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Intro

Today we will Be"H learn אסכת בבא מציעא 7' of מסכת בבא מציעא. Some of the topics we will learn about include:

המגביה מציאה לחבירו

קנה חבירו

Whether one can perform a קנין to acquire an ownerless object on behalf of someone else;

And

מגו דזכי לנפשיה

זכי נמי לחבריה

If one is acquiring something partly for himself, he can also acquire it for someone else.

חרש

The רבנן gave deaf-mutes the ability to perform a קנין.



בוב ומנהיג

The Gemara discusses if one can acquire an ownerless animal by riding it or leading it, and if one of these methods is superior.

מוסירה

Whether holding an animal's bridle is an effective קקנין; The Gemara differentiates between קונה מחבירו, purchasing an animal, and מציאה, acquiring an ownerless animal.

רלאיח

It is forbidden to work with a team comprised of two species of animals. The **G**emara discusses riding or sitting in a wagon drawn by such a team.









So let's review...

The Mishnah ידף ב כי continues with another scenario of שנים אוחזין בטלית שנים אוחזין בטלית

Two people are holding on to a טלית, but have different claims:

זה אומר כולה שלי

וזה אומר חציה שלי

One says he owns the entire טלית, while the other says that he owns half;

האומר כולה שלי

ישבע

שאין לו בה פחות משלשה חלקים

The one who is claiming the whole טלית swears that he owns at least $\frac{3}{4}$,

והאומר חציה שלי ישבע

שאין לו בה פחות מרביע

While the one who is claiming half swears that he owns at least 1/4;

זה נוטל שלשה חלקים

וזה נוטל רביע

And they divide it accordingly, with one taking ¾ and the other ¼, as Rashi explains

מה שהן דנין עליו נשבעין שניהם

שאין לכל אחד בו פחות מחציו

Half of the טלית certainly belongs to one of them. Therefore, they each swear that they own ½ of the other half, the disputed portion, which is ¼ of the entire טלית.





Dedicated By: _





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The Gemara explains that this refers to a case of מקח וממכר

They both claim to have bought the טלית.

And, we might have thought

להוי כמשיב אבידה וליפטר

One who voluntarily returns a lost object does not have to swear that he did not find more, because he could have simply denied finding anything. Similarly, the person who only claimed ½ the טלית should not have to swear, because he could have claimed the whole thing?

Therefore, this extra case in the Mishnah teaches us that we suspect

איערומי קא מערים

Perhaps he deliberately claimed only ½ the טלית, reasoning

אי אמינא כולה שלי בעינא אשתבועי

אימא הכי דאהוי כמשיב אבידה ואיפטר

If I claim the entire טלית, I will have to swear, I would rather receive half without an oath. Therefore, we require him to swear as well.

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אימא הכי דאהוי כמשיב אבידה ואיפטר אי אמינא כולה שלי בעינא אשתבועי

I would rather receive half without an oath.

If I claim the entire טלית I will have to swear;

Therefore, we require him to swear as well.







The Mishnah continues היו שנים רכובין על גבי בהמה

או שהיה אחד רכוב ואחד מנהיג

If two people were riding an animal - Or,

If one was riding the animal and the other was leading it; זה אומר כולה שלי

וזה אומר כולה שלי

And each one claims that the animal was ownerless and he acquired it by riding or leading it;

זה ישבע שאין לו בה פחות מחציה

וזה ישבע שאין לו בה פחות מחציה

ויחלוקו

They each swear that they own at least half the animal, and they then divide it equally.

The Gemara explains that although this can be understood from the first case of שנים אוחזין בטלית, the Mishnah is teaching us

דרכיב נמי קני

One can acquire an animal by riding it, even though he is not causing it to move. The Gemara will soon elaborate on this idea.

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The Mishnah concludes regarding שנים אוחזין בטלית

בזמן שהם מודים או שיש להן עדים חולקין בלא שבועה

If they both admit, or if there are witnesses, that they acquired it simultaneously, they divide it without swearing.









The Gemara explains that this last case refers to

They acquired an ownerless טלית simultaneously.

Therefore, the Gemara asks

תיעשה זו כמי שמונחת על גבי קרקע

ולא יקנה לא זה ולא זה

Neither one acquired anything, because one can only acquire something by lifting the entire object off the ground. Since they picked up the טלית together, each one is only lifting part of it, and the other half is considered as if it is still on the ground. Therefore, neither performed a valid יקנין?

The Gemara gives two answers:

1.

says רמי בר חמא

המגביה מציאה לחבירו

קנה חבירו

One can effectively perform a קנין to acquire an ownerless object on behalf of someone else.

2.

רבא however holds

המגביה מציאה לחבירו

לא קנה חבירו

One cannot perform a קנין to acquire an ownerless object completely on behalf of someone else. However, Rava says; in this case,

מגו דזכי לנפשיה

זכי נמי לחבריה

Since he is acquiring it partly for himself, he can also acquire it for the other person.

The Gemara proves this principle as follows:

שאילו אמר לשלוחו

צא וגנוב לי וגנב פטור

One is not liable for instructing someone to steal on his behalf, because

אין שליח לדבר עבירה

Therefore, the שלים is liable, because he acquired it for himself. However,

שותפין שגנבו חייבין

If someone stole for himself AND his partner, they are both liable. Apparently, because

מגו דזכי לנפשיה

זכי נמי לחבריה

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The Gemara discusses how this principle would apply in a related case:

The Halachah is that

חרש שוטה וקטן

יש בהן גזל

מפני דרכי שלום

The רבנן instituted that a deaf-mute or insane person's acquisition is effective in order to avoid disputes.

Now, in a case of

חרש ופקח שהגביהו מציאה

If an ordinary person and a deaf-mute picked up an ownerless object simultaneously;

It would seem that

חרש קנה

דקא מגבה ליה בן דעת

The deaf-mute acquires it, because he can avail himself of the other's קנין; but

פקח לא קנה

The פקח does not acquire it, because the deaf-mute's power of acquisition is not effective for the פקח, because it's only מדרבנן.

However, the Gemara asks

המגביה מציאה לחבירו קנה חבירו

היכא דקא מגבה ליה אדעתא דחבריה

One can only acquire for another if he performs the קנין on his behalf,

and in our case

האי אדעתא דידיה קא מגבה ליה

The פקח picked it up for his own benefit;

איהו לא קני, לאחריני מקני?

If the פפקח's acquisition is not successful, he certainly does not intend to acquire it for the שחה.

Therefore, the Gemara concludes

מתוך שלא קנה פקח

לא קנה חרש

Dedicated By: __

Since the פקח does not acquire it, the חרש does not acquire it

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חרש קנה דקא מגבה ליה בן דעת

The deaf-mute acquires it, because he can avail himself of the other's קכין.

המגביה מציאה לחבירו קנה חבירו היכא דקא מגבה ליה אדעתא דחבריה

One can only acquire for another if he performs the קני on his behalf

However in our case

האי אדעתא דידיה קא מגבה ליה

The פקח picked it up for his own benefit;

איהו לא קני, לאחריני מקני

If the פקח's acquisition is not successful, he certainly does not intend to acquire it for the תרש.

מתוך שלא קנה פקח לא קנה חרש

Since the פקח does not acquire it, the חרש does not acquire it.







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And there is no concern for דרכי שלום, because there's a difference;

שני חרשין דעלמא

תקינו להו רבנן

דלא אתי לאנצויי

The רבנן instituted that deaf-mutes can acquire something together in order to avoid arguments. However, in the case of

חרש ופקח שהגביהו מציאה

מימר אמר

פקח לא קני, אנא אקני?

He will not expect his קנין to be more effective than the פֿפָקּר, and there will be no argument.

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דרכי שלום דעלמא
שני חרשין דעלמא
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the poss, and there will be no argument.

The Gemara now discusses one acquiring an ownerless animal , roting it, and

The Gemara inquires

מנהיג, by leading it.

רכוב במקום מנהיג

If one person rides the animal and another leads it, who acquires the animal?

On the one hand,

רכוב עדיף

דהא תפיס בה

The rider actually has a hold on the animal. On the other hand,

מנהיג עדיף

דאזלא מחמתיה

The leader causes it to move?









The Gemara cites a Mishnah with a related מחלוקת to possibly resolve this inquiry:

The Pasuk says

לא תחרש בשור ובחמור יחדיו

One may not plow with an ox and a donkey together.

Therefore, the Mishnah rules:

המנהיג סופג את הארבעים

והיושב בקרון סופג את הארבעים

One who leads them, or sits in a wagon drawn by them, is liable for מלקות.

רבי מאיר פוטר את היושב בקרון

One who sits in the wagon is not liable, as Rashi explains דלאו מידי עביד

He did not work with the animals.

However.

שמואל אפיך

וחכמים פוטרין את היושב בקרון

The opinions are reversed:

רבי מאיר holds him liable, while the חכמים exempt him.

Now,

מנהיג לחודיה ודאי קני

One who leads them is liable, and so it follows that this is also a valid method of acquisition.

However, since שמואל maintains that the חכמים exempt one who merely rides in the wagon, we can infer that רכוב לחודיה לא קני

One who rides the animal does not acquire it.

Although we could differentiate as follows: יושב לא תפיס מוסירה

רכוב תפיס מוסירה

One who sits in the wagon does not hold on to the bridle, while a rider does hold on to the bridle, and therefore, רכוב יקונה IS?









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However, רב הונא does not so differentiate, as he rules מוסירה

מחבירו קנה

במציאה ובנכסי הגר לא קני

One can acquire from another person by taking hold of the bridle, as the term מוסירה indicates

כאדם המוסר דבר לחבירו

The animal is handed over in this way. However, this is only because

קא מסר ליה חבריה

The animal is transferred to his possession by handing over the bridle. However,

במציאה ובנכסי הגר לא קני

One cannot acquire an ownerless animal in this manner, because

מאן קא מסר ליה דליקני

No one is handing it over, and simply taking hold of the bridle is not a קנין. And so,

רכוב לא קני, riding is not a קנין.

And since

רכוב לא קני,

כל שכן רכוב במקום מנהיג

Certainly, a rider does not acquire the animal when someone else is leading it.

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רב הונא

does not so differentiate

במציאה ובנכסי הגר לא קני

One cannot acquire an ownerless animal in this manner, because

מאן קא מסר ליה דליקני No one is handing it over, and simply taking hold of the bridle is not a. הכין.

And since,

רכוב לא קני כל שכן רכוב במקום מנהיג

Certainly, a rider does not acquire the animal when someone else is leading it.

מוסירה מחבירו קנה

One can acquire from another person by taking hold of the bridle

כאדם המוסר דבר לחבירו

The animal is handed over in this way.

However, this is only because

this is only because קא מסר ליה ת<u>בריה</u>

The animal is transferred to his possession by handing over the bridle.

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The Gemara now returns to explain our Mishnah: היו שנים רכובין על גבי בהמה

We have explained that the Mishnah is teaching us that a rider acquires an ownerless animal.

According to רבי מאיר,

פשיטא?

If יושב בקרון is a קנין is certainly a קנין?

Rather, it is the opinion of the יושב בקרון who hold that יושב בקרון and בוכים are not a קנין. However, our Mishnah refers to

The rider also spurs it on with his feet;

And the Mishnah refers to

תרי גווני מנהיג

Such a כובה is also a מנהיג; this is also considered leading.

This discussion continues in the next Daf.





