

A ט"ד

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

רב's Halachah of

התוקף בעבדו של חבירו ועשה בו מלאכה פטור

If someone seized another person's servant and made him perform work for him, he does not have to compensate the owner. However,

דמסיק בהו זוזי

מיחזי כרבית

If the עבד's owner owes him money, he may not do so, because this benefit appears to be interest.

התוקף ספינתו של חבירו ועשה בה מלאכה

If someone seized another person's boat and used it, in some cases he pays only פחתה, the cost of its wear and tear, and in some cases he pays even שכרה, the higher price of a rental.

The Mishnah's Halachah of

גזל מטבע ונסדק

משלם כשעת הגולה

If a person stole a coin and it cracked, he must pay the higher value of the time it was stolen, because, as Rashi explains

שינוי הניכר הוא

וקנייה בשינוי

The גזלן already acquired the item through the change that was discernable, as the actual item changed.

However

גזל מטבע ונפסל

אומר לו הרי שלך לפניך

If he stole a coin and it was then disqualified, he may return the coin to the owner as is,

B because

הוא שינוי שאינו ניכר הוא

ולא קנייה בשינוי

The גזלן did not acquire the item because the change was not discernable, the actual item did not change, only its status changed.

The Machlokes regarding

המלוה את חבירו על המטבע

ונפסלה המטבע

If a person loaned merchandise to someone on the condition that he is repaid in coins, but those coins became disqualified;

רב רב

נותן לו מטבע היוצא באותה שעה

The לווה must pay the מלוה with coins that are now in use, but not with the original coins that became פסול, because coins that have no use are not considered currency.

המלוה disagrees and holds the לווה may even pay the מלוה with the original coins that became פסול, because

יכול לומר לו לך הוציאו במישן

They are considered currency as they are still in use in the faraway country of מישן.

כסף צורה

שינוי fruits may only be eaten in Yerushalayim. However, he may also redeem the fruit with coins and take the coins to Yerushalayim, from which he will buy food to be consumed there. The original fruits may then be eaten in his own city.

The Pasuk teaches that the coins must be of a currency that is accepted in Yerushalayim.

A

התוקף בעבדו של חבירו
ועשה בו מלאכה
פטור

התוקף ספינתו של חבירו
ועשה בה מלאכה

גזל מטבע ונסדק
משלם כשעת הגולה

שינוי הניכר הוא
וקנייה בשינוי

גזל מטבע ונפסל
אומר לו הרי שלך לפניך

B

שינוי שאינו ניכר הוא
ולא קנייה בשינוי

המלוה את חבירו על המטבע
ונפסלה המטבע

כסף צורה

1 So let's review ...

The Gemara in the previous Daf cites רב who holds עבדא כמקרקעי דמי
A slave is considered like land, for which the Halachos of גזילה do not apply.

The Gemara now questions this from another statement of רב:

אמר רב
התוקף בעבדו של חבירו ועשה בו מלאכה
פטור

If someone seized another person's slave and made him work for him, he does not have to compensate the owner.

1

רב
עבדא כמקרקעי דמי

A slave is considered like land,
for which the Halachos of גזילה do not apply.

אמר רב
**התוקף בעבדו של חבירו
ועשה בו מלאכה
פטור**

If someone seized another person's slave
and made him work for him,
he does not have to compensate the owner.

2 The Gemara asks

ואי ס"ד עבדא כמקרקעי דמי
אמאי פטור

ברשותא דמריה קאי
If an עבד is considered like קרקע there was no גזילה, and he ought to be חייב because the עבד was in the owner's possession when he performed the work?

However, if

עבדא כמטלטלא דמי

If the עבד is considered a moveable object there was גזילה, and the גזלן is פטור because the עבד was in his possession, when he performed the work.

The Gemara answers

הכא במאי עסקינן
שלא בשעת מלאכה

רב refers to where the עבד worked for the גזלן during a time when he does not work for his owner, and therefore the גזלן is פטור, because

זה נהנה וזה לא חסר

He did not cause the owner any loss.

On the contrary, the owner benefits, because

ניחא ליה דלא ליסתרי עבדיה

He wants the עבד to work, and not become accustomed to being idle.

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2

ואי ס"ד עבדא כמקרקעי דמי
אמאי פטור
ברשותא דמריה קאי

If an עבד is considered like קרקע there was no גזילה,
and he ought to be חייב because the עבד was in the
owner's possession when he performed the work?

However, if
עבדא כמטלטלא דמי

If the עבד is considered a moveable object there was גזילה,
and the גזלן is פטור because the עבד was in his possession,
when he performed the work.

**הכא במאי עסקינן
שלא בשעת מלאכה**

The עבד worked for the גזלן
during a time when he does not work for his owner,
and therefore the גזלן is פטור, because

זה נהנה וזה לא חסר
He did not cause the owner any loss.

On the contrary, the owner benefits,
because

ניחא ליה דלא ליסתרי עבדיה
He wants the עבד to work, and not become
accustomed to being idle.

3 The Gemara proceeds with a similar case
 התוקף ספינתו של חבירו ועשה בה מלאכה
 If someone seized another person's boat, and used it;
 רב says
 רצה שכרה נוטל
 רצה פחתה נוטל
 The owner can demand either the price of a rental, or the
 costs of its wear and tear, whichever amount is greater.
 שמואל says
 אינו נוטל אלא פחתה
 The owner can only collect the cost of the wear and tear,
 even if it was less than שכרה.

פפא explains that there is no Machlokes, and offers two
 approaches

1.
 Either רב refers to
 הא דעבידא לאגרא
 רצה שכרה נוטל
 The boat was ordinarily rented, and therefore the owner
 can demand the rental price.
 While שמואל refers to
 הא דלא עבידא לאגרא
 אינו נוטל אלא פחתה
 The boat was not ordinarily rented, and therefore the
 owner cannot demand the rental price, only the wear and
 tear.

OR
 הא והא דעבידא לאגרא
 The boat is usually rented.
 And רב refers to
 דנחית ליה אדעתא דאגרא
 The גזלן seized the ship with the intentions of paying the
 rent. Therefore, he pays שכרה if it was greater, because it
 was a rental, and he pays פחתה if it was greater, because he
 was a שואל שלא מדעת גזלן הוא who pays
 כשעת הגזילה

While שמואל refers to
 דנחית ליה אדעתא דגולנותא
 The גזלן seized the ship with the intention to steal it.
 Therefore, he only pays פחתה as גזילה, but not שכרה,
 because it was not a rental.

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3 התוקף ספינתו של חבירו
 ועשה בה מלאכה

If someone seized another person's boat, and used it;

שמואל
**אינו נוטל אלא
 פחתה**

The owner can only collect
 the cost of the wear and tear,
 even if it was less than שכרה.

רב
**רצה שכרה נוטל
 רצה פחתה נוטל**

The owner can demand
 either the price of a rental,
 or costs of its wear and tear,
 whichever is greater.

פפא explains that there is no Machlokes,
 and offers two approaches

1

While שמואל refers to
**הא דלא עבידא לאגרא
 אינו נוטל אלא פחתה**
 The boat was not ordinarily
 rented, and therefore
 the owner cannot demand
 the rental price,
 only the wear and tear.

Either רב refers to
**הא דעבידא לאגרא
 רצה שכרה נוטל**
 The boat was ordinarily
 rented, and therefore the
 owner can demand the
 rental price.

2

פפא ורב דעבידא לאגרא
 The boat is usually rented.

שמואל refers to
**דנחית ליה אדעתא
 דגולנותא**
 The גזלן seized the ship
 with intention to steal it.
 Therefore, he only pays
 פחתה as גזילה,
 שכרה, because it
 was not a rental.

רב refers to
**דנחית ליה
 אדעתא דאגרא**
 The גזלן seized the ship with
 the intentions of paying the
 rent. Therefore,
 he pays שכרה if it was greater,
 because it was a rental,
 and he pays פחתה if it was
 greater, because he was a
 שואל שלא מדעת גזלן הוא
 כשעת הגזילה - who pays

4 The previous Mishnah continues
 גזל מטבע ונסדק
 If a person stole a coin, and it cracked; OR
 פירות והרקיבו
 He stole fruits, and they became rotten; OR
 יין והחמיץ
 He stole wine, and it became spoiled;
 In all these cases
 משלם כשעת הגזלה
 He must pay the higher value of the time they were
 stolen, because, as Rashi explains
 שינוי הניכר הוא
 וקנייה בשינוי
 The גזלן acquired the item through a change which is
 discernable, as the actual item changed.

However
 מטבע ונפסל
 If he stole a coin, and it was disqualified for use; OR
 תרומה ונטמאת
 He stole Terumah and it became טמא, and it is אסור באכילה,
 forbidden to be eaten; OR
 חמץ ועבר עליו הפסח
 He stole חמץ and over Pesach it became אסור בהנאה,
 forbidden in all benefits; OR
 בהמה ונתעבדה בה עבירה
 He stole an animal and it was worshipped as an Avodah
 Zarah, which makes it אסור בהנאה; OR
 שנפסלה מעל גבי המזבח
 It got a מום, a blemish, which disqualifies it for Korbanos;
 OR
 שהיתה יוצאה ליסקל
 The animal was sentenced to be stoned;
 In all these cases
 אומר לו הרי שלך לפניך
 He may return the item as is, because
 שינוי שאינו ניכר הוא
 ולא קנייה בשינוי
 The גזלן did not acquire the item, because the change was
 not discernable, the actual item did not change, only its
 status changed.

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4 **גזל מטבע ונסדק**
 If a person stole a coin, and it cracked; OR
פירות והרקיבו
 He stole fruits, and they became rotten; OR
יין והחמיץ
 He stole wine, and it became spoiled;
 In all these cases
משלם כשעת הגזלה
 He must pay the higher value of when they were stolen,

As Rashi explains
שינוי הניכר הוא וקנייה בשינוי
 The גזלן acquired the item through a change
 which is discernable, as the actual item changed.

However
מטבע ונפסל
 If he stole a coin, and it was disqualified for use; OR
תרומה ונטמאת
 He stole Terumah and it became טמא, and it is אסור
 באכילה, forbidden to be eaten; OR
חמץ ועבר עליו הפסח
 He stole חמץ and over Pesach it became אסור בהנאה,
 forbidden in all benefits; OR
בהמה ונתעבדה בה עבירה
 He stole an animal and it was worshipped
 as an Avodah Zarah, which makes it אסור בהנאה; OR
שנפסלה מעל גבי המזבח
 It got a מום, a blemish, which disqualifies it for Korbanos; OR
שהיתה יוצאה ליסקל
 The animal was sentenced to be stoned;

In all these cases
אומר לו הרי שלך לפניך
 He may return the item as is, because
שינוי שאינו ניכר הוא
ולא קנייה בשינוי
 The גזלן did not acquire the item,
 because the change was not discernable,
 the actual item did not change, only its status changed.

5 The Gemara elaborates on the distinction in גזל מטבע; that if

נסדק
משלם כשעת הגזלה
And if
נפסל
אומר לו הרי שלך לפניך

רבי הונא explains

נסדק
Means
נסדק ממש
The coin actually cracked; which is a discernable change, and therefore
משלם כשעת הגזלה
And
נפסל
Means
פסלתו מלכות
The coin was disqualified for use by the government; which is NOT a discernable change, and therefore
אומר לו הרי שלך לפניך

רבי יהודה disagrees and says

נסדק
היינו נמי פסלתו מלכות
If the coin was disqualified for use in all parts of the country, it is also considered a discernable change, and
משלם כשעת הגזלה
Because, as Rashi explains;
מינכרא היזיקא
שאין צורה זו דומה לצורה של כל היוצאים עכשיו
The minting on this coin is different than all the other coins that are now circulating in this country.

אלא ה"ד נפסל

שפסלתו מדינה זו ויוצאה במדינה אחרת
If the coin was disqualified for use in one part of the country, it is NOT a discernable change, and
אומר לו הרי שלך לפניך

Because

לא מינכרא היזיקא
There are many coins such as this one that are circulating in other parts of the country.

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5

The distinction in גזל מטבע

נפסל
אומר לו
הרי שלך לפניך

נסדק
משלם
כשעת הגזלה

רבי הונא explains

נפסל
Means
פסלתו מלכות
The coin was disqualified by the government which is NOT discernable, and therefore
אומר לו הרי שלך לפניך

נסדק
Means
נסדק ממש
The coin actually cracked; which is a discernable change, and therefore
משלם כשעת הגזלה

רבי יהודה explains

נפסל
Means
שפסלתו מדינה זו
ויוצאה במדינה אחרת
If the coin was disqualified for use in one part of the country, it is NOT a discernable change, and therefore
אומר לו הרי שלך לפניך
Because
לא מינכרא היזיקא
Coins such as this are circulating in other parts of the country.

נסדק
Also includes
פסלתו מלכות
משלם כשעת הגזלה
as Rashi explains;
מינכרא היזיקא
שאין צורה זו דומה לצורה של כל היוצאים עכשיו
The minting on this coin is different than all the other coins now circulating in this country.

6 The Gemara proceeds with a Machlokes regarding המלוה את חברו על המטבע ונפסלה המטבע
 If a person loaned merchandise to someone on the condition that he is repaid in coins, but those coins later became disqualified.
 רב says
 נותן לו מטבע היוצא באותה שעה
 The מלוה must pay the מלוה only with coins that are now in use, but not with the disqualified coins, because as Rashi explains
 דהא קיבל עליו לתת לו מטבע והאי לאו מטבע הוא
 The מלוה promised to repay with currency, and coins that have no use are not considered currency.
 שמואל disagrees and holds the מלוה may even pay with the original disqualified coins, because
 יכול לומר לו לך הוציאו במישן
 They are considered currency because they are still in use in the faraway country of מישן.
 However, רב נחמן limits שמואל's opinion to only if דאית ליה אורחא למיזל למישן
 The מלוה travels to מישן anyway;
 He must accept these coins, because he can use them there.
 אבל לית ליה אורחא לא
 If the מלוה does not travel to מישן, he does not have to accept these coins, because he is not able to use them here.

6

המלוה את חברו על המטבע ונפסלה המטבע
 If a person loaned merchandise to someone on the condition that he is repaid in coins, but those coins later became disqualified.

אין
 The מלוה may even pay with the original disqualified coins, because
יכול לומר לו לך הוציאו במישן
 They are considered currency because they are still in use in the faraway country of מישן.

רב
 נותן לו מטבע היוצא באותה שעה
 The מלוה must pay the מלוה only with coins now in use, but not disqualified coins.
 As Rashi explains
 דהא קיבל עליו לתת לו מטבע והאי לאו מטבע הוא
 The מלוה promised to repay with currency, and these coins are no longer considered currency.

רב נחמן
דאית ליה אורחא למיזל למישן
 The מלוה travels to מישן anyway;
 He must accept these coins, because he can use them there.
אבל לית ליה אורחא לא
 If the מלוה does not travel to מישן, he does not have to accept these coins, because he is not able to use them here.

7 The Gemara questions נחמן's distinction from a Braisa regarding מעשר שני: אין מחללין על המעות שאינם יוצאות A person cannot redeem שני fruits in his own country, with coins that are not used in Yerushalayim, because as Rashi explains, the Pasuk states וצרת הכסף בידך והלכת אל המקום The coins must be considered כסף צורה, currency, in Yerushalayim, and these coins are not כסף צורה there. And the Braisa elaborates; כיצד, היו לו מעות כוזביות ירושלמיות או של מלכים הראשונים אין מחללין For example, if he had ancient coins from the times of בן כוזיבא, or from earlier kings, that cannot be used in any place, they cannot be used to redeem שני מעשר, because they are not כסף צורה. The Gemara says this implies, however, הא של אחרונים דומיא דראשונים מחללין If he had current coins that can be used even in one place, even though he cannot use them in Yerushalayim where he must purchase food with this money, the coins can still be used to redeem שני מעשר, and are considered כסף צורה. If so, even if לית ליה אורחא למיזיל למישן The coins are still considered money, because they can be used in one place?

7 אין מחללין על המעות שאינם יוצאות
A person cannot redeem מעשר שני fruits in his own country, with coins that are not used in Yerushalayim,
As Rashi explains, the Pasuk states
וצרת הכסף בידך והלכת אל המקום
The coins must be considered כסף צורה, currency, in Yerushalayim, and these coins are not כסף צורה there.

כיצד
היו לו מעות כוזביות ירושלמיות או של מלכים הראשונים אין מחללין
בן כוזיבא, or from earlier kings, that cannot now be used in any place, they cannot be used to redeem מעשר שני מעשר because they are not כסף צורה.

However,
הא של אחרונים דומיא דראשונים מחללין
If he had current coins that can be used even in one place, even though he cannot use them in Yerushalayim where he must purchase food with this money, the coins can still be used to redeem מעשר שני מעשר, and are considered כסף צורה.

If so, even if
אית איב אורחא למיזיל למישן
The coins are still considered money, because they can be used in one place?

8 The Gemara explains, the Braisa refers to כשאין מלכיות מקפידות זו על זו
 When countries are at peace, and the coins of other countries are accepted in Yerushalayim, those coins are considered כסף צורה even if he is not going to that country.
 While שמואל refers to כשמלכיות מקפידות זו על זו
 When countries are at war and the coins of מישן would be confiscated in other countries; then, only if אית ליה אורחא למיזל למישן
 If he is going to מישן, the coins are considered currency to him.
 And if לית ליה אורחא למיזל למישן
 If he is not going to מישן, the coins are not considered currency to him.

8

The Braisa refers to
כשאין מלכיות מקפידות זו על זו
 When countries are at peace, and their coins are accepted in Yerushalayim, those coins are considered כסף צורה even if he is not going to that country.

While שמואל refers to
כשמלכיות מקפידות זו על זו
 When countries are at war and the coins of מישן would be confiscated in other countries; then,
 Only if **אית ליה אורחא למיזל למישן**, the coins are considered currency to him.
 And if **לית ליה אורחא למיזל למישן**, the coins are not considered currency to him.