

This month's Daf Digest is dedicated in memory of
 Mrs Yenta Weiss, Rivke Yenta bas Asher Anshel & Yosef ben Chaim Hacoheh Weiss
 By Mr. and Mrs. Manny Weiss

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah discusses the parameters of the obligation of a thief, borrower or watchman to return the object that is in their possession.

2) Returning a loan

A Baraisa is cited that seemingly contradicts the Mishnah's ruling that money borrowed in a settled area may not be paid back in a wilderness.

Abaye resolves the contradiction.

The Gemara explains the novelty of the Mishnah's last ruling that if stipulated the money could be returned in a wilderness.

3) **MISHNAH:** The Mishnah discusses the liability of a person who either does not remember whether he paid back a loan or does not know if he was ever obligated to give someone money in the first place.

4) "I don't know"

R' Huna and R' Yehudah maintain that one who responds to a claim with "I don't know" is obligated to pay whereas R' Nachman and R' Yochanan maintain that he is exempt.

Each Amora explains the rationale behind his view.

The stringent position is unsuccessfully challenged.

Support for the response to the previous challenge is presented.

5) **MISHNAH:** The Mishnah discusses the responsibility of a thief to return a sheep that he stole from a friend.

6) Clarifying the Mishnah

Rav, Shmuel, R' Yochanan and R' Chisda offer four different explanations of the Mishnah's intent behind the phrases שלא לדעת and לדעת.

Rava explains the rationale behind R' Chisda's explanation.

A possible contradiction in the position of Rava regarding these matters is suggested but rejected.

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REVIEW and Remember

1. Why is one who does not recall whether he paid back a loan obligated to pay?
2. What are the four explanations for the Mishnah?
3. What is the halachic importance of the fact that people regularly check their pockets?
4. What types of items is one permitted to purchase from a shepherd?

Distinctive INSIGHT

A loan can be claimed anywhere, a lost object or deposit only in the city

מלוה ניתני ליתבע בכל מקום, אבידה ופקדון לא ניתנו ליתבע אלא במקומן

The Mishnah rules that a loan or object deposited with someone which is received in a city may not be paid back or returned in an unsettled place (wilderness). A Baraisa cited in the Gemara rules differently, that a loan may be paid back anywhere, but a deposit must be returned in a place similar to where it was received. Abaye resolves the Mishnah and the Baraisa. While the Mishnah reports that the borrower or receiver who receives a loan or deposit in a city may not pay the loan in the wilderness, the Baraisa teaches that the lender or owner may demand payment anywhere he wishes. In other words, an item cannot be imposed upon its owner in an inconvenient or awkward location, but if he so wishes, he can ask for his item wherever he wants, even in the wilderness.

Ri"ף rules according to the understanding of Abaye. A lender who lent his money in the city may therefore ask for his money back even in the wilderness, but someone who finds an object or wishes to return a deposit back to its owner should only do so in the city.

ספר התרומות writes that this rule needs to be understood in its proper context. The intent is not that if someone lends money in the city, and he finds the borrower in the wilderness that he may demand his money on the spot. The lender cannot expect that the borrower run back to the city and bring him his money out in the country on demand. Even if the borrower has money with him, he is not obligated to give all of his cash to the lender and remain penniless. Rather, if while in the wilderness the lender asks for his money, the borrower is allowed to keep whatever he needs for his immediate sustenance, and he must give whatever he can to the lender. If the borrower claims that he only has enough for his immediate needs and cannot pay anything, the lender can assert his claim and insist that the borrower take an oath to back his inability to pay. This is the case for a loan. However, the law is different if while in the wilderness the owner claims that someone has his lost object that was found, or if he demands to have a deposit returned from this person. Even if the owner claims that the object is probably available and he wants it returned to him in the wilderness, the one being asked to return it can claim that he does not have it with him, and he does not have to take an oath. We assume that even if he owes it, he probably did not bring it with him to the wilderness. ■

HALACHAH Highlight

Replacing a counterfeit coin

ואיני יודע אם החזרתי לך אם לא החזרתי לך חייב לשלם

"I do not know whether I returned the money to you or not" – He is obligated to pay

Rambam¹ cites the Gemara's discussion of a case where Reuven asks Shimon to pay back the money he lent or deposited by him and Shimon responds by admitting that he borrowed or received the stated sum of money but does not recall whether he paid back or returned the money. Rambam rules that Shimon must pay Reuven the money that he received and he may not even ask Reuven to take an oath that Shimon still owes him the money. The rationale behind this ruling is that Shimon knows that at some point he was obligated to pay this sum of money to Reuven and Reuven asserts with certainty that he never received his money. Since Shimon is uncertain whether he ever honored his obligation he must pay (ברי ושמא ברי עדיף). Shulchan Aruch² adds that if Shimon desires he may make a declaration of banishment against anyone who improperly collects money from him.

Taz³ addresses the case of Shimon who paid a debt to Reuven. Some time after the payment Reuven returns with a counterfeit coin and claims that Shimon was the one who gave him this counterfeit coin and Shimon claims complete ignorance regarding the origin of the coin. Taz ruled that this is not a case where Reuven claims that Shimon never paid back his debt and Shimon responds that he does not recall; rather this case is more similar to the other case discussed in the Gemara where Reuven claims that Shimon owes him money and Shimon does not recall whether he ever incurred this debt in the first place. The reason for this is that we know with certainty that Shimon paid back his debt and Reuven is now claiming that one of the coins was counterfeit. That claim is considered new, therefore, Shimon does not have to replace the

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A possible contradiction between this ruling of Rav and another ruling he issued is suggested but rejected.

It is proposed that this dispute is subject to a dispute between Tannaim.

Part of this explanation is rejected.

It is suggested that there is a dispute between Tannaim regarding the matter of whether counting exempts the thief from further liability.

This suggestion is also rejected.

Two additional explanations of the Baraisa are presented.

7) **MISHNAH:** The Mishnah compiles a list of items that may not be purchased for fear that they were stolen.

8) **Purchasing items that were possibly stolen**

A Baraisa is cited that elaborates on the Mishnah's list of items that should not be purchased out of fear that they were stolen.

The Gemara presents two versions of R' Chisda's clarification of a point in the Baraisa.

A second point in the Baraisa is clarified.

The Gemara inquires which case R' Yehudah was referring to when he made his comment which effects whether he is expressing a stringent position or a lenient position. ■

counterfeit coin. Pischei Teshuvah⁴ cites authorities who disagree with Taz but he asserts that the majority of Poskim concur with Taz's ruling. Aruch Hashulchan⁵ also notes that there is a disagreement about this case and although he finds Taz's position to be more logical, nevertheless, he advises that the two parties come to some compromise between them. ■

1. רמב"ם פ"א מהל' טוען ונטען ה"ט
2. שר"ע חר"מ סי' ע"ה סע' ט'
3. ט"ז שם בסוף הסימן
4. פת"ש שם בשם הש"ך סי' רל"ב ס"ק ט"ו
5. ערוה"ש שם בסוף הסימן ■

STORIES Off the Daf

Steal now, pay later

הגזול את חברו

Today's daf discusses theft.

Once Rav Nisim Yagen, zt"l, got on a bus in Israel. As the Rav went to pay, the driver—a newly observant baal teshuvah—said, "Rabbi please sit down! There is no need for a person of your stature to pay."

Rav Yagen was horrified, "Do you really think it's worthwhile to steal a bus ride and be forced to return to this world in another gilgul to repay my debt for such a pittance? It's not even worth it for a million dollars. All the more so for a few cents!"¹

Rav Yagen pointed out many practices that are clearly defined as theft, even though most people engage in them without a second thought. "How often does a person go into a store with a little less money at hand than is needed? He promises to return later with the rest but very often forgets all such commitments. Presumably, when he says he will pay the rest at a later date, the man inadvertently means in his next lifetime!"²

"Sometimes a person accidentally drops an item in a grocery store and it breaks. Unless the customer is certain that the owner is unwilling to accept compensation for this mishap, he must pay for the damage. If he does not he is clearly a thief!"³

But one who steals in not only affected

in the next world. The Midrash in Shemos Rabbah teaches a very powerful lesson regarding the detrimental effects of theft even in this world: "When those who have theft on their conscience cry out to Hashem, He doesn't listen since they are actively engaged in sin even as they pray since they have yet to restore the theft!"⁴

How many people are circumspect regarding shaatnez because they know that wearing clothes with shaatnez blocks their tefillos? Why aren't people concerned when it comes to money acquired in an illicit fashion? ■

1. נתיבי אור ע' קמ"ד
2. שם, ע' ק"ם
3. שם ע' קמ"ג
4. שמות רבה, כ"ב