

## OVERVIEW of the Daf

### 1) A stolen lulav (cont.)

The Gemara explains that a stolen lulav is invalid for the remaining days of Sukkos after the first day, because of the principle of מצוה הבאה בעבירה—a mitzvah brought about through a transgression. This principle applies whether or not the owner gave up hope on retrieving the item.

R' Yochanan in the name of R' Shimon ben Yochai presents an analogy to illustrate this principle.

R' Ami also taught that a stolen lulav is invalid for all the days of Sukkos because it is a מצוה הבאה בעבירה.

R' Yitzchak, however, disagreed and maintains that a stolen lulav is valid from the second day of Sukkos and on.

R' Yitzchak's position is unsuccessfully challenged.

R' Huna instructed sellers who buy from idolaters that they should not directly cut the הדסים from the trees themselves, but rather have the idolaters cut it from the tree to avoid any issues of theft.

The Gemara begins to analyze and pinpoint the exact application of these instructions. ■

## REVIEW and Remember

1. What is the source that indicates that stolen property is forever invalid?  
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2. Does Hashem pay taxes?  
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3. Why is a dry lulav invalid for all the days of Sukkos?  
\_\_\_\_\_
4. What are two methods to acquire stolen property?  
\_\_\_\_\_

*Today's Daf Digest is dedicated by Dr. and Mrs. Shmuel Roth  
In loving memory of their mother  
מרת מרים הינדא בת ר' שמואל ע"ה*

*Today's Daf Digest is dedicated by the Kandelman family  
In loving memory of their son and brother  
דוד אביחיל ע"ה בן ר' ירחמיאל, נ"י*

## Distinctive INSIGHT

### The instructions to the Hadas merchants

מאי טעמא? סתם נכרים גזלני ארעתא נינהו וקרקע אינה נגזלת

Rav Huna gave instructions to the merchants who dealt with הדס branches. The situation was that gentiles had the bushes, and they cut off branches to sell to the Jews. The Gemara assumes that the land and the bushes which the gentiles controlled were actually stolen from Jews. Rav Huna required that the branches be cut off the bushes by the gentiles themselves, and only then be sold to the Jewish merchants. In this manner, the original owners would have יאוש / hopelessness of ever retrieving their property as the branches were cut, in the hands of the gentiles. Then, with the change of ownership from the gentiles to the merchants—שינוי רשות—the legal ability for a transaction to occur would be complete.

Ramban (Bava Kama 41a in the Rif) explains that the opinion that יאוש alone is insufficient for a קנין understands that this is not because we need a two-step process. Rather, יאוש alone is, in fact, all that is necessary, but it is only effective when it occurs as the object is in the hands of a person who is not required to return the object. If someone acquires an object before יאוש, as did the gentiles in this case, the יאוש can have no effect, as we say באיסורה אתא לידיה—the object was acquired when it was still prohibited to keep." Rav Huna knew that although the land was stolen, as long as the branches were connected to the ground יאוש did not yet occur. The land is legally still in the possession of the original owners, and no יאוש is possible for an object that is still in one's possession. Rav Huna instructed that the gentiles cut the branches. Now יאוש occurred, and the Jewish merchants can acquire them.

Rambam (Hilchos Geneva 5:3) argues and explains that the transaction is actually made up of two parts. He even writes that if the change in possession occurred first, the יאוש which occurs later is effective, although the object came into this person's possession in a state of באיסורה אתא לידיה. ■

# HALACHAH Highlight

## Using a lulav grown in Yerushalayim

משום דבוה ליה מצוה הבאה בעבירה

Because it is a mitzvah that comes as the result of a transgression.

**S**efer Kaftor Vapherech<sup>1</sup> writes that it is prohibited to use a lulav that grew in Yerushalayim. The reason for the prohibition is the Gemara<sup>2</sup> that states that it is prohibited to make a garden or orchard in Yerushalayim. This halachah is recorded by Rambam<sup>3</sup>. A lulav from Yerushalayim indicates that the tree must have been planted in violation of this halachah, and therefore, using this lulav would constitute a מצוה הבאה בעבירה—a mitzvah that comes as a result of a transgression.

Rav Dovid ben Zimra<sup>4</sup> agrees that while the Beis HaMikdash stood it would be prohibited to use a lulav grown in Yerushalayim because it would be a mitzvah that comes as the result of a transgression. Nowadays, however, the prohibition against planting trees in Yerushalayim no longer applies<sup>5</sup>. The reason for the prohibition

was based on the sanctity and honor due Yerushalayim while the Beis HaMikdash was extant, but once the Beis HaMikdash is no longer extant the restriction does not apply. Accordingly, it is permitted, nowadays, to use a lulav that was grown in Yerushalayim.

Rav Yaakov Emden<sup>6</sup> agrees with Rav Dovid ben Zimra that the restriction against planting in Yerushalayim applies only when the Beis HaMikdash stands, but disagrees with the application of מצוה הבאה בעבירה even while the Beis HaMikdash was around. The halachah of the Gemara only restricts a person from planting in Yerushalayim, but it does not cause the trees planted in violation of this halachah to become prohibited due to מצוה הבאה בעבירה. Thus, we find that people would go out of their way to obtain a lulav and aravah from Yerushalayim without apprehension for the above-cited concerns. In fact, these מינים were considered superior quality. ■

1. ספר כפתור ופרח פרק ו'
2. גמ' בבא קמא פב דאיתא שם שאין אושים בירושלים גנות ופרדסים
3. רמב"ם פ"ז מהל' בית הבחירה הל"ד
4. שו"ת הרדב"ז ח"ב סי' תרל"ג
5. ע"ש מה שכתב לתרץ למה גזרה זו בטלה אחר שסבת הגזרה בטלה ולא אמרינן שאע"פ שבטלו הסבה שגזרו בשבילה עדיין הגזירה קיימת
6. מור וקציעה סי' תרמ"ה ד"ה כתוב בספר כפתור ופרח ■

# STORIES Off the Daf

## A public restitution

גזול פסול משום דהוי ליה מצוה הבאה בעבירה

**T**he Mekor Chaim, zt"l, explains our Gemara by bringing the well-known concept that the lulav represents the spine, the hadasim represent the eyes, the aravos represent the mouth, and the esrog represents the heart. Even when all of these four species are perfectly kosher, and are even mehudar, if they are stolen they are completely invalid. Chazal teach that sins between a man and his friend are judged more stringently than those between man and Hashem; Yechezkel HaNavi even caps his litany of the twenty-four sins that

brought about the churban with theft, as if to say that it is the ultimate act of trespass. (Yechezkel 22:13) Our Gemara is saying that even if one is exemplary in all of his dealings with Hashem and his fellow man, like an apparently perfect set of ארבע מינים, theft renders him invalid. This means that he is distant from Hashem until he makes restitution and changes his ways.

When the Chofetz Chaim, zt"l, was making his arrangements for his anticipated move to Eretz Yisrael toward the end of his life, he bequeathed his personal well to the public of Radin.

When asked why he did this, the gadol explained, "For years we had a grocery store here in Radin. Chazal write in Kiddushin that being a grocer is an occupation for thieves since

it is all too easy to inadvertently (or intentionally, ח"ו) err in weighing out goods or making change for purchases. But how can one compensate the public when one doesn't even know what mistakes were made or who lost by them?"

He continued, "Chazal taught that one who has stolen from the public should make a public restitution. That is why I am leaving my well to be used by all the inhabitants of Radin."

Later on, all the wells in Radin froze over during a particularly hard frost—all except for the one that had belonged to the Chofetz Chaim. When asked about this unusual occurrence, the gadol was clearly pleased. "Wonderful! Now all those I stole from will certainly come and get restitution from my well!" ■

