became fat, and its value increased

משלם תשלומי כפל ותשלומי ד' וה' כעין שגנב

> אלוס דא"א אנא די באניאנא ואת לקאת

And if it was in the reverse

שמינה והכחישה

When the גנב stole the animal it was fat, but then he abused the animal and it became lean and its value decreased;

משלם תשלומי כפל ותשלומי ד' וה' כעין שגנב

דאוקרון אידי נקדי אי קלאדי בואדי אדי אידי קלאדי בלגץ







The Gemara continues

אמר רבי אילעא

גנב טלה ונעשה איל

עגל ונעשה שור

נעשה שינוי בידו וקנאו

If a person stole a young lamb or calf, and while in his possession it matured into a ram or ox, the גנב acquires the animal through this שינוי, regarding

טבח ומכר

שלו הוא טובח שלו הוא מוכר

If he then slaughtered or sold the animal, he is NOT liable to pay יד' וה, because it was HIS animal.

However, as Rashi explains;

משלם קרן כי השתא

The קרן is paid according to the current high price. Although he did own the animal from when the שינוי occurred? However, as the פני יהושע explains;

כיון דשינוי הבא מאיליו הוא

והגזלן לא שינה בה מידי

לא מסתבר שיהא חוטא נשכר

Since the שינוי, did not actually cause this שינוי, but rather it came about on its own, we do not consider the שינוי for his benefit in reducing the קרן amount.

And regarding כפל the Gemara later explains, either רבי אילעא holds

כפל

כעין שגנב

He pays the כפל as per the former low value of טלה, and he disagrees with TT who holds

כפל

כשעת העמדה בדין

OR רבי אליעא does agree with רבי and טלאים

כדמעיקרא

If he pays the כפל with an actual טלה, he does not need to also pay the current high value of איל, because, as Rashi explains

דטלה גנב טלה משלם

He returned the same object that was stolen.

However.

דמים

כשל עכשיו

If he pays the כפל with money, he does pay the current value of איל, because

כפל

כשעת העמדה בדין

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The Gemara mentions a Braisa that apparently contradicts מר' אילעא

גנב טלה ונעשה איל

עגל ונעשה שור

משלם תשלומי כפל ותשלומי ארבעה וחמשה

כעין שגנב

He IS liable to pay ד' וה even though there was a שינוי and we don't say

The Gemara explains that ה''s concept of שינוי קונה is actually a Machlokes בית שמאי and בית הלל regarding the case of

נתן לה באתננה

חיטין ועשאן סולת

זיתים ועשאן שמן

ענבים ועשאן יין

If a person paid a תונה with wheat, olives or grapes, which she then made into flour, oil or wine;

בית שמאי אוסרין

ובית הלל מתירין

The בית שמאי hold the product it still prohibited for the use of Korbanos, even though there was a שינוי, while the הלל hold the product becomes permitted for Korbanos through the שינוי שינוי.

Apparently, the בית שמאי hold

שינוי אינו קונה

A שינוי does not change the object's status, and the Issur still applies, and therefore, regarding

גנב טלה ונעשה איל

משלם תשלומי ארבעה וחמשה

hold בית הלל while the

שינוי קונה

A שינוי does change the object's status, and the Issur אתנן no longer applies, and therefore regarding

גנב טלה ונעשה איל

שלו הוא טובח שלו הוא מוכר

The Gemara explains that the Machlokes is based on the Pasuk of אחנון which states

כי תועבת ה' וגו' גם שניהם

The בית שמאי hold

גם

לרבות שינוייהם

The inclusive word אחנן teaches that even if the אחנן object was changed, it is still forbidden. And

הם

ולא ולדותיהם

The exclusive word הם teaches that if the אתנן animal gave birth, the offspring is permitted.

While the בית הלל hold

הם ולא שינויהם

הם ולא ולדותיהם

The exclusive word הם teaches that both, a ילדות and ולדות are permitted.

And the word גם does not include anything.

This discussion continues in the next Daf.





