

## כאן בגניבה אחת כאן בשתי גניבות –

**Here it is by one robbery; here it is by two robberies**

### Overview

The גמרא asked that from our משנה we can infer that an ע"ע may be sold twice. However there is a ברייתא<sup>1</sup>, which derives from the word בגניבתו<sup>1</sup> that an ע"ע cannot be sold twice. רבא responded that there is no contradiction; one ruling refers to one גניבה, and the other ruling refers to two גניבות. There is a dispute between רש"י and תוספות, when he can be sold twice and when not.

פירש בקונטרס<sup>2</sup> בהא אינו חוזר ונמכר -

רש"י explained that in this case (where it was גניבה אחת), he is not resold a second time - והכי קאמר ונמכר פעם א' בגניבה אחת ולא פעמיים בגניבה אחת -

And this is what the פסוק means, and he is sold one time for one גניבה, but not twice for one גניבה -

אבל נמכר הוא שתי פעמים בשתי גניבות -

However he is sold two times for two גניבות; this is true -

ואפילו לא עמד בדין עד שגנב שתיהן ואינו שוה אלא דמי אחת<sup>3</sup> נמכר וחוזר ונמכר -

Even if he was not judged in court until he stole twice, but since he is worth only the value of one גניבה, he is sold and resold -

דכל חדא וחדא קרינן ביה בגניבתו -

For regarding each one (גניבה) we call it 'בגניבתו'. This concludes this פרש"י.

פרש"י and גמרא continues with the תוספות

ופריך בגניבתו טובא משמע אם עמד על שתיהן בדין כולו קרינן בגניבתו<sup>4</sup> -

And אביי asked, 'the word בגניבתו can mean many גניבות'; and רש"י explains, if the גנב appeared in court for both robberies at the same time,<sup>5</sup> all the robberies are to be included when we read בגניבתו -

כדכתיב ובהמה רבה והדגה אשר ביאור -

<sup>1</sup> ואם אין לו ונמכר בגניבתו states the פסוק שמות (משפטים) כב, ב. In

<sup>2</sup> בד"ה כאן בגניבה.

<sup>3</sup> The גנב stole from ראובן twice, each time a hundred זוז, he was caught after both robberies and brought to court where they ruled he owes two hundred זוז. If the גנב has no money at all to pay, and he is worth only one hundred זוז as a slave, he can be sold twice, because the תורה excludes with the word בגניבתו not to be sold twice only if he stole once from one person (then we read it בגניבתו, and נמכר, he is sold once for one of his robberies, but not twice), however if he stole twice [even] from the same person; regarding each robbery, we say he shall be sold for his robbery, therefore he is sold twice.

<sup>4</sup> Even though בגניבתו is singular (his [one] robbery), nevertheless it can refer to many robberies, as he goes on to prove.

<sup>5</sup> See footnote # 3.

As it is written, ‘and many **בהמה**’ (in the singular), it is also written, ‘and the fish (singular) **which are in the river**’. We see that the תורה uses the singular even when there are many, the same should apply here since there was only one **העמדה** בדין, even though there were many robberies, nevertheless all these robberies are included in the singular בגניבתו,<sup>6</sup> and it should exclude him being sold twice for all these robberies which had one **העמדה** בדין.

ואפילו הכי חזר<sup>7</sup> ונמכר הוא דאיכא -

And nevertheless רבא rules that **this is the case where he is resold!** How can this be?!

The גמרא and פרש"י continue:

אלא כאן באדם אחד שעמד בדין בבית אחת אפילו בגניבות הרבה אינו נמכר ונשנה -  
עמד בדין רש"י; ‘if he was **אביי**’; ‘here it is one person’; ‘**one time even for many גניבות, he is not sold and resold again**’, as תוספות explains -  
דחצי גניבה היא<sup>8</sup> -

For it is a half גניבה. -

פרש"י continues:

אבל בב' בני אדם שמעמידים אותו בדין שתי פעמים נמכר בשביל כל אחת ואחת -  
However by two people, where both victims are taking him to court two times (once for each robbery victim), he is sold for each and every robbery -  
והוא הדין אם גנב ועמד בדין ונמכר וחזר וגנב משיצא לחפשי חזר ונמכר עד כאן לשונו -  
And the same law applies if he stole and was **עמד** and sold, and he stole again (even) from the same person once he was free, he is resold. This concludes the citation of פרש"י.

פרש"י asks on תוספות:

וקשה מה שפירש בגניבה אחת אינו חוזר ונמכר<sup>9</sup> -

And there is a difficulty with this which רש"י explained that by one גניבה he is not resold -

דהא לא אתיא לא כרבנן ולא כרבי אליעזר -

<sup>6</sup> The usage of singular for plural is only when the plural are in one group (as the examples from בהמה and דגה indicate), therefore if there was one **העמדה** בדין it is possible to call them all גניבה אחת, but not if there are many **העמדות** בדין.

<sup>7</sup> Others amend this to read חד (instead of חזר). The translation according to this גירסא would be **and nevertheless** (even though there are two robberies, but since there was only one **העמדה** בדין **there is only one** ונמכר!

<sup>8</sup> אביי considers all the גניבות which had one **העמדה** בדין as one גניבה, therefore if he will be sold twice (in the case of footnote # 3) it will be as each time he is being sold for half a גניבה, and the תורה writes בגניבתו for his entire גניבה, but not for half a גניבה (see later in the גמרא which states בגניבתו ולא בחצי גניבתו).  
..(בגניבתו אמר רחמנא ולא בחצי גניבתו).

<sup>9</sup> This is referring to the explanation of both רבא and אביי where according to רש"י he is not sold twice for one גניבה, meaning that if he is only worth part of the גניבה, we sell him once (and the victim receives a partial payment) but not a second time (and according to אביי this is true even if it was two גניבות by one person but one **העמדה** בדין).

**For this ruling of רבא and אב"י is not according to the רבנן and not like ר"א -**

**דהא בסמוך קאמר תנו רבנן היה גניבו אלף ושוה ה' מאות נמכר וחוזר ונמכר<sup>10</sup> -**

**For shortly the גמרא states; ת"ר, if his robbery was worth a thousand, and the robber was worth five hundred, the rule is he is sold, and sold again -**

**וכרבי אליעזר נמי לא אתי דאיהו קאמר אם היה גניבו כנגד ממכרו נמכר -**

**And רבא does not coincide even with ר"א, for ר"א maintains that if the value of his robbery equals the value of robber's sale price, only then is he sold -**

**ואם לאו אינו נמכר כלל משמע אפילו פעם אחת אינו נמכר<sup>11</sup> -**

**And if not (if the values are not the same [as in the case of מאות ה' ושוה ה']) he is not sold at all, seemingly this means that he is not sold even one time. רבא and ר"א are therefore in disagreement with both the רבנן and ר"א.**

תוספות offers his interpretation:

**לכך פירש רבינו יצחק כאן בגניבה אחת נמכר וחוזר ונמכר עד שישלם כל הגניבה -**

**Therefore the ר"י explained when רבא said בגניבה אחת, the rule is that he is sold and resold until he pays up for the entire robbery -**

**דנמכר בגניבתו משמע שנמכר כמה פעמים עד שישלם כל גניבתו<sup>12</sup> -**

**For the words ונמכר בגניבתו indicates that he is sold many times until he pays up for his entire robbery -**

**אבל בשתי גניבות לא ימכר אלא פעם אחת<sup>13</sup> -**

**However by two robberies (from the same person), he is sold only one time.**

**ופריך בגניבתו טובא משמע היכא דגנב וחזר וגנב לאותו אדם עצמו מיקרי שפיר בגניבתו -**

**And אב"י asked that בגניבתו means many גניבות, meaning that where he stole and stole again from the same person, that is indeed considered בגניבתו, and -**

**אימא דנמכר עד שישלם הכל<sup>14</sup> -**

**I should say that he is sold and resold until he pays up everything -**

**ומשני באדם אחד דגנב וחזר וגנב לאותו אדם עצמו נמכר עד שישלם לו כל הגניבות -**

**So אב"י answered, by one person if he stole and stole again from the same person, he is sold until he pays up for all the robberies -**

**דהיינו שפיר בגניבתו אבל בשני בני אדם אינו נמכר<sup>15</sup> ונשנה:**

<sup>10</sup> This is not like רבא ואב"י, who maintain that by one גניבה he is not resold. See 'Thinking it over' # 1.

<sup>11</sup> רבא ואב"י, however maintain that if his value is less than the גניבה he is not resold, but he is sold one time for part of the גניבה.

<sup>12</sup> This follows the view of the רבנן that נמכר וחוזר ונמכר (see text by footnote # 10).

<sup>13</sup> He is only sold for the first גניבה (as many times as needed), but not for the second גניבה. The meaning of בגניבתו is (that he is sold) for one גניבה only.

<sup>14</sup> Since it is one victim, even though it was many robberies, it should be considered בגניבתו, and he should be sold again and again until he pays up for all the robberies to this one person.

<sup>15</sup> See רש"י who explains that according to אב"י the word בגניבתו (singular) [not בגניבתם] is referring to the victim

**For that is considered בגניבתו,<sup>16</sup> however if he stole from two people he is not sold and resold;** he is only sold for the first one.

### Summary

According to רש"י; רבא maintains that if he stole only once he is not resold, but he is sold twice if he stole twice (from the same person [even if there was only one [העמדה בדין]). However אב"י maintains that for one העמדה בדין you are sold twice, however if he stole from two people he is only sold once.

According to תוספות; רבא maintains that if he stole once he is resold, if he sold twice (from the same person) he is only sold for the first גניבה. However אב"י maintains that he is resold for the same person even for two גניבות, but he is not resold if he stole from two people (he is sold just for the first).

אב"י	רבא	רש"י
באדם א' אפי' ב' גניבות בהעמדה בדין א' אינו חוזר ונמכר, בב' אנשים חוזר ונמכר	גניבה א' באדם א' אינו חוזר ונמכר; ב' גניבות באדם א' אפי' העמדה בדין א' חוזר ונמכר	
באדם א' אפי' ב' גניבות חוזר ונמכר, בב' אנשים אינו חוזר ונמכר עבור הב'	גניבה א' באדם א' חוזר ונמכר, ב' גניבות באדם א' אינו חוזר ונמכר עבור גניבה הב'	תוס'

### Thinking it over

1. רש"י asks on רבא that רבא does not follow the view of (either) the רבנן (or of ר"א), for the רבנן say גניבו אלף ושוה חמש מאות נמכר וחוזר ונמכר, while רבא maintains that by one גניבה he is not חוזר ונמכר (only by two גניבות).<sup>17</sup> Why cannot we answer that according to רש"י the term גניבו אלף means by two גניבות, where רבא also maintains חוזר ונמכר?!<sup>18</sup>

2. Does תוספות differentiate between one העמדה בדין or separate העמדות בדין?

3. What would be the ruling (according to רש"י and תוס') in a case where he stole from one person and was sold, and then released and he stole again from the same person; from another person?<sup>19</sup>

(the נגב), that he may sold many times to pay back one נגב (בגניבתו), but not for a second נגב.

<sup>16</sup> See footnote # 14.

<sup>17</sup> See footnote # 10.

<sup>18</sup> See מהרש"א א.

<sup>19</sup> See פני יהושע.