

Sugya I: Part B

1. Scanning the Gemara to generate structure

After having studied the building blocks (tannaitic sources + meimrot), we now turn to the sugya itself. For our purposes, the sugya begins with the Gemara on 29b and continues until the words “ka mashma lan” on 30a. Have students break out into chavrutah, and start to outline the sugyah. As always, you will provide the appropriate amount of scaffolding depending on the level of the class during this process.

Hopefully, students will note that the tension in the sugya stems from the precise tension which we identified last class: that is, the different readings of R. Yohanan and Shemuel of our Mishnah. The sugya first presents R. Yohanan’s reading, and then Shemuel’s. It concludes with a challenge and defense of Shemuel’s reading.

2. R. Yohanan’s Reading

We have seen the first piece of shakla v’taryah before. The Gemara argues/assumes that the Mishnah’s ruling is equally applicable to both Yom Tov Rishon and Yom Tov Sheni. While the reason for the dried out lulav’s absolute disqualification is apparent, (it is not “*hadar*,” which is a pasul relevant to all days of sukkot,) the reason for the stolen lulav’s disqualification is less clear. On the first day, granted, it is disqualified, as it is not “*lachem*.” But what about on the second day? R. Yohanan answers (in the name of Rash”bi), that it is disqualified because it is a Misvah Haba’ah Ba’averah.

Have students open up verse from Malakhi (1:13). What is the verse’s context? What is Malakhi’s point? (Students often need to be reminded that the context is not directly relevant to the mitzvah of Araba Minim. Rather, it is discussing korbanot!) For R. Yohanan, Malakhi’s juxtaposition of stolen animal with the lame animal (which is clearly unqualified for use as a korban,) is meant to indicate the disqualification of the stolen animal as well. [This is a powerful point: Malakhi is accusing the people of a moral blindness that prevents them from seeing that the blemish of theft is as ‘real’ as any physical blemish. It is worth highlighting this point to the students, as this is a real opportunity for moral enrichment through Talmud study, an opportunity which is often not so readily accessible.]

The derivation of Misvah Haba’ah Ba’averah from Malakhi is a bit complicated, but utilizes similar structural terms to those found in the beginning of the sugya. The basic goal of the gemara is to perform a controlled experiment, isolating the possible variables for the disqualification of the stolen korban. Assuming that the animal could be acquired via yeush,¹ it should qualify thereafter as “מִכֶּם – yours,” and thus be a valid korban. The only rationale for its continued disqualification then is its status as a Misvah Haba’ah Ba’averah.

¹ See Tosafot ibid. s.v. *Ha Kanyeesh* for the meaning and role of yeush in this sugya.

Map this as follows:

	Mikem	Misvah Haba'ah Ba'verah
Before Yeush	Pasul	Pasul
After Yeush	Kasher	Pasul

The sugya now provides a second meimra, consisting of an interpretation of pasuk in Yeshayahu using a mashal regarding theft.² Write down the components of the mashal (King, Taxes, Travelers, Non-Payment of Taxes) in one column on board, and have someone correlate each to its nimshal:

King = God

Travelers = Jews

Taxes = Korban

Non-Payment of Taxes = Theft of Korban

Ask class: *What is the function of having both meimrot in the sugya? What would we be lacking if we only had one or the other?* [This question focuses on the Bavli as an edited text, made up of constituent components woven together into a literary unit. Make that point explicit. The text could have been edited differently.]

Some responses might be:

- The mashal provides a moral/philosophical/aggadic underpinning to the legalistic exegesis of the first meimra.
- The first meimra conceives of Misvah Haba'ah Ba'verah as a sort of physical stain or blemish (a *pasul Heftza*), while the latter focuses more on the process of Misvah Haba'ah Ba'verah (a *pasul Ma'aseh*).³
- The first meimra works within the normal conceptions of ownership, while the goal of the second meimra seems to be to challenge/compromise our very conceptions of ownership. What does it mean to steal something from a person, when that person ultimately does not own the said object to begin with since everything is God's?

3. R. Ami's Meimra

R. Ami's meimra is introduced by the term '*itmar name*.' This indicates that something in the upcoming meimra supports something said above. What exactly are they?

² Cf. Maharsha here, who explains why the reference to an 'olah/burnt offering is most appropriate for the mashal's message.

³ See R. H. Reichman's Reshimot Shiurim to *m. Sukkah*, pg. 120.

4. Shemuel's Meimra

As we discussed last time, Shemuel disagrees with R. Yohanan on two related fronts: [1] He reads the mikreh of the Mishnah as referring to only the first day, and [2] he seems to entirely ignore the issue of Misvah Haba'ah Ba'averah.

Ask students: *Why does Shemuel ignore the issue of Misvah Haba'ah Ba'averah?* [Put differently: Shemuel's meimra is introduced by the term '*u'pligah*.' What exactly is he arguing about that was said previously?

The answer is subject to a makhloket rishonim. The Ba'al haMaor (pg. 14b-15a in Rif pages) understands Shemuel to be rejecting the entire notion of Misvah Haba'ah Ba'averah. On the other hand, Tosafot (s.v. *Mitokh*) present a more minimalistic understanding of Shemuel. In this understanding, Shemuel does indeed recognize the general concept of Misvah Haba'ah Ba'averah, but limits its application to Biblical Mitzvot. Rabbinic mitzvot are not susceptible to this pasul.

[Food for thought: What might be the reasoning which stands behind this understanding of Shemuel? Cf. Tosafot ibid. 9a s.v. *Hahu*, and 30a s.v. *Meshum*.]

5. Challenging and Defending Shemuel

In the final two steps of the sugya, Shemuel's position is challenged and then defended by later amoraim.

R. Nahman b. Yitzhak challenges Shemuel by citing our Mishnah. His argument is somewhat complicated, but can be broken down into the following steps:

- A. **Citation of the Mishnah:** The Mishnah explicitly disqualifies a stolen and/or dried out lulav.
- B. **Inferences:**
 - a. The Mishnah's silence regarding the status of a borrowed lulav indicates that such a lulav would be kosher. In other words, our default assumption is that there is nothing problematic about using a borrowed lulav for the mitzvah; absent any rulings to the contrary, we will therefore assume it to be kosher. Thus, argues R. Nahman b. Yithak, our Mishnah implicitly rules that a borrowd lulav is kosher.
 - b. This "ruling" of the Mishnah could only be valid on Yom Tov Sheni, as the borrowed lulav would certainly be disqualified for use on the first day because of the requirement of לָכֵם. Therefore, it is as if our Mishnah has stated "[On Yom Tov Sheni] a borrowed lulav is kosher."
 - c. If the ruling regarding the borrowed lulav was made regarding Yom Tov Sheni, then the other, "explicit" rulings of the Mishnah must have been made regarding Yom Tov Sheni as well. Therefore, when the Mishnah rules that a stolen lulav is disqualified, its ruling applied to Yom Tov Sheni.

- C. **Conclusion:** We have deduced that the Mishnah “clearly” states “A stolen lulav is disqualified [even on Yom Tov Sheni].” This stands in direct contradiction to Shemuel’s ruling.

A later amora, Rava (or perhaps R. Ashi, depending on one’s reading), defends Shemuel. Have the students read the defense, and see if they can articulate which step in the challenge is the primary site of attack.

The answer is the first inference. R. Nahman b. Yitzhak infers from the Mishnah’s silence that the borrowed lulav is kasher. Rava argues the contrary: The Mishnah is silent regarding the borrowed lulav because its disqualification is obvious! For Rava, the tanna of our Mishnah limited himself to articulating only those rulings which are not obvious (“*lo mibayeh ka’amar*”). A borrowed lulav is clearly disqualified for use (on Yom Tov Rishon!) because it does not fulfill the requirement of לָכֵן. However, a legitimate claim might be made that a stolen lulav would be kasher for those who adopt the position (argued elsewhere in the Talmud) that we assume that owners had yeush over stolen property – it is therefore plausible that the robber acquired the lulav and the requirement of לָכֵן would be satisfied. It is in response to this ‘hava amina’ that the Mishnah rules that a stolen lulav is not kasher on Yom Tov Rishon. On Yom Tov Sheni, however, it may well be kasher, in accordance with Shemuel’s ruling.

Remarkably, Rava has managed to flip the relationship between the borrowed and stolen lulav, rendering the use of the former a more egregious violation than use of the latter. This is a continuation of the sugya’s subtle discussion of the very notion of ownership – begun by Malakhi and furthered in the mashal of R. Yohanan’s second meimra, and now in Rava’s meimra. In a sense, he echoes the earlier voices we identified in the prior lesson and earlier in this one, those who focus on compromised ownership rather than on the legal-moral inadequacies of a Misvah Haba’ah Ba`averah.

We thus find, at the end of the sugya, that both early, divergent explanations for the pasul of a stolen lulav remain “alive” deep into the Amoraic period, and are brought into the conversation by the ‘stamma d’Talmuda’ itself.

6. The Debate Continues: Rishonim

In concluding this sugya, ask the students to weigh in on this debate. *Whose opinion – R. Yohanan’s or Shemuel’s – should carry the day?* One way of answering that question might be: whose opinion does the Gemara itself seem to favor? For example, the sugya grants R. Yohanan’s opinion priority of presentation, potentially biasing the reader towards it. On the other hand, Rava (who defends Shemuel) gets the last word – perhaps this indicates a favoring of Shemuel?

On this front, have students read the Rambam and Ra’avad , Hil. Lulav 8:9, and note how the former rules like Shemuel, while the latter pushes towards R. Yohanan. Cf. the various

considerations raised by the rishonim cited in Beit Yosef O.C. 649 on the source sheet. Ultimately, this debate continues between the Mekhaber and the Rema in Shulkhan Arukh (ibid.), and never really dies.

For homework:

In addition to reviewing the sugya, do a “*Mah Kasheh l’Rashi*” drill on the first Rashi on 30a, s.v. *Shene’emar*, to be handed in the next day.

The issue bothering Rashi is that the proof-text from Malakhi does not explain that a stolen lulav constitutes a Misvah Haba’ah Ba’averah at all; it is discussing korbanot, not lulavim! Rashi therefore explains that the function of the citation is to source the very notion of Misvah Haba’ah Ba’averah itself, rather than to make the secondary claim that a stolen lulav constitutes a Misvah Haba’ah Ba’averah. This highlights the logical leap of the sugya, applying the notion of Misvah Haba’ah Ba’averah from the world of korbanot, to that of Arba Minim.

Brainstorm with the class: How can we account for this extension? What assumptions must the sugya be making?

There are at least two answers:

- a) The sugya (or perhaps R. Yohanan himself) is extending Misvah Haba’ah Ba’averah from the area of korbanot to all other mitzvot. Just as korban is a mitzvah and is vulnerable to the pasul of Misvah Haba’ah Ba’averah, so too all mitzvot are vulnerable. This is the approach of Tosafot (s.v. *Meshum*). Korbanot are the paradigm for all mitzvot.
- b) The pasul of Misvah Haba’ah Ba’averah is relevant primarily to the world of Korbanot. However, the sugya (or perhaps R. Yohanan himself) is claiming that lulav/Arba Minim is a quasi-korban! What other clues might we have that lulav is thought of as a quasi-korban? [Think about references to blemishes/“mumim” on the lulav.] And what would it mean to call the lulav a korban?

Repeat this exercise with Rashi s.v. *Ka Mashma Lan*. Note that the sugya does not articulate what we have learnt via the Mishnah’s ruling. What about the *hava amina* was problematic? Sometimes the sugya does in fact articulate “*ka mashma lan XYZ*.” Yet when it does not, a gap is formed in the text, demanding the reader to fill it in. Different rishonim will fill in this gap differently.