

Sugya I: Lulav haGazul and Mitzvah haBaah baAveirah

Goals:

By the end of the class, students should be able to

1. Fill out and utilize a Mikreh-Din-Ta'am chart for our Mishnah
2. Understand the basic machloket between R. Yohanan and Shemuel

1. Mikreh-Din-Ta'am Charts

An extremely useful tool for analyzing Tannaitic texts is the **Mikreh-Din-Ta'am** [*Case-Ruling-Rationale*] **Chart**. Information conveyed in Tannaitic texts can be categorized in one of three groups: Information about the mikreh/case, i.e. circumstances under analysis; information about the din/ruling about said case; and information about the ta'am/rationale for the ruling, e.g. its scriptural source or logical underpinning. Mishnaic texts will oftentimes not provide rationales for rulings, and are sometimes be extremely laconic regarding the details of the case. Additionally, Mishnaic texts will sometimes present a ruling without attribution to a specific Tanna, while parallel texts will present the ruling with attribution to a specific Tanna, or in fact present the ruling as the subject of a Tannaitic debate.

2. Charting our Mishnah

Hand out sheets with blank Mikreh-Din-Ta'am charts, and put a chart on the board. Ask students to put the first four words of m. Sukkah 3:1 into the chart. Walk around room; see if students did it correctly.

It should look like this:

טעם	דין	מקרה
	פסול	לולב הגזול והיבש

The Mishnah rules that a stolen or dried-out lulav is disqualified. Note that the Mishnah, unlike midrashei halakhah, does not provide a ta'am for these rulings, as is usually the case.

3. Analyzing our Mishnah

Focusing on the first case – the stolen lulav – ask students to speculate about the ta'am: Why is a stolen lulav pasul? Chances are, most students will arrive at a permutation of R. Yohanan's explanation of *Mitzvah haBaah baAveirah*, to wit, that utilizing stolen objects for performance of a mitzvah must be illegal. It seems intuitively inappropriate for an *aveirah* to assist one's performance of a mitzvah.

4. A Parallel Midrash

Now, show the students the following text, telling them that it is a parallel to our Mishnah; you will explain more about its provenance in a few minutes. [The Midrash is parsed, bolded, and italicized for ease of comprehension]:

ספרא אמור פרשה יב פרק טז (ב)

1. **ולקחתם לכם**: כל אחד ואחד,
2. **לכם**: משלכם ולא את הגזול,
3. מיכן אמרו אין אדם יוצא ידי חובתו ביום טוב הראשון של חג בלולבו של חבירו ...

Decode the Midrash as follows:

- The Midrash is interpreting the verse we worked on together: Vayikra 23: 40. Here, it focuses on the first two words: **ולקחתם לכם**.
- In Line 1, the Midrash interprets the plural conjugation of the verb **ולקחתם** as indicating that every individual must fulfill the mitzvah of Arba Minim himself. (The relationship of females to this mitzvah is an important but separate issue.) That is to say, the *hava aminah* the Midrash is responding to is that the mitzvah would only be performed by a singular entity (the Beit Din? Kohen Gadol?), probably representing of the entire people.
- In Line 2, the Midrash interprets the seemingly superfluous term **לכם** as indicating that the lulav must belong to the addressee of the verse, that is, the performer of the mitzvah. One may only be yotzeh the mitzvah of Arba Minim when the requirement of ownership is met. Note especially how the text rules **משלכם ולא את הגזול**.¹
- In Line 3, the Midrash links the ruling from Line 2 to Mishnah Sukkah 3:13 (introducing this linkage via the formula of **מיכן אמרו** meaning, 'from here they said,' i.e. this is the exegetical basis of the following known Mishnaic ruling) ruling that one may not fulfill his obligation of Arba Minim on the first day of Sukkot with someone else's lulav. This Beraitah, at the least, seems to clearly disqualify not only the *stolen*, but also the *borrowed* lulav. Introduce here the parallel yet slightly varied Talmudic statement to this Mishnah, found at Bavli Sukkah 43b:

תניא:

1. **ולקחתם** - שתהא לקיחה ביד כל אחד ואחד
2. **לכם** - משלכם, להוציא את השאול ואת הגזול.

- In short, the Baraita explains that a stolen lulav is 'pasul' because it fails to meet the ownership requirement. It is not **לכם**. The Beraitah does not explain the 'pasul' by recruiting the principle of Mitzvah haBaah baAveirah.

¹ Had the Midrash not explicitly articulated that the rule of **משלכם** leads to the exclusion of "הגזול" from the class of acceptable lulavim, how else might we have understood this rule? [Either now or later, introduce the possibility that the rule of **משלכם** might also exclude the borrowed lulav from the class of acceptable lulavim. Based on internal evidence from this line itself, is unclear whether it does so implicitly or not].

- Furthermore, the Baraita differs from the Mishnah's ruling in that it adds a caveat to the disqualification it articulates: it is only applicable on the first day of Yom Tov. [Be careful with terminology here: the first day of Yom Tov in contrast to the 6 days of Hol HaMoed. Bracket the question of *Yom Tov Sheni shel Galuyot* for now.] Our Mishnah, in contrast, does not specify one way or another.
- Ask students to make an argument from silence: Do we assume that the Mishnah's ruling is similarly relegated to the first day only, or do we on the contrary assume that its silence on the matter indicates a blanket rule, equally applicable to the first and latter days of Sukkot? [These different instincts will find resonance in the two voices in the sugya, that of Shemuel, and the Stamma d'Gemara/R. Yohanan respectively. You may choose to foreshadow that for the students or not.]

5. Summarizing and Representing Data on Mikreh-Din-Ta'am Chart

In short, we have here a text which indicates that the rationale for the pasul of the stolen lulav is its failure to meet the requirement of **לכם**, rather than its status as a Mitzvah haBaah baAveirah.

As such, we have generated two ways of filling in the ta'am column in our chart:

טעם	דין	מקרה
לכם: משלכם ולא את הגזול	פסול	לולב הגזול
Mitzvah haBaah baAveirah		

However, as you will now demonstrate, both of these ta'amim find Amoraic expression.

6. Thinking like an Amora: the Meimrot

Three primary meimrot (with some accompanying stammaitic packaging) occupy the sugyah (cited here in order of appearance in the sugyah):

1. [גזול, בשלמא יום טוב ראשון - דכתיב (ויקרא כג) לכם - משלכם, אלא ביום טוב שני אמאי לא?] אמר רבי יוחנן משום רבי שמעון בן יוחי: משום דהוה ליה מצוה הבאה בעבירה²
2. אמר רבי אמי: יבש פסול מפני שאין הדר, גזול פסול משום דהוה ליה מצוה הבאה בעבירה
3. אמר רבי יצחק בר נחמני אמר שמואל: לא שנו אלא ביום טוב ראשון, אבל ביום טוב שני, מתוך שיוצא בשאול - יוצא נמי בגזול.

- a. The clearest formulation is that of R. Ami in second source. R. Ami (a 3rd generation Amora from Israel) identifies the disqualifying feature of the dried lulav in its lack of "hadar" (a topic we will return to later), and the stolen lulav in its status as a Mitzvah haBaah baAveirah. This latter identification is identical to that of R. Yohanan [2nd generation Amora from Israel]. However, the two meimrot are

² Students will have to understand the structure of "b'shlamah X...elah Y..." to comprehend the bracketed portion here.

formulated differently: R. Ami's meimra stands alone as a complete sentence, while R. Yohanan's meimra does not constitute a complete thought, but rather is dependent upon/comments on another text – in this case our Mishnah. In general, it is worth noting that meimrot sometimes stand alone, and sometimes are clearly interpretive and assume knowledge of the text being interpreted. (Sometimes, the Gemara itself is not clear which text [or line of text] a meimra is interpreting.)

- b. On the other hand, we have Shemuel's [1st generation Babylonian Amora] meimra. Shemuel rules that the Mishnah, (at least in its ruling regarding the stolen lulav,³) applies only to the first day; on the latter days, "since one may fulfill his obligation with a borrowed [lulav], he may also fulfill his obligation with a stolen [lulav]."
- c. Pose the question to the class: *What logical assumptions underlie Shemuel's meimra?* Responses should include these points:
 - A. The ta'am for the disqualification of the stolen and borrowed lulavim is identical.
 - B. Thus, when either type of lulav is known to be acceptable (kasher) for use in fulfilling the mitzvah, the other type must be acceptable as well.
 - C. The borrowed lulav is acceptable on the latter days of the holiday
 - D. Therefore, the stolen lulav is acceptable on the latter days of the holiday.

Again, ask the students: *Where do these assumptions come from?* Note that assumption A is explicitly articulated in the beraita on TB Sukkah 43b, and assumption B is a fair deduction from that text. Assumption C seems to derive from a more basic assumption, to wit, the requirement of **לכם** applies on only the first day. This assumption is articulated in the aforementioned lines of the sugya:

“גזול:

- **בשלמא** יום טוב ראשון - דכתיב (ויקרא כג) לכם - משלכם,
- **אלא** ביום טוב שני אמאי לא”

The Gemara here takes it for granted that the scriptural requirement of ownership would only explain a disqualification for the first day, and as such seeks out an alternate source of disqualification for the second. Tosafot source this assumption in a particular reading of our base verse, Vayikra 23:40, wherein all terms in the verse appearing prior to the words “ביום הראשון” would only apply to the first day, while words appearing after would apply all

³ It is not clear what he rules regarding the dried lulav. Cf. the much broader formulation of his position in the Yerushalmi (Sukkah 3:6, 53b): ר' יצחק בר נחמן בשם שמואל כל הפסולין אינן פוסלין אלא ביום טוב הראשון בלבד.

seven days. Thus, while the identities of the four species themselves remain constant for the entire holiday, the requirement of **לכם** is applicable for only the first.⁴

Putting this all together, we are left with Shemuel's implicit identification of the ta'am for the Mishnah's ruling disqualifying the stolen lulav: its failure to meet the requirement of **לכם**.

7. Mapping Meimrot onto Mikreh-Din-Ta'am Chart

We can map this onto our Mikreh-Din-Ta'am chart as follows (red font for R. Yohanan/ R. Ami, blue font for Shemuel)

טעם	דין	מקרה
<ul style="list-style-type: none"> • לכם: משלכם ולא את הגזול • Mitzvah haBaah baAveirah • לכם: משלכם ולא את הגזול 	פסול	לולב הגזול [ביום טוב ראשון]

The *nafka minah* between the blue and red readings are presented in the following, derivative chart:

טעם	דין	מקרה
מה"ב	פסול	לולב הגזול ביום טוב שני
אין צורך ל"לכם"	כשר	

Note that the R. Yohanan's position assumes no distinction between the first and latter days of the holiday vis a vis the Mishnah's disqualifications. This position is articulated by the Gemara in the words: "קא פסיק ותני: ולא שנא ביום טוב שני, לא שנא ביום טוב ראשון" and stands in direct opposition to Shemuel's position.

8. Leading into Next Session

This debate stands at the center of the sugya to which we turn in the next lesson. Before proceeding, though, ask the students to explain the *nekudat ha-makhloket*: What exactly are Shemuel and R. Yohanan arguing about? What considerations motivate each side? Have students write up at least three possibilities for home-work.

⁴ The exegetical issues are broader than articulated here and are dealt with in part in Tosafot, *ibid*; but unless a student brings it up, it is better to save exploration of this issue for another time and not overwhelm the students at this point.