



Acquiring a Horse by Riding One

Bava Metzia opens discussing disputes of ownership, with each party claiming they acquired the ownerless object first. The first *Mishnah* involve two parties arguing about the ownership of a garment, whereas in the second *Mishnah*, the parties are arguing about an animal. The *Mishnah* (1:2) teaches that if both are riding the horse, or one is riding the horse while the other is leading it and each claim that the horse is theirs, they must each swear that they own no less than half the horse, and then divide it equally.

The *Bartenura* initially explains that the *Mishnah* is teaching that riding a horse without driving it is a means of acquiring the horse, even if the horse remains stationary. However, when considering the second case, where one of the parties is leading the horse, the *Bartenura* explains that the rider only acquires the horse if he kicks the horse causing it to move. If the rider was only seated on the horse, then it would belong to one that lead it. The *Tosfot Yom Tov* however finds the two explanation of the *Bartenura* contradictory as they express two opinions raised in the *Gemara*: is straddling the horse is enough to acquire it or does one need to drive it by kicking it as well. The latter understanding is the opinion of *Shmuel*.

The *Tosfot Yom Tov* cites other opinions that are consistent with their explanation of the *Mishnah*. For example, the *Rosh* maintains that one only acquires the horse if he kicks it while riding it in both cases. The first case that involves two riders is necessary to teach that we do not say that the one in the front has a

stronger claim or made a stronger act of acquisition. The second case is important to teach that despite the rider both sitting on and driving the horse, he does not have a stronger claim than the person guiding it while walking. The *Rif* on the other hand explains that in both cases the rider is simply seated on the horse. How do we explain that opinion of the *Bartenura* that explains both cases differently?

The *Chidushei Mahariach* suggest that the *Bartenura* maintains the position of *Shmuel*. The issue the *Bartenura* addresses in his explanation is the novelty of the first case. In the first case, iff they are both simply seated on the horse, then neither performed the *kinyan* and if both kicked the horse, then he feels the ruling is obvious. Consequently, the *Chidushei Mahariach* explains that according to *Shmuel* it is true that being seated on the horse alone does not affect the *kinyan*. If we saw a person go and sit on a stray horse and another then grab it and lead, then it would indeed belong to the second person. The *Mishnah* is teachings us that if we find a person already seated on a *hefker* horse, we can assume that the *kinyan* was already performed. In other words, the rider has a *chazaka* (presumed status) that he acquired this horse. Consequently, regarding the first case, when the *Bartenura* explains that two individuals that are seated on the horse have acquired it even without driving it, the *Bartenura* means that we assume that the two individuals have a *chazaka* of ownership and another person cannot try and seize it.

Yisrael Bankier

Revision Questions

בבא קמא ט': י"ב = י"א

- When are the heirs of a thief not obligated to pay back the victim if the stolen item has been consumed? (י"א: א')
- Can one exchange money from the tax collector's chest? (י"א: א')
- If a *gazlan* stole a garment from a person and left him one in "exchange" can the person keep it? (י"ב: ב')
- When do we say that a person can keep the property that he salvaged from a natural disaster? (י"ב: ב')
- What is the law if *Reuven* claims that particular items in the possession of *Shimon* are his and were stolen, yet *Shimon* claim he purchased them? (י"ג: ג')
- Regarding the previous question, is the law different if he is know to be a thief? (י"ג: ג')
- Consider a case where *Reuven* was carrying a barrel of wine and *Shimon* was carrying a barrel of honey. If the barrel of wine cracked and *Reuven* emptied his own barrel of wine in order to save the honey, what can he claim from *Shimon*? When does this ruling change? (י"ד: ד')
- What other case is brought that is similar to the one in the previous question? (י"ד: ד')
- If someone stole a field from another and the state seized the property, when do we say that the thief is liable and when is he exempt? (י"ה: ה')
- What other case is brought that is similar to the one in the previous question? (י"ה: ה')
- If someone loaned money from someone in the city, can he return it to him in the desert? (י"ו: ו')
- Is a person obligated to pay if he borrowed money and is unsure whether he paid the person back? What if he is unsure if even borrowed the money? (י"ז: ז')
- If a someone stole an animal and then returned it without the owners knowledge, and then the animal is either stolen or dies, is he responsible? (י"ח: ח')
- Can one purchase fruit from someone who is paid to guard fruit trees? (י"ט: ט')
- Can a launderer keep the thread and fluff left over? (י"י: י')
- After a carpenter has finished work, what parts of the "mess" belongs to the him and what belongs his client? When does it all belong to the client?)

בבא מציעא א' א' – ג'

- What is the law if two people are holding onto a garment and are disputing the full ownership of the garment? (א' א': א')
- Regarding the previous question, what if one of the parties claims he has a (half) share in the garment? (א' א': א')
- What is the law if a person is riding a horse and another is leading it and each of them claim that the horse is theirs? (ב' ב': ב')
- If someone is riding a horse and sees a \$5 note on the ground and tells another person to retrieve it for him, when does the money belong to the rider and when does it belong to the person who retrieved it? (ג' ג': ג')

Melbourne, Australia

Sunday -Thursday
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Efrat, Israel
Shiur in English

Sunday -Thursday
Rabbi Mordechai Scharf
9:00am
Kollel Magen Avraham
Reemon Neighbourhood

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http://www.dafyomi.co.il/calendars/myomi/myomi-thisweek.htm

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Next Week's Mishnayot...

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | שבת קודש |
|------------------------|------------------------|------------------------|------------------------|------------------------|-----------------------|------------------------|
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| Bava Metzia 1:4-5 | Bava Metzia 1:6-7 | Bava Metzia 1:8-2:1 | Bava Metzia 2:2-3 | Bava Metzia 2:4-5 | Bava Metzia 2:6-7 | Bava Metzia 2:8-9 |

