



Ownership Disputes

The first *Mishnah* of *Masechet Bava Metzia* presents the famous case of two people who enter *Beit Din* holding onto a *tallit*, each claiming sole ownership. The *Halacha* requires that they each have to make an oath of regarding the ownership before receiving half the *tallit* (i.e. the *tallit* is sold and the money is divided).

Tosfot (2a) discuss the different methods used by *Beit Din* when resolving ownership disputes. When one party is in possession of the disputed article and the other party seeks to reclaim the article, *Halacha* follows the *Chachamim* whereby the burden of proof, in the form of witness testimonies, is placed on the party seeking to reclaim the article. *Halacha* presumes that the party in possession of the article as the owner of the article. This may be the origin of the legal maxim “possession is nine-tenths of the law”.

When neither party has physical possession of the disputed article, the *Halacha* mandates that whoever first obtains possession of the article can claim the article as theirs, and the other party must provide proof of ownership. Since ownership was not determined and there is no presumption of ownership for either party, in the event that the article is stolen by the other party, the roles are reversed and the party that had possession must now provide witnesses to prove their right of absolute ownership. The *Rosh* adds that since neither party has a presumption of ownership, *Beit Din* does not intervene to determine proprietorship and is not in a position to question the party that is in possession of the article.

When both parties have possession of the disputed article, and as a result, each has a presumption of ownership, two situations are possible. Since both parties approach the *Beit Din* with possession of the article, *Beit Din* has a duty to intervene to determine proprietorship and prevent one party from stealing the article from the other (*Rosh*).

The first scenario is where it is impossible that both parties can have concurrent ownership of the article. *Tosfot* explain that this case is where two parties entrusted a third party different sums of money and each claim to have deposited the larger sum. The differential between the two amounts is deemed to be the article of dispute and the third party is considered to be holding the money for both parties, thereby establishing a presumption of ownership for both parties. The money cannot be divided between the parties since it belongs to one of the parties, and one party will have received half the money unlawfully. Rather, the money is retained in the possession of the third party ‘until *Mashiach* arrives’; the money is withheld indefinitely until evidence is presented to resolve the dispute.

The second scenario is where it is possible that both parties may have shared ownership. Since both parties have an equal presumption of ownership and it is possible to establish that both may have acquired the article at the same time, the article is divided equally between the parties.

Tosfot maintain that the case of our *Mishnah* falls into this latter category. They explain that each party may have raised the abandoned *tallit* at the same time to claim ownership unaware of the presence of the other. While this may be an unlikely scenario, it is enough to satisfy that neither party is necessarily lying.

One question remains. The *Gemara* on 5b asks why the *Mishnah* imposes an oath on each of the parties if the *Halacha* requires merely to divide the article of dispute. *R’ Yochanan* answers that the oath is a rabbinically enforced deterrent to prevent people from simply grabbing onto an article in someone else’s possession and approaching *Beit Din* claiming ownership.

Shmoiki Berkowitz

Revision Questions

בבא קמא ט"ו: י" – י"ז: י"ז

- If a father makes a *neder* preventing his son from gaining any benefit from his possessions and then dies, when do we say that the son cannot inherit the property? (ט"ו: י"ז)
- Regarding the previous question, what if the son is the only heir? (י"ז: ט"ו)
- If someone steals from a *ger* and falsely swears that he did not steal from him and the *ger* dies with no heirs, to whom does he pay *keren ve'chomesh*? (ט"ז: י"א)
- Regarding the previous question, what is the law if the thief subsequently dies prior to delivering the money and offering the *korban*? (ט"ז: י"א)
- Can the *korban asham* of the thief be offered prior to: (ט"ז: י"א)
 - Returning the stolen item?
 - Paying the *chomesh*?
- When are the heirs of a thief not obligated to pay back the victim if the stolen item has been consumed? (י"א: ט"ז)
- Can one exchange money from the tax collector's chest? (י"א: ט"ז)
- If a *gazlan* stole a garment from a person and left him one in "exchange" can the person keep it? (י"ב: ט"ז)
- When do we say that a person can keep the property that he salvaged from a natural disaster? (י"ב: ט"ז)
- 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: ט"ז)
- Regarding the previous question, is the law different if it is known to be a thief? (י"ג: ט"ז)
- 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: ט"ז)
- What other case is brought that is similar to the one in the previous question? (י"ד: ט"ז)
- 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: ט"ז)
- What other case is brought that is similar to the one in the previous question? (י"ה: ט"ז)
- If someone loaned money from someone in the city, can he return it to him in the desert? (י"ו: ט"ז)
- 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: ט"ז)
- If 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: ט"ז)
- Can one purchase fruit from someone who is paid to guard fruit trees? (י"ט: ט"ז)
- Can a launderer keep the thread and fluff left over? (י"י: ט"ז)
- After a carpenter has finished work, what of the "mess" belongs to the him and what belongs his client? When does it all belong to the client? (י"י: ט"ז)

בבא מציעא א' א' – א' א'

- What is the law if two people are holding onto a garment and are disputing the full ownership of the garment? (א' 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' א')

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1 st July ט"ו תמוז	2 nd July ט"ז תמוז	3 rd July י"ז תמוז	4 th July י"ח תמוז	5 th July י"ט תמוז	6 th July כ' תמוז	7 th July כ"א תמוז
Bava Metzia 1:2-3	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

