



OVERVIEW of the Daf

1) Concealed objects (cont.)

The Gemara continues to cite a Baraisa that elaborates on the dispute between R' Yehudah and Rabanan concerning liability for concealed objects.

Rava presents a related ruling concerning liability when someone was given a gold coin but was informed that it was silver.

R' Mordechai told R' Ashi that Rava's ruling could be derived from the Mishnah itself.

2) The remedy for the victim of theft

Rav and Shmuel raise the question of whether the "remedy for the victim of theft" applies for concealed objects damaged by fire.

Ameimar inquired whether the principle of the "remedy for the victim of theft" applies to the case of an informer.

After elaborating on the inquiry the Gemara leaves the matter unresolved.

A related incident is recorded.

An inquiry similar to the question that emerged from the previous incident is presented.

3) The thief and extortionist

R' Ashi explains the difference between a thief and an extortionist.

R' Avya unsuccessfully challenges this explanation.

4) MISHNAH: The Mishnah discusses liability for a spark that shoots out and causes damage as well as a camel walking on the street with flax on its back that ignites.

5) Placement of the Chanukah menorah

Ravina infers from R' Yehudah's ruling in the Mishnah that there is an obligation to place the Chanukah menorah within ten tefachim of the ground.

The inference is rejected.

R' Kahana reports in the name of R' Nosson bar Minyomi in the name of R' Tanchum that the menorah may not be higher than twenty amos from the ground.

הדרן עלך הכונס

6) MISHNAH: The Mishnah begins by contrasting the twofold payment (כפל) with the fourfold or fivefold payment (תשלומי ד' וה'). The Mishnah concludes with a statement that one who steals, slaughters or sells after a thief does not pay כפל or תשלומי ד' וה'.

7) Clarifying the Mishnah

The fact that the Mishnah did not note that one who falsely claims an item was stolen must pay כפל but one who falsely claims an animal was stolen does not pay תשלומי ד' וה' is a support for a similar statement issued by R' Chiya bar Abba.

A second version of this discussion is presented in which the Gemara rejects the assertion that support could be found for R' Chiya bar Abba from our Mishnah.

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Distinctive INSIGHT

Being responsible to protect gold

הנותן דינר זהב לאשה ואמר לה הזהרי בו של כסף הוא, הזיקתו משלמת דינר זהב משום דאמר לה מאי הוה ליך גביה דאזקתייה

Our Gemara presents a case where a man deposits a gold coin with a woman without revealing its true value to her, and only instructs her to be very careful with it "because it is silver." If she, in fact, was negligent and it became lost, she must pay only the value of silver, for she did not know that it was more valuable than that, and we cannot demand from her more than was told to her. However, even in such a case, if she were to damage it directly with her own hands, she must pay for the full value of gold. This is because even if it were in fact silver, she had no right whatsoever to destroy the coin directly. She therefore must pay the value of the gold coin.

In Bereshis (34:7) we find the episode of Shechem who took Dina, the daughter of Yaakov. The Torah points out that the act of Shechem was considered to be very serious, particularly due to the fact that it was perpetrated against the family of Yaakov. "And the sons of Yaakov came in from the field when they heard it; and the men were grieved and they were very angry because he had done a vile deed in Israel in defiling Yaakov's daughter, a thing which ought not to be done." Since it was such a disgrace and defilement of the sanctity of the household of Yisrael, his act was deemed to be a serious crime. What kind of a claim can this possibly be against Shechem? Was he in fact aware of the special character of the Jewish family to the degree that he was held accountable for defiling it?

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REVIEW and Remember

1. If someone damaged gold thinking that it was silver, what is his liability and why?

2. What is the difference between a thief and an extortionist?

3. How did Ravina demonstrate that the Chanukah menorah must be placed within ten tefachim of the ground?

4. What objects are not subject to the כפל penalty?

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 In loving memory of their mother Mrs. Sonia Mauer ע"ה
 מרת שפרה בת ר' משה אהרן הלוי, ע"ה

HALACHAH Highlight

The correct height of the menorah

נר חנוכה מצוה להניחה בתוך עשרה

The mitzvah is to place the Chanukah flame within ten tefachim

Shulchan Aruch¹ rules that the Chanukah flame should be placed between three and ten tefachim from the ground. The reason, explains Mishnah Berurah², is that if it is within three tefachim of the ground it looks as if it is resting on the ground and it is not recognizable that the homeowner placed it there. The rationale for putting the Chanukah menorah no higher than ten tefachim is that it produces a greater degree of publicity of the miracle since it is uncommon for a lamp, intended for light, to be placed at such a low place. Mishnah Berurah³ cites Elya Rabba who suggests that the reason people are not particular to light between three and ten tefachim from the floor is that they follow the position of Mordechai that since we light the menorah inside rather than outside, the height where the menorah is placed is not important. Tur, however, disagrees with Mordechai and according to his position one should be careful regarding the height of the menorah even when lighting the menorah inside.

The upper limit for the Chanukah flame is twenty amos. A common question is where a person who lives in an apartment that is more than twenty amos above street level should light his

8) The twofold payment

A Baraisa is cited that makes an exposition that כפל applies to living things as well as inanimate things.

The exposition is challenged. ■

menorah. Sha'ar Hatzion⁴ writes that the menorah should not be placed in the window that faces the public domain since the people in the street will not be able to see the candles. The correct placement will be opposite the mezuzah in the doorway. Some authorities⁵ suggest that if there are other tall buildings nearby the menorah should be placed in the window facing one of the other tall buildings. Granted, the people on the street will not see the candles but since the people who live in the nearby buildings will be able to see the flames it is sufficient. Others⁶ reject this position and assert that the rules enacted by Chazal to promote publicizing the miracle take into account the people on the street. Accordingly, since the people on the street will not see the candles they should not be placed in the window of that apartment and they should be placed at the entrance to the apartment or at the entrance to the staircase. ■

1. שו"ע או"ח סי' תרע"א סע' ו'
2. מ"ב שם ס"ק כ"ו וכ"ז
3. מ"ב שם
4. שער הציון שם ס"ק מ"ב
5. ע' פסקי תשובות סי' תרע"א הע' 31
6. ע' פסקי תשובות שם הע' 32 ■

STORIES Off the Daf

Guarding the wealth

נטירותא דכספא קבילי עלי

Acertain man was given the important task of guarding the valuable silver accoutrements of the sifrei Torah of his community. One day he forgot to lock the door as he went to the market. When he returned several hours later he found to his dismay that the entire collection was gone. Apparently, he had been observed by a scoundrel who had taken full advantage of his negligence.

When he told this to the community leaders, they were upset. "Obviously you must replace what was stolen on account of your negligence," the Rosh Hakahal said.

"I don't think so," the man replied. "After all, I was a watchman for hekdesch whom we find need not pay if the object was damaged."

This dispute was brought to the

Lechem Mishnah, ז"ל. He answered, "The watchman must indeed pay. The Rambam says clearly that even a watchman of hekdesch must pay for negligence since he is likened to one who damaged the object willfully.

"This seems at first glance to contradict the Gemara on Bava Kamma 62. There we find that if one gave a woman a gold coin claiming it was silver and she was negligent, she only pays for a silver coin. It is only if she damaged it that she must recompense him for the full value of a gold coin. Does this not seem to indicate that a mazik is worse than being negligent?"

The Lechem Mishnah then answered his own question. "But the Gemara itself says the reason for this differentiation: the woman did not assume the responsibility to guard the gold, only the supposed silver. Although negligence is exactly like mazik, this is only if the person is a watchman on the object. Regarding whatever she accepted to watch she must pay, just

like hezek. It is only regarding that which she did not accept upon herself to guard that negligence is not equated with outright damage."¹ ■

1. שו"ת לחם רב סימן קפ"ז

(Insight...Continued from page 1)

Beis Halevi explains the idea based upon our Gemara. When direct harm is inflicted in a manner which is unjustified whether an item is more valuable or less valuable, there is no excuse for the perpetrator even if he did not realize the actual increased value of the item. If the act of Shechem was one which was allowed or even tolerable against even a simple family in the land, then we could not blame Shechem for not realizing that Dina was from such an illustrious family. Nevertheless, because his act was actually an outrage under any circumstances or against any person, he was therefore fully liable to pay "gold." He was therefore punishable for the full impact of the damage which he incurred against the sanctity of the great family of Yisrael. ■