

OVERVIEW of the Daf

1) Identifying the author of the Mishnah (cont.)

The Gemara unsuccessfully challenges the assertion that the Mishnah reflects the opinion of R' Yishmael.

The end of the Mishnah is cited to challenge the assertion that the Mishnah follows the view of R' Yishmael.

The Gemara answers that the end of the Mishnah follows R' Akiva.

This suggestion is unsuccessfully challenged.

Two different Amoraim cite Rav's explanation of the Mishnah. According to one opinion the Mishnah referred to a case where the custodian intended to steal the barrel whereas according to the second opinion the intent was to misappropriate the barrel.

The practical difference between these two opinions is noted.

R' Sheishes challenges these interpretations and offers his own interpretation of the Mishnah.

The Gemara explains how the two opinions quoting Rav as well as R' Sheishes explain the Mishnah in accordance with R' Yishmael.

The reason R' Yochanan, cited earlier, rejected these interpretations is explained.

2) Misappropriation

Rav and Levi disagree whether misappropriation is dependent upon a loss or not.

An attempt is made to demonstrate that Rav is the one who said that misappropriation is not dependent upon a loss.

This proof is rejected.

From our understanding of Rav's opinion the Gemara assumes that Levi holds that misappropriation is dependent

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REVIEW and Remember

1. What does R' Yochanan offer as a reward for the one who would explain the Mishnah in accordance with a single position?

2. What is the issue debated by Rav and Levi?

3. What is the point of dispute between R' Yosi of Nehorai and R' Yochanan?

4. What are two references to the law of misappropriation necessary?

Distinctive INSIGHT

What constitutes שליחות יד?

והוינן בה משום דהניח מקלו ותרמילו עליה חייב

Rav and Levi argue regarding whether a watchman is guilty of misappropriation of an object entrusted to him (שליחות יד) as soon as he takes it, or only once the object has been damaged (צריכה חסרון). Rav made a statement in clarification of a Baraisa which seems to indicate that the opinion of Rav is that the watchman is only liable once he steals the object and causes a loss to it (צריכה חסרון). The Baraisa discusses a shepherd who is responsible for harm that occurs to sheep if the shepherd had placed his bag or stick on the animal. The Gemara notes that simply placing a bag or stick on an animal hardly is reason enough to be considered שליחות יד, especially in light of the fact that the shepherd subsequently removed these items from the animal. Rav explains that, in fact, the shepherd is only liable if the bag or stick is still on the animal when the אונס later occurs. The Gemara ultimately concludes that the case is that the shepherd did not simply place the stick on the animal, but that he struck the animal (הכנישה במקל), thus proving that Rav holds that שליחות יד is only an issue once the animal is weakened.

The Gemara originally believed that the shepherd should be exempt once he removes the stick from the animal, as this is tantamount to returning the animal to its owner after having used it. Rashi explains that there was a מחלוקת earlier (40b-41a) regarding a watchman who steals an object he is guarding and then wishes to return it to the owner. R' Yishmael holds that it is not necessary for the watchman to inform the owner of the return, while R' Akiva holds that the owner must be informed of the theft as well as the return. Accordingly, our Gemara which allows removal of the stick or bag from the animal to be sufficient without informing the owner is only according to the opinion of R' Yishmael. Although we do not rule according to R' Yishmael, Rashi explains that all Amoraim (with the exception of R' Yochanan) explain that our Mishnah is authored by R' Yishmael, so the Gemara is comfortable explaining the Baraisa according to R' Yishmael, as well. This is why the Gemara thought that simply removing the stick would be enough for the shepherd to be exempt, and the Gemara answered that the shepherd was liable because the stick or bag was still on the animal.

Ra'aved explains that the Gemara thought that the shepherd's placing the stick on the animal was temporary and infrequent, and the owner would not care about it. The Gemara answers that the shepherd did this regularly, to the point where the animal is weakened and the owner would be concerned. ■

HALACHAH Highlight

Is a custodian permitted to return the deposited item early?

צריך דעת בעלים

[Returning the object] requires the knowledge of the owner

The Gemara continues its discussion of the disagreement between R' Yishmael and R' Akiva whether a custodian who misappropriated the deposit must inform the owner that he is returning the object or not – בעינן דעת בעלים או לאו. A related question arises regarding a case of a custodian who agreed to watch an item for a designated period of time and wants to return the item within that time. For example, the custodian agreed to watch the item for thirty days and after only fifteen days the custodian contacts the owner to inform him that he wants to return the object that afternoon. Shulchan Aruch¹ rules that the custodian cannot force the owner to take back the item against his will even though the owner is aware that the custodian is returning the object. Sema² explains that the owner has the right to tell the custodian that since he agreed to watch the item for thirty days he cannot renege on that agreement.

Mishnah Lamelech³ challenges this ruling from the well known principle פועל יכול לחזור בחצי היום –an employee has the right to quit his job in the middle of the day. Why then is the custodian denied the right to quit his job as a custodian on day fifteen? Ketzos Hachoshen⁴ answers that a custodian is not considered an employee as assumed by Mishnah Lamelech. A

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upon a loss.

The rationale behind this position is explained.

As part of this discussion, the Gemara presents a disagreement between R' Yosi ben Nehorai and R' Yochanan whether the law of misappropriation for a paid watchman is different than it is for an unpaid watchman.

Rava offers an alternative explanation for the pesukim that discuss misappropriation for a paid watchman and an unpaid watchman.

The Gemara explains how the opinion which holds that misappropriation is dependent upon a loss would explain these verses. ■

custodian has made an agreement with the owner to guarantee the return of the item and commits to pay the value of the item to the owner in the event that he cannot return the object (subject to the different degrees of liability of the different categories of custodians). As such, the custodian placed a lien on his property to guarantee the deposited item but that does not make him an employee. Since he is not an employee he cannot back out of the agreement that he made with the owner and therefore, even if the item was given back to the owner on day fifteen and it was stolen or lost from the owner's possession the custodian would remain liable to pay the owner the value of that deposited item. ■

1. שו"ע חו"מ סי' רצ"ג סעי' א'
2. סמ"ע שם סק"ד.
3. משנה למלך פ"ז מהל' שאלה הי"א.
4. קצות סי' רצ"ג סק"ב. ■

STORIES Off the Daf

The thief of time

"שואל שלא מדעת גזלן הוא..."

The Ahavas Yisrael of Vizhnitz, zt"l, was known to be a very diligent scholar who never wasted a moment of his time. During every available instant he was occupied with either Torah or avodah. This characteristic was so ingrained within his very nature that he felt pained by wasted time. The rebbe would often say, "The most difficult avodah for me is wasting time! Since even the smallest unit of time is an irretrievable segment of one's life span, why let it slip away without any positive use?"

On Yom Tov in his beis medrash there was a break between minchah and

ma'ariv during which everyone went home. Since everyone cleared out to rest after a very fully packed day, the gabai would lock all the doors so he could also go home for a rest.

Once, just before such a break, a certain chassid fell asleep in a corner of the beis medrash. Understandably, the gabai figured that the shul was empty and locked up. After a short time this chassid woke up and found that everyone had left and he was locked in. He frantically checked all the doors, and finally found that the gabai had left the key on the inside of one of the doors. He opened the door and took the key with him with the intention of returning it to the gabai that night.

When the gabai arrived, he found that the key to the door on that side of the shul was missing and the door on

that side of the shul remained locked. Understandably, the gabai searched thoroughly all over the shul but could not locate the key. When the chassid finally returned the key to the anguished gabai, he was relieved but a bit annoyed. After all, this man knew his address. Why hadn't he returned the key immediately?

After the chassid went his way, the Ahavas Yisrael said to the gabai, "Now I understand why chazal say a person who borrows without permission is a thief. It seems troubling why this should be so. After all, he intends to return it later. But now it is easy to comprehend. Borrowing without permission causes the owner to waste time for absolutely nothing. This borrower is a thief of the innocent man's time, and a thief of time is also a thief!"¹

1. עלי נזר, סיון תשס"ז, ע' ב'