

It was previously stated; גופא אמר רב קרן כעין שגנב –
רב said, 'the principal is to be repaid similar to what he stole'

OVERVIEW

רב taught that when a thief repays what he stole, he must repay the principal as it was worth when he stole the item;¹ however concerning כפל or ד' וה' (if he sold or slaughtered a sheep or an ox that he stole) he pays the (multiple) value of its worth at the time when the case is adjudicated in בית דין.² Our תוספות will explain the meaning of כעין שגנב (based on the גמרא) and discuss whether it was necessary for רב to teach this.

במסקנא דמילתא³ אמרינן דרב איירי לענין יוקרא וזולא⁴ -

At the conclusion of this issue the גמרא states that s'רב's ruling is relevant concerning an increase or decrease in the value of the stolen object.

תוספות asks:

ואם תאמר ומאי קא משמע לן מתניתין היא בריש הגוזל קמא (לקמן דף צג,ב) -

And if you will say; and what is רב teaching us?! This is a משנה in the beginning of קמא הגוזל, where the משנה states that -

כל הגוזלינן משלמין כשעת הגזילה -

All robbers pay for the object as its value was at the time of the robbery. רב seems to be saying the same thing, that whether the price increased or decreased he pays כעין שגנב.

תוספות anticipates a possible solution:

ואף על גב דמתניתין משמע דלענין שינוי איירי כגון⁵ עצים ועשאו כלים -

And even though it seems that the משנה there is discussing cases concerning (only) a change in the stolen item, for instance if wood was stolen and the thief converted it into utensils. The point of the משנה in this example is that the thief need not return the utensils (which are worth more than the wood he stole) to the owner (for the thief acquired the ownership of the utensils through שינוי), but rather the thief must only pay the value of the raw wood that he stole. It would therefore seem that the משנה is not discussing a change in

¹ This rule applies if the stolen item is not present (in its original form); however if the stolen item is present (in its original form), the thief returns the original item.

² The טביחה ומכירה ד' וה' explains that concerning ד' וה' he pays the multiple of its value at the time of the robbery.

³ See later on this עמוד.

⁴ The thief pays the value the object was worth when he stole it, regardless of the value of the object at the time he repays the owner for its loss (assuming that the thief did not destroy the object when the value increased).

⁵ This is one of the examples the משנה there gives concerning this rule of כשעת הגזילה.

the price of wood, but rather a change in the item where the thief improved it. However רב is discussing יוקרא וזולא the change in price of the very same item.

יוקרא וזולא שינוי there is discussing משנה attempts to bolster this idea that the תוספות

והתם (דף צו,ב) נמי קאמר בגמרא כל הגזלנים משלמים כשעת הגזילה -

And the גמרא there as well states that when the משנה concludes that כל הגזלנים - that extra phrase - **משלמים כשעת הגזילה**

לאתויי דרבי אלעאי גזל טלה ונעשה איל נעשה שינוי בידו וקנאו⁶ -

Comes to include the case of רבי אלעאי where someone stole a sheep and it matured and **became a ram**, the rule is that **it changed in the thief's possession and the thief acquires it**. This again indicates that the thrust of the משנה there is to teach us that if there is a change or improvement in the stolen item, the thief acquires the item and pays only the value of the original item as he stole it. Therefore רב is not repetitive of the משנה; the יוקרא וזולא שינוי קונה, while רב is discussing [only] משנה.

negates this solution. We cannot assume that the משנה there is only discussing שינוי and is not discussing יוקרא וזולא. For even though the examples cited were of שינוי -

מכל מקום לענין יוקרא וזולא נמי איירי -

Nevertheless that משנה is also referring to יוקרא וזולא and not שינוי exclusively-

תוספות proves his point:

כדמוכח בסוף המפקיד (בבא מציעא דף מג,א) דמייתי לה איוקרא וזולא⁷ -

as is evident in the end of המפקיד גמרא where the משנה of cites this פרק **concerning יוקרא וזולא**.

יוקרא וזולא of משנה the brings an additional proof that the תוספות

וכן פרק כל שעה (פסחים דף לב,א) גבי אוכל תרומה⁸ -

⁶ One may think that only a change which the thief accomplished (like עצים ועשאו כלים) is considered a sufficient שינוי and he is קונה this item; however a שינוי which is automatic such as איל טלה ונעשה איל where the thief did not effect the change, perhaps then the גנב is not קונה (and must return the [improved] איל), therefore the extra phrase of כל שינוי דממילא איל even by a גנב is קונה. teaches us that a משלמים כשעת הגזילה

⁷ The גמרא there cites the ruling of רבה mentioned here (האי מאן דגזל וכו' מעיקרא וכו' ד') (as a support to this ruling) דתנן כל הגזלנין משלמין כשעת הגזילה. The case of רבה is a case of יוקרא וזולא and not of שינוי and yet the גמרא cites this משנה of הגזל as a support to רבה. Others maintain that the proof of תוספות is from the discussion there concerning ב"ה who may maintain that a שולח יד בפקדון pays העולם מן העולם. The גמרא asks that משנה, כשעת הוצאה מן העולם, for the משנה, כשעת הוצאה מן העולם, that he pays only שוה יד שליחות. This proves that we derive from the משנה of כל הגזלנים וכו' that even in a case of הוולו he pays כשעת הגזילה. See 179 הערה.

⁸ If a זר eats תרומה (of a כהן) he must return פירות (not money) to the כהן (which in turn become תרומה). The גמרא there asks, when the זר repays the כהן in פירות does he return the same amount of פירות that he ate (if he ate a pound of grapes he returns a pound of grapes), or does he return פירות that are worth the amount of פירות that he ate (if he ate a

And similarly in **פרק כל שעה**, the גמרא there cites this משנה, concerning one who eats תרומה -

דקאמר היכא דמעיקרא שויא ד' ולבסוף שויא זוזא לא תבעי לך -

For the גמרא states that where originally the תרומה was worth four זוזים (when he ate it) and at the end (when he is paying) it was worth a זוז, you do not need to question -

דודאי לפי דמים משלם⁹ דלא גרע מגזלן¹⁰ דתנן כל הגזלנים משלמים כשעת הגזילה -

For, certainly he pays according to its monetary value, for he is not less responsible than a thief, and a thief would be required to pay four זוזים that he stole, as the משנה states 'כל הגזלנים משלמים כשעת הגזילה'. We see from both these גמרות that they are citing this משנה of ויזילא וזולא to be referring to cases of יוקרא וזולא. The question therefore remains what רב is teaching us when he states that קרן כעין שגנב (which we explain to mean that he pays concerning הגזילה וזולא (יוקרא וזולא), when it is already stated in a משנה!

answers: תוספות

ויש לומר דעיקר רב לא אתא לאשמועין -

And one can say; that the main lesson of רב is not coming to teach us the rule of קרן כעין שגנב for indeed we know this already from that משנה -

אלא תשלומי כפל ותשלומי ארבעה וחמשה כשעת העמדה בדין -

But rather רב is teaching us the second part of his ruling that the payment of כפל and the payment of ד' וה' is as the assessed value at the time when the defendant is standing in court to be judged. This rule that כפל וד' וה' is כשעת העמדה בדין was not taught in any משנה.

anticipates a difficulty with this interpretation: תוספות

והא דקאמר מאי טעמא דרב -

And that which the גמרא asks what is the reason of רב; and the גמרא answers that the words גניבה and חיים indicate that the thief is responsible to return the קרן as it was when he stole it); it would seem from (the question and especially) the answer that we are discussing the reason why רב maintains שגנב קרן כעין שגנב; however רב needs no reason why קרן pays קרן? מ"ט דרב (and answer) why therefore does the גמרא ask (and answer) מ"ט דרב, משנה¹¹ for that it is a משנה, משנה¹¹ why therefore does the גמרא ask (and answer) מ"ט דרב?

dollar's worth of grapes he returns a dollar's worth of grapes at the current price (regardless if it is a pound or not).

⁹ He is required to pay four זוזים worth of grapes at the current reduced price of grapes. If he ate a pound of grapes at the then price of four זוזים per pound, he must repay him with four pounds of grapes at the current price of one זוז per pound.

¹⁰ This זר who ate the תרומה is (in addition to eating תרומה which is forbidden, is also) causing a monetary damage to the כהן (he is eating up his תרומה), therefore he is required to pay (at least) as any thief would be required to pay. See 'Thinking it over' # 1.

¹¹ If the גמרא is searching for a reason for the דין of the משנה it should question and explain the משנה; not רב!

קרן כעין שגנב responds that indeed the גמרא is not asking (or answering) why רב maintains שגנב but rather the גמרא -

אתשלומי כפל ותשלומי ד' וה' קא בעי -

Is asking concerning the payment of כפל and the payment of ד' וה' why is כפל כפל ד' וה' assessed as of כשעת הגזילה and not כשעת העמדה בדין -

והכי פירושו אמר קרא¹² גניבה וחיים אחייה לקרן כעין שגנב -

And this is the explanation of the גמרא's answer; the verse states both גניבה and חיים, to teach us, restore the principal similar to what he stole -

ומשמע ליה דוקא לקרן ולא תשלומי ד' וה' -

And רב infers from this פסוק that only for the קרן (the גניבה) is there an obligation to restore it (אחייה) to its original value but not concerning the payments of ד' וה'.

There it is not necessary to assess the value שגנב, but rather כשעת העמדה בדין כעין שגנב. The גמרא cites this דרשה of שגנב, אחייה לקרן כעין שגנב, not for its sake to explain why קרן pays שגנב¹³, but rather for the inference of this דרשה, that it is only קרן that collects שגנב, however כפל and ד' וה' are assessed כשעת העמדה בדין.

asks:¹⁴

ואם תאמר בהגזול קמא (לקמן דף קה,א) דאמר רבא גזל שלש אגודות בג' פרוטות -

And if you will say; רבא rules in קמא if one stole three bundles (of whatever) which were worth in totality three פרוטות when he stole them -

והזלו ועמדו על ב' והחזיר לו ב' חייב להחזיר לו אחת -

And they became cheaper, so that the three אגודות together are worth currently two פרוטות, and the thief returned two (פרוטות or two of the original אגודות), the thief is obligated to return one (original¹⁵ אגודה or one פרוטה) to the owner. The גמרא continues:

ותנא תונא¹⁶ גזל חמץ ועבר עליו הפסח -

And the תנא of our משנה taught us this ruling; one steals חמץ and פסח went by (while the חמץ was in the possession of the גזול), the rule is that the גזול may say to the owner (if the גזול is still in the possession of the חמץ that he stole) here is the חמץ in return (even though the חמץ is now אסור בהנאה for it is עליו הפסח). However, we infer from this משנה, if the גזול does not have the חמץ, then he must pay the owner the value of the חמץ (as it was before פסח [when he stole it]), even though now this חמץ would have no value since it is עליו הפסח. Similarly by the אגודות, even though they have no current value (the remaining אגודה is worth less

¹² אם המצא תמצא בידו הגנבה משור וגו' חיים שנים ישלם: The פסוק reads: שמות (משפטים) כב ג.

¹³ It may indeed be the reason why הגזלנים משלמין כשעת הגזילה; however here it is cited (mainly) to explain why כפל and ד' וה' are not כשעת העמדה בדין, but rather כשעת הגזילה.

¹⁴ The following question(s) are not necessarily relevant to our גמרא; however since תוספות cited the משנה of כל משנה there תוספות as well.

¹⁵ See ד"ה אמר תוספות there.

¹⁶ ב"ק צו,ב.

that a פרוטה), nevertheless the גנב is liable to pay (its original value of a פרוטה). This concludes the הגוזל קמא in גמרא.

concludes his question:

אמאי לא מייתי ראיה ממתניתין דכל הגזלנים משלמין כשעת הגזילה¹⁷ -

Why does he not bring a proof from our previously quoted משנה that כל הגזלנים משלמין כשעת הגזילה -

כיון דלענין יוקרא וזולא נמי איירי -

Since, as previously proved, that משנה is also discussing יוקרא וזולא. The case of רבא is a case of יוקרא וזולא; it was originally worth three and now it is worth two. According to the משנה of גזל, the thief is obligated to pay three זוזים, why do we cite the משנה of גזל?! when we should cite the משנה of חמץ וכו'!

answers:

ויש לומר דמתניתין דכל הגזלנים לא מצי מייתי -

And one can say; that from the משנה of כל הגזלנים גמרא could not have brought a proof to רבא -

דהתם אם איתא לגזילה בעין הויא בת השבה ולהכי כי ליתא נמי בעין משלם כשעת הגזילה¹⁸ -

For there in the משנה of כל הגזלנים if the גזילה would be present, it would be a returnable object; the thief would be required to return the item he stole (for it is worth more than a פרוטה), and therefore even if it is not present the thief pays כשעת הגזילה -

אבל גבי אגודה דאם איתא בעין לא הויא בת השבה¹⁹ דהשתא לא שויא פרוטה -

However concerning the 'bundle' where if it were present it would not be a 'returnable' object, for now it is not worth a פרוטה, therefore -

הוה אמינא דכי ליתא נמי לא משלם -

I would have assumed that when it is not present, the thief is also not required to pay. This is why the גמרא could not have cited the משנה of כל הגזלנים; for in the case of כל הגזלנים the item presently has a value of a פרוטה or more; however in the case of the אגודה, the remaining אגודה has no value (it is פחות מפרוטה) -

אבל מההיא דחמץ ועבר עליו הפסח מייתי שפיר -

However from that משנה of חמץ and הפסח the גמרא brings a proper proof

¹⁷ The advantage of citing the משנה of כל הגזלנים וכו' is because the משנה of כל הגזלנים precedes the משנה of גזל חמץ (see later in this תוספות). [Alternately; from the משנה of גזל חמץ we derive that he is required to pay (the חמץ [and hence the third זוז]) only from an inference; however the משנה of כל הגזלנים states it clearly.]

¹⁸ The item deserves and needs to be returned. If the thief cannot return it he pays whatever (value) he stole.

¹⁹ This seems to contradict the תוספות (cited previously in footnote # 14) that if the אגודה is present he must return it (even though it is currently worth less than a פרוטה (see פנ"י)). Perhaps תוספות means that this אגודה currently is not a פרוטה. See אמ"ה.

to רבא -

דאילו הוי בעין לא שוי מידי אפילו הכי היכא דליתא בעין משלם כדמעיקרא -
for even if the חמץ was present it would be worthless, and nevertheless when it
is not present he pays the original value. The same is true by רבא that even though it has
 no current value (it is משהו פרוטה), nevertheless he pays the original (פרוטה) value.

In Summation: The משנה of חמץ גזל teaches that [even] if something is worthless בשעת השבה,
 nevertheless there is an obligation to pay for it ([perhaps the price of] הגזילה). The משנה of
 כל הגזלנים teaches that the payment is כשעת הגזילה (even) if it is worth less (but not worthless)
 בשעת השבה.

now asks a similar question in reverse תוספות

ובפרק כל שעה (פסחים דף לב,א) הוי מצי לאתויי מההוא דגזל חמץ דמשלם כדמעיקרא -
And in שעה כל שעה (concerning the איבעיא מדה משלם or לפי מדה משלם if איבעיא) **פרק כל שעה** cited
 previously) the גמרא **could have brought proof from that משנה of חמץ גזל that he**
pays the original value. The same applies by ר' ולבסוף א' that he pays the original
 value. The גמרא therefore could have cited that ²⁰משנה -

explains why the גמרא chose the משנה of כל הגזלנים instead: תוספות

אלא דניחא ליה להביא ההיא דכל הגזלנים שהיא שנויה תחילה -
But it was preferable for the גמרא to bring that משנה of כל הגזלנים (as opposed to
 גזל חמץ), **because it was taught earlier.** We first have the משנה of כל הגזלנים (on צג,ב) and
 later the משנה of גזל חמץ (on צו,ב).

offers an alternate solution why the גמרא in פסחים did not cite the משנה of גזל חמץ instead of
 the משנה of כל הגזלנים: תוספות

ועוד אומר רבינו יצחק דמגזל חמץ לא מצי למידק כלל דלפי דמים משלם -
And furthermore says the ר"י that from the משנה of גזל חמץ we cannot infer at
all (and resolve the issue) **that one pays according to the monetary value** (as
 opposed to לפי מדה) in a case -

היכא דמעיקרא שויה ד' ולבסוף שויה זוזא -
Where originally the תרומה was worth four and ultimately it is worth one
דהוה אמינא דגבי חמץ כי ליתא בעין בעי לשלומי ליה חמץ מעליא -
For I would have assumed that concerning חמץ when the חמץ is not present he
is only required to pay him genuine חמץ (not [other] הפסח) -
כאותה חתיכה שגזל דלפי מדה משלם -

²⁰ Perhaps the advantage of citing the משנה of גזל חמץ over the משנה of כל הגזלנים is that one may argue that the rule of
 יוקרא וזולא is only concerning שינוי but not תוספת.

לפי The equivalent of the size of the piece that he stole, for we can assume that - **מדה משלם**

אבל לא כדמים של שעת הגזילה²¹:

But he is not required to pay him the value of **שעת הגזילה**. Therefore we would not know whether he pays one זוז of תרומה (the current value) or four זוזים (the original value) we would only know that a payment is due. Therefore the גמרא cited the משנה of כל הגזלנים where it clearly states that they pay כשעת הגזילה, that one must pay the original value.

SUMMARY

The purpose of רב is to teach us that כפל and 'וה' do not pay שגנב but rather כשעת העמדה בדין.

The משנה of כל הגזלנים teaches that the payment is כשעת הגזילה (even) if it is worth a lesser amount בשעת השבה. The גזל חמץ משנה teaches that [even] if something is worthless בשעת השבה, nevertheless there is an obligation to pay (but not necessarily כשעת הגזילה).

THINKING IT OVER

1. תוספות asserts that the משנה of כל הגזלנים וכו' is referring to יוקרא וזולא as well. One of תוספות proofs is that the גמרא cites this משנה to resolve that if initially the תרומה was worth ד' (when he ate it) and now it is worth a זוז, he pays ד', since כל הגזלנים²². However the case there is that he ate (and destroyed) the תרומה when it was worth ד', therefore he has to pay ד' (since he consumed an item that is worth ד'); but רב is teaching us that even if the item was lost or destroyed after it became cheaper, nevertheless he pays the higher price כשעת הגזילה. This seems to be a different ruling entirely!²³

2. In the case of רבא (which is supported by the משנה of גזל חמץ), where the אגודה is currently not a פרוטה שוה and he does not have the original אגודה; is he required to pay a פרוטה or can he acquire an אגודה (for less than a פרוטה) and return it?²⁴

²¹ We can derive from the משנה of חמץ that payment is due, even if at the present time there is no value to the stolen object (as by חמץ or by the אגודות); however there is no indication from that משנה as to how much payment is required for the חמץ (meaning that if the price of חמץ decreased after פסח he may only have to pay the amount of חמץ he stole, which is now worth less than when he stole it), and therefore we cannot decide whether it is לפי מדה or לפי ממון.

²² See footnote # 10.

²³ See אמ"ה הערה 178.

²⁴ See נח"מ and מהרש"א.