

20.9.4

96a (האי אינש גזלנא עתיקא הוא ובעינא דאיקנסיה) → 96b (אמר רבא גזל והשביח ומכר)

I Several rulings of רבא in re: גזלה of a שבח

- a If the thief appreciated the goods and then sold or bequeathed them – the sale/inheritance is valid
 - i Question: if the buyer appreciated it –
 - ii (his own) answer: the thief sold the buyer all rights coming to him – including the rights to שבח
 - iii Question: if a non-Jew appreciated it, does he keep the appreciation?
 - 1 Challenge (ר' אחא מדפתי): why should we grant the favor of this תקנה to the עכו"ם?
 - 2 Defense: question asked re: a case where he sold it to a Jew
 - (a) Block: even so, if the Jew is coming from כח העכו"ם, he has no more rights than the seller
 - 3 Rather: case is where original theft was by a Jew, sold to non-Jew who appreciated it, then sold to another Jew
 - (a) Lemma1: since the thief and current owner are Jews, the תקנה holds
 - (b) Lemma2: since a non-Jew came in the middle, there is no תקנה – תיקון

II Rulings from רבא's מדרש בית regarding קנין ע"י שנוי

- a פפא ר' if someone cut down a fellow's palm tree - קנין no (even if he threw it into his own yard)
 - i Reason: originally called a palm tree and still called a palm tree
 - ii Even if: he made logs of the tree – still called "palm logs"
 - 1 But: if he made beams out of them – קנה ע"י שנוי
 - (a) However: making big beams into small beams isn't a שנוי
 - (b) But: if he made them into boards – that is a שנוי → קנה
- b דבא ר' if someone stole a לולב and made it into leaves – קנה
 - i Reason: originally called לולב, now called "leaves"
 - ii Similarly: if he took the leaves and made them into a broom, קנה ע"י שנוי
 - iii But: if he made the broom into a rope – קנין no
 - 1 Reason: if he unravels the rope, it is a broom again
- c פפא ר' question – if central leaf/spine of becomes split, is that a שנוי?
 - i Proposed proof: ruling that if the תיומת was taken, the לולב is invalid
 - 1 assumption: same rule applies if it was split – invalid (→ שנוי)
 - 2 Rejection: only if it was taken off it is invalid, since it is deficient
 - 3 Alternatively: if it was split, considered as if missing and invalid (→ שנוי)
- d פפא ר' if someone steals sand and turns it into a brick – קנין no
 - i Reason: it can be turned back into sand
 - ii However: if he turned a brick into sand, it is a שנוי
 - 1 Reason: if he turned the sand into a brick again, that is a new brick – "פנים חדשות באו לכאן"
- e פפא ר' if someone steals a gold brick and turns it into coins – לא קנה
 - i Reason: he can turn it back into a gold brick
 - ii However: if he turned coins into a brick – קנה
 - 1 Reason: even if he reverted the brick into coins – these are new, different coins – פנים חדשות באו לכאן
 - iii If: the coins looked old and he made them look new (e.g. by polishing them) - לא קנה
 - 1 However: if they were new and he made them look worn – קנה
 - (a) Reason: even if he repolishes them – פנים חדשות באו לכאן

III Analysis of final clause of משנה – משעת הגזילה – מה הכלל, כל הגזלנים משלמים כשעת הגזילה

- a ר' אלעא of הכלל comes to include the ruling of ר' אלעא:
 - i If: he stole a kid and it matured into a ram – קנה ע"י שנוי
 - 1 therefore: if he then stole or slaughtered, exempt from ד' וה' – it is his own animal that he is טובח ומוכר
 - ii story: a man stole a team of oxen, plowed, sowed etc. and then returned them
 - 1 ruling: ר"נ ordered that the benefit to the field be appraised and the גזלן had to pay that
 - (a) Challenge (רבא): the field also contributed to the benefit
 - (b) Defense (ר"נ): only requested payment of half the benefit
 - (i) Challenge: in any case, it's still a גזלה and, as per our משנה, should be returned as is (no extra payment)
 - (ii) Defense: this was a well-known robber; an extra fine was called for