

OVERVIEW of the Daf

1) A shomer who denies the depositor's claim (cont.)

Another unsuccessful challenge to R' Sheishes's ruling is presented.

2) Full denial

R' Huna in the name of Rav rules that if witnesses come to confirm a claim that the defendant had denied completely and had taken an oath that he owed nothing, the defendant is not obligated to pay. This ruling is based on an exposition.

Rava suggests that this ruling of Rav would be logical regarding a loan but in fact it applies even to a deposit.

R' Nachman repeated Rav's ruling and R' Acha bar Minyomi unsuccessfully challenged this ruling.

A conversation between Rami bar Chama and R' Nachman regarding R' Nachman's personal position on this matter is presented.

R' Hamnuna unsuccessfully challenges this ruling.

Rava challenges this assumption of R' Hamnuna's challenge and accordingly, offers another explanation of Rav's ruling.

R' Ashi unsuccessfully challenges Rava's interpretation of Rav's teaching.

3) Falsely claiming a deposit was stolen

R' Chiya bar Abba in the name of R' Yochanan rules that one who falsely claims a deposit was stolen will pay כפל or 'וה' ד' if he slaughtered or sold the animal.

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REVIEW and Remember

1. What was meant by Ilfa's statement שבועה קונה?
2. How did R' Ashi challenge Rava's interpretation of Rav's ruling?
3. Explain אין משיבין על היקישא.
4. What is the source that one does not become a shomer on an object that was deposited by a child?

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Distinctive INSIGHT

When is the שומר liable for כפל?

הטוען טענת גנב בפקדון משלם תשלומי כפל וכו'

The Gemara discusses a case of a person entrusted to guard (לשמור) an item for its owner, and when the owner returns to retrieve his item, the שומר claims that the item was stolen. If, in fact, the שומר himself was the one who stole the item, the Torah teaches that he must be the one who pays double. ברכת שמואל explains that theft defines a situation where the object is taken into the possession of the thief illegally (באיסורא אתא לידיה). In our case, the object was presented to the שומר in good faith, but it was later withheld by an act of deception. Nevertheless, the Torah teaches us a חידוש that here, too, the payment is כפל. We can explain that although this case is technically not a case of genuine theft, it is a case where a שומר is obligated to pay double due to his misrepresentation of the status of the object entrusted to him.

Earlier (63b), the Gemara elaborated and concluded that the only time a שומר pays כפל is when his claim was that the object was stolen, and that he swore falsely to back up his claim. If he presented some other claim (such as that the object was lost), or if he does not support his claim with an oath, he does not pay כפל. The Rishonim explain why the case of a שומר-turned-thief is liable for כפל, and why under these specific conditions.

Rambam (Geneiva 4:10) writes that if the שומר snatches a sheep from the flock or a coin from a purse, he must pay כפל just like any other thief. Ra'aved questions this ruling, as Rambam does not mention the requirements set by the Gemara of the specific nature of the claim or the oath. It seems, according to Rambam, that the שומר is like any other thief and should be liable even if he claims that the item was lost, and even without an oath.

Kesef Mishne explains that if the שומר does an actual act of thievery, and he snatches a sheep from the flock, he is certainly like any thief, and he is liable even without a specific claim of "it was stolen" and even without an oath. The specific guidelines of טוען טענת גנב and an oath are only necessary when the object remains where it is and the שומר tries to avoid returning the item by presenting a false claim. ■

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HALACHAH Highlight

Is a minor capable of "giving?"

כי יתן איש אין נתינת קטן כלום

"When a man will give" [teaches] that the giving of a child is meaningless

Our Gemara is clear that a child is incapable of "giving" something to another. This leads Minchas Chinuch¹ to ask an interesting question related to pidyon haben. If there is a firstborn who was not redeemed by his father and the child redeemed himself by giving a kohen the necessary five selaim has the mitzvah been fulfilled? Do we consider the money given to the kohen for redemption the same as any other debt or is the obligation to give five selaim to a kohen for redemption different? Regarding other debts that halacha is that we do not collect the debt from orphans who are minors but if they voluntarily paid off the debt they are freed of any further responsibility. So too, one could argue that when the child redeems himself the obligation has been fulfilled and it is unnecessary for him to redeem himself when he becomes an adult. On the other hand, one could argue that redeeming a first-born child is a mitzvah and a child is incapable of fulfilling a mitzvah and thus he would be required to redeem himself when he becomes an adult. Minchas Chinuch also adds that even though our Gemara teaches that a child is incapable of giving, that limitation will not constitute an impediment in this case. Since the Kohen has the right to take the money against the wishes of the firstborn, due to the lien (שעבוד) the Torah puts on his property it is unnecessary for the child to "give" and as long as the money reaches the kohen the obligation has been fulfilled.

Another related issue is whether one fulfills the mitzvah of

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R' Yochanan explains the rationale behind this ruling.

The analogy made by R' Yochanan is unsuccessfully challenged.

R' Chiya bar Abba unsuccessfully challenges R' Yochanan's ruling.

The Gemara presents numerous alternative responses that R' Yochanan could have offered and explains why he did not choose that response.

4) Falsely claiming a lost object was stolen

R' Chiya bar Abba in the name of R' Yochanan rules that one who falsely claims a lost object was stolen from his possession must pay כפל.

R' Abba bar Mamal unsuccessfully challenges this ruling.

5) Falsely claiming a deposit was stolen (cont.)

R' Chiya bar Abba in the name of R' Yochanan rules that one who falsely claims a deposit was stolen will pay כפל only if there was a partial admission (מודה במקצת). ■

by giving the gifts to a child. Our Gemara derives the principle that a child cannot give from the verse *כִּי יִתֵּן אִישׁ* – If a man will give – from which the Gemara inferred that only an adult can give but not a child. Yerushalmi², however, derives this principle from the end of the verse that says *רַעְיוֹ* – his friend – and a child does not qualify as *רַעְיוֹ*. Accordingly, since *משלוח מנות* must be given to a "friend" (*איש לרעהו*) one could assert that the mitzvah is not fulfilled if it is given to a child. Beior Halacha³ rejects this position since it is based on a conclusion drawn from Yerushalmi and the Bavli disagrees. ■

1. מצוה שצ"ב

2. ירושלמי שבועות פ"ו ה"ה

3. בירור הלכה או"ח ח"ג סי' תרצ"ה סע' ד' ■

STORIES Off the Daf

Stealing sleep, stealing time

והעדים מעידים אותו שגנבו

Today's daf discusses theft. Rav Yisrael Salanter, zt"l, would often lament that somehow the Choshen Mispat section of Shulchan Aruch gets left by the wayside. "Chazal tell us that everything depends on mazal, even a sefer Torah in the heichal. Similarly, various halachos have an aspect of mazal too. People are exceedingly careful about certain halachos, while at the same time other halachos are completely ignored.

"This is especially true regarding theft.

This is not only regarding other people's money; many are indifferent regarding stealing a fellow Jew's sleep and time as well..."

Once, Rav Yisrael attended a close friend's wedding until late into the night. Although it was held in his hometown, he did not return home. Instead, he went to a nearby inn and rented a bed.

When asked why he had not just gone home, he explained that he was afraid that if he knocked on his door this would wake his neighbors. To cause a fellow Jew such pain was surely inadmissible, so he had no recourse but to spend the night elsewhere!¹

During the 1948 bombings of Yerushalayim, water was very scarce. It was carefully doled out and usually there were

very long lines to receive a meager supply.

One time, someone went out to obtain water on behalf of Rav Isser Zalman Meltzer, zt"l. Surprisingly, this person returned with water in a relatively short time.

Since this person had often said that people did not give enough respect for the Torah and its scholars, Rav Meltzer was worried that his messenger had either cut the line or been excused from waiting altogether because he was bringing the water for Rav Isser Zalman. It was only when the messenger assured him that there happened to be a shorter line at precisely that time of day that Rav Meltzer was satisfied.² ■

1. מובא בתנועת המוסר חלק א'

2. מובא בספר הזהרו בממון חבריכם