

OVERVIEW of the Daf

1) The dispute between R' Tarfon and R' Akiva

The Gemara declares that the dispute between R' Tarfon and R' Akiva regarding the liability of the finder is limited to where the finder used the money but if he didn't all opinions would agree that there is no liability.

It is suggested that this explanation refutes R' Yosef who holds that a finder has the liability of a paid watchman.

R' Yosef defends his position.

This explanation is unsuccessfully challenged.

R' Yehudah in the name of Shmuel rules that the halacha follows R' Tarfon who permits the finder to use the money.

In a related incident R' Yosef allowed a finder to use the money that he found.

Abaye successfully challenged this ruling arguing that R' Tarfon only permits the finder to use the money if he had to sell the lost object but not when he finds lost money.

2) **MISHNAH:** The Mishnah presents the proper way for the finder to care for the lost objects that are in his possession.

3) Finding tefillin

Shmuel rules that one who finds tefillin should appraise their value, sell them and hold onto the money.

Ravina unsuccessfully challenges this ruling.

4) Borrowing a Sefer Torah

A Baraisa discusses the responsibilities of one who borrows a Sefer Torah.

The reason it was necessary for the Baraisa to teach that one who borrows a Sefer Torah is not permitted to lend it to others is explained.

It is noted that the Baraisa's ruling that it is permitted for a borrower to read from the Sefer Torah is necessary for the subsequent ruling that he should not study something for the first time.

The Baraisa's ruling related to reading from a deposited Sefer Torah is explained.

The Gemara identifies the point of dispute between R' Eliezer ben Yaakov and Tanna Kamma.

5) Two people reading from a borrowed Sefer Torah

A Baraisa implies that two people could read from a borrowed Sefer Torah which contradicts the Mishnah that ruled that two people may not read from the Sefer Torah.

Abaye resolves the contradiction.

6) Shaking out a garment

The Mishnah that implies that shaking out a garment is beneficial is contradicted by a statement of R' Yochanan who indicates that it is harmful.

Four resolutions to this contradiction are presented.

Tangentially, R' Yochanan warns against drinking lukewarm water and the parameters of this restriction are explained.

R' Yochanan also offers advice against becoming accustomed to an expensive lifestyle. ■

Distinctive INSIGHT

One who guards a found object

שומר אבידה—רבה אמר כשומר חנם, רב יוסף אמר כשומר שכר

When a person finds a lost object and becomes involved in finding its owner, he assumes responsibility to protect and guard the object on the behalf of the one who lost it until he succeeds in restoring the item to its owner. Rabba says that he is assigned the role of an unpaid watchman (שומר חנם), and he is therefore not responsible of any mishap similar to that of the item's being stolen or lost. R' Yosef says that he has the role of a paid watchman, who is liable if the object is stolen.

Two explanations are given to explain the opinion of R' Yosef, as the finder of the object is not actually paid any type of salary for his service. One explanation is that while this watchman is involved in performing the mitzvah of caring for and maintaining the lost object he is exempt from performing other mitzvos. This means that he would benefit financially by being exempt from giving tzeddaka at that moment. The other explanation is that the finder does not have the choice whether to return the object, as the Torah demands that the finder accept this responsibility against his will. The fact that he is compelled to do this job places him on the level of a paid watchman.

Pnei Yehoshua explains that the very reward he receives for doing the mitzvah is the payment for which he is promoted to being a "paid" watchman. אור שמח provides a basic understanding of the different שומרים to explain this halacha, based upon the words of the Mishne L'Melech ופקדון (שאיילה ופקדון). A שומר שכר is a paid worker, who, by definition, may resign his job in the middle of the day. He is hired to actively

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REVIEW and Remember

1. According to R' Yosef, what is the point of dispute between R' Tarfon and R' Akiva?

2. What are אונסין דשואל?

3. What should one do if he finds a pair of tefillin?

4. Under what conditions is lukewarm water considered dangerous?

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HALACHAH Highlight

Learning from a lost sefer

אבל לא ילמוד בהן בתחילה

However, he should not study something that he is learning for the first time.

The Gemara rules that someone who borrows a Sefer Torah may open and read from it but he is not permitted to study something that he never learned before. Ramban¹ writes that this restriction applies only to a Sefer Torah, Nevi'im or Kesubim since studying new material involves excessive contact with the scroll and there is a concern that it would rip but when reviewing material that was already studied it is unnecessary to touch the parchment and therefore it is permitted. In later generations where they began to write even the Gemara, it is permitted for someone who borrows a massechta to study that massechta even if he has never studied it before since regarding the study of Talmud there is no difference regarding the manner in which one learns whether it is a new area of study or material that is being reviewed. Magid Mishnah² writes that although Ramban wrote his comments regarding a person who borrows a sefer it applies the same for someone who finds a lost sefer. He concludes he remarks, however, with the words *וצריך עיון*—the matter requires further analysis.

Sema³ understood that Magid Mishnah was leaning towards the position that regarding a lost sefer the finder is permitted to use that sefer while it is in his possession whether to study new material or whether to review old material. He also cites Nimukei Yosef who writes explicitly that the comment of Ramban applies to lost objects as well. Other authorities⁴ disagree and maintain that Ramban's leniency is limited to the case of a borrowed sefer.

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apply himself to guard the object in his custody. An unpaid guard cannot quit in the middle of the job. He is actually not expected to actively watch the object given to him, but he can simply put it in a secure place, where it will remain until it is retrieved by its owner. In this regard, he is not an official פועל, and he cannot resign his position. One who finds a lost object has the responsibility to actively care and maintain the object he finds, so he is therefore compared to a שומר שכר.

אמרי בינה notes that even according to the explanation that this person is compelled to watch the object, we must say that the reward he receives is the savings of tzeddakah that he need not pay while caring for the object. However, this small financial gain is usually not enough of a reason for a person to accept the major responsibility to guard the found object. This is why we add the additional consideration of his being compelled to act due to the mitzvah. ■

Since there is no difference how one handles a sefer whether the material is new or old it is assumed that the lender understood that the borrower would be "rough" with his sefer. In contrast, regarding a lost sefer there is no indication that the owner allows others to use his sefer in a "rough" fashion and it should be assumed that he does not permit the finder to use his sefer. Radvaz⁵ understood Ramban like Sema and explained that it could be understood that the owner of the lost sefer is willing to allow the finder to use his sefer as an exchange for the effort the finder puts in to taking care of the lost sefer until it could be returned. ■

1. רמב"ן ד"ה השואל
2. מגיד משנה פ"ג מהל' גזלה ואבידה הי"ג
3. סמ"ע חו"מ סי' רס"ז ס"ק כ"ח
4. ע' נתיבות המשפט חידושים ס"ק י"ב
5. שו"ת הרדב"ז ח"א סי' תק"כ ■

STORIES Off the Daf

Some practical advice

ר"ע אומר לא ישתמש בהן

Today's daf discusses the halachic obligation of one who finds a lost object.

One blustery winter day, a certain newly married young man decided to get up early to learn in the big Gerrer shul in the Geulah neighborhood of Yerushalayim. The young man was very glad to have a coat that had been custom made of very warm material. After davening, the young man searched for his coat but unfortunately could not locate it. Eventually he went home and ate breakfast.

When it was time for kollel, the cold

weather reminded him of his loss and he again went to the beis midrash to look for his coat. Perhaps he had somehow missed it during his first search or perhaps someone accidentally took the coat and later returned it to the shul after realizing his error?

As he was searching, the Beis Yisrael of Gur, ז"ל, motioned to the young man to approach his room. The rebbe had noticed the young man's futile efforts and wondered what they were all about. Strictly no-nonsense, the Beis Yisrael asked the young man why he had not yet gone to kollel. When the young man explained the reason for his tardiness, the rebbe asked him to check his house to see if he had a sample of the exact material from which his coat had been sewn. After searching

for some time, the young man finally found a very small piece of the fabric and brought it back to the rebbe.

The Rebbe divided the material into four pieces and sent out four chassidim to search not only the beis midrash, but also the nearby Yeshivas Sefas Emes as well. The coat had somehow ended up in the yeshiva. The person who had accidentally taken it left it there and one of the searching chassidim picked it up. The rebbe himself presented the coat to the happy young man after minchah in Ger that very same day.

As he did so, he offered some practical advice: "Make sure to sew your name into the coat so people will know to return it to you!" ■

1. פאר ישראל פרק כ"ט