



Volume 6. Issue 16

Yi'ush – Losing Hope in the Face of Theft

We learnt this week that mental designation (*machshava*) can transform an item requiring no extra labour to become functional, into a *kli* (26:7)¹. This is important since from that point onward it becomes susceptible to *tumah*. We also learnt that in some circumstance the mental designation of a thief (*ganav*) or robber (*gazlan*)² can be significant (26:8):

...Those [hides] stolen by a *ganav* become susceptible to *tumah* through *machshava*; those stolen by a *gazlan* do not become susceptible to *tumah* through *machshava*. *R' Shimon* says, the matter is reversed: those [hides] stolen by a *gazlan* become susceptible to *tumah* through *machshava*; those stolen by a *ganav* do not become susceptible to *tumah* through *machshava*.

We find a debate between the *Chachamim* and *R' Shimon* whether the *ganav* or *gazlan* has the ability to change the status of the stolen item with *machshava* alone. Before the debate can be analysed some background information is required.

The *Gemara* (*Bava Kama* 66b) explains that in this context, one must be the owner of the item for *machshava* to be effective³. Consequently, an important factor is whether the legal ownership of the hide has changed. A critical (but not sole) factor is whether the owner has given up hope of retrieving his property - referred to as *yi'ush*.⁴ Consequently the debate appears to be whether in the case of a *ganav* and *gazlan* the original owner has given up hope that he will ever retrieve the object.

The commentaries explain the debate as follows. The *Chachamim* believe it is only in the case of the *gazlan*, where the robber has been identified, that the owner does not give up hope in retrieving his property. In the case of the *ganav*, since the owner does not know who stole his property, he gives up hope and the *machshava* of the thief is effective. *R' Shimon* applies the reverse logic. It is in the case of the *gazlan*, where the owner had already been confronted by the robber and learnt that he is powerless against the strong criminal that he gives up hope. With

respect to the *ganav* however, hope still remains that he may be able to liberate the stolen item.

When faced with any debate in *Mishnah* or *Gemara*, one is apprehensive to attribute the debate to a disagreement about a fact of nature. If it were such a matter a survey or other investigation could and should have been performed to resolve the matter. In this case the *Chazon Ish* explains that here too the debate cannot be understood in this manner – the debate is **not** regarding whether or not the owner has given up hope in the case of the *ganav* and *gazlan*.

The *Chazon Ish* explains that *yi'ush* is a far more complicated issue – it is not a black and white matter. In the case of theft there is a mix of emotions of both hope and despair. Monetary ownership is a function of one's control of the object in question and it is up to the Sages to decide at what point in this mix of emotions is this control lost. For the *Chachamim* this point is reached in the case of the *ganav*. The identity of the thief is unknown and there is no place direct his hope in retrieving the stolen item. For *R' Shimon* however, current lack of identity is not a problem for a search can be initiated. The overriding issue is rather the feeling of powerlessness.

This explanation helps to understand a debate in the *Gemara* (*Bava Kama* 114). According to *Ulla*, if one heard the original owner exclaim that he gave up hope then all would agree that in both cases *machshava* is significant. This position appears to make sense as the question of the owners hope is clarified. However according to *Rava* the debate still stands. Why? The *Tosfot* explain that his exclamation is not taken seriously and his true feelings are otherwise. Understanding *yi'ush* as a function of complex emotions this makes sense. The exclamation of the owner is but one of his emotions that is also partnered with enduring feelings of hope. Consequently an exclamation alone, according to *Rava*, would not resolve the debate.

Yisrael Yitzchak Bankier

¹ See the *Tosfot Yom Tov* who rules that mental designation alone is not enough and one's intentions must also be articulated.

² A *ganav* steals the object secretly, in a manner where he ideally will not be seen and will not get caught. A *gazlan* however is not bothered with confronting his victim or being identified.

³ There is a discussion in the *Rishonim* on that *Gemara*, regarding the state of the hide and the form of *tumah* that the hide is becoming susceptible to. This discussion is beyond the scope of this article.

⁴ The *Gemara* explains that *yi'ush* alone is not enough. A physical change in the stolen object is also required. In this case however *machshava* also affects a change in the name of the object. Initially it was a hide and it became a table cover. The *Gemara* teaches that a change in name is equivalent to a physical change for these purposes.

Revision Questions

כלים כ"ה:ד' – כ"ו:ח'

- Explain the debate regarding the utensil referred to as a *rova va'chatzi rova* where one compartment comes into contact with *tameh* liquids. (כ"ה:ד')
- What is the law regarding that outside of one of the compartments that came into contact with *tameh* liquid? (כ"ה:ה')
- What is the law regarding the dividing wall? (כ"ה:ה')
- What is the law regarding the outsides of the entire utensil if the liquid came into contact with the outside of one of the compartments? (כ"ה:ה')
- How much of the utensil must be placed in the *mikvah* if only one compartment came into contact with the *tameh* liquid? (כ"ה:ה')
- What is the law if *tameh* liquid came into contact with the handle of a utensil? (כ"ה:ו')
- If the liquid came into contact with which other parts, is the handle *tahor*? Is the hand *tameh*? (כ"ה:ו')
- What is the law of *beit tzeviah* and when does it apply? (List all five opinions.) (כ"ה:ז')
- What example is provided to explain the opinions of *R' Meir* and *R' Yosi*? (כ"ה:ח')
- Does one need to be concerned about the contents of a bubbling urn whose outside is *tameh*? (כ"ה:ח')
- What two stringencies apply to utensils used for *kodesh*? (כ"ה:ט')
- Complete the following rule and explain: (כ"ה:ט')

ש _____ מְבַטֵּל מִיַּד הַמַּעֲשֶׂה וּמִיַּד מַחֲשָׁבָה
וּ _____ אֵינָהּ מְבַטֵּלֶת לֹא מִיַּד הַמַּעֲשֶׂה וְלֹא מִיַּד מַחֲשָׁבָה
- What are the two opinions regarding the reason for the list of leather-ware utensils in the first *Mishnah* of the twenty-sixth *perek*? List some of those items. (כ"ו:א')
- When is a *kis shel shnatzot* no longer susceptible to *tumah*? (כ"ו:ב')
- Which *tzror* is *tameh* is which *tzror* is debated? Explain. (כ"ו:ב')
- Which of the follow leather utensils are susceptible to *tumah*: (כ"ו:ג')
 - The thorn-pickers' "spoon"?
 - *Zon*?
 - *Sharvulim*?
 - *Praklimin*?
- Which *beit etzba'ot* are susceptible to *tumah*? (כ"ו:ג')
- What is the law regarding a sandal that was *tameh midras* and one of the straps broke and was then repaired? (כ"ו:ד')
- What is the law if both straps broke and were then repaired? (When is the law different?) (כ"ו:ד')
- Which type of sandal is *tahor* if it breaks in any part? (כ"ו:ד')
- List some leather items that are susceptible to *tumat midras*? (כ"ו:ה')
- Which item is debated between *R' Eliezer* and the *Chachamim*? (כ"ו:ה')
- Which item is debated between *Beit Shammai* and *Beit Hillel*? (כ"ו:ו')
- What item did *R' Yosi* rule was not susceptible to *tumah* and in whose name did he state the ruling? (כ"ו:ו')
- What is the general rule regarding when thought (*machshava*) alone can render an item susceptible to *tumah*? (כ"ו:ז')
- What is the difference between when the hides of a tanner and the hides of a *ba'al ha'bayit* can become susceptible to *tumah*? (כ"ו:ח')
- Explain the debate regarding the difference between when the hides stolen by a *ganav* and *gazlan* can become susceptible to *tumah* through *machshava*. (כ"ו:ח')

Local Shiurim

Sunday -Thursday

Between mincha & ma'ariv
Mizrachi Shul

Friday & Shabbat

10 minutes before mincha
Mizrachi Shul

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
7 th June ט"ו סיון	8 th June ט"ז סיון	9 th June י"ז סיון	10 th June י"ח סיון	11 th June י"ט סיון	12 th June כ' סיון	13 th June כ"א סיון
Keilim 26:9-27:1	Keilim 27:2-3	Keilim 27:4-5	Keilim 27:6-7	Keilim 27:8-9	Keilim 27:10-11	Keilim 27:12-28:1

