

## The thief and the robber

## הגנב והגזלן –

### OVERVIEW

The גמרא cites a ברייתא which states that if a גנב or a גזלן were מקדיש that which they stole or robbed, it is a valid הקדש (for it belongs to the גנב וגזלן [regarding their ability to make it הקדש] since the owners were מייאש). (מייאש refers us to a later גמרא in order to resolve an apparent contradiction.

-----  
בהגוזל בתרא (לקמן קיד, א) פריך אי רבנן<sup>1</sup> קשה גזלן אי רבי שמעון קשה גנב ומשני לה<sup>2</sup> שפיר: In רבנן, there is a difficulty with mentioning גזלן; if it is according to ר"ש, there is a difficulty with mentioning גנב. And the גמרא there answers it properly.

### SUMMARY

This ברייתא does not contradict the מחלוקת between ר"ש and רבנן mentioned in the previously cited משנה.

### THINKING IT OVER

When תוספות writes ומשני לה שפיר, is he referring to all the three answers<sup>3</sup> given or only to some of the answers?

---

<sup>1</sup> The is referring to the dispute between the רבנן and ר"ש (cited on סז, ב) whether there is יאוש בעלים only by a גנב but not by a גזלן (the view of the רבנן), or whether there is יאוש בעלים only by a גזלן, but not by a גנב (the view of ר"ש). See ד"ה של גנב וד"ה חילוף רש"י there. In any event neither of them maintain that there is יאוש בעלים both by a גנב and a גזלן; how can the ברייתא state that the הקדש of both a גנב and a גזלן is valid (on account of יאוש בעלים)?!

<sup>2</sup> The גמרא there gives three answers; one, according to עולא who maintains that if it is known that the owner was מייאש all (רבנן ור"ש) agree that יאוש is קונה, the ברייתא is discussing a case of 'ידוע'; secondly, that the term גנב in this ברייתא refers to a ליסטים מזוין (an armed thief), who is considered as a גזלן and the ברייתא follows the view of ר"ש that there is יאוש by a גזלן. The third answer is that the ברייתא follows the view of רבי who maintains that there is יאוש both by a גנב and a גזלן.

<sup>3</sup> See footnote # 2.