

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah presents cases of negligence for which even an unpaid watchman is liable.

2) Clarifying the Mishnah

Rava in the name of R' Yitzchok explains why a custodian who carries the deposited money behind him is considered negligent.

Tangentially, the Gemara cites three other teachings of R' Yitzchok that relate to business-related matters.

The last teaching that blessing is found on those things that are hidden from the eye is echoed in a teaching of R' Yishmael.

A related Baraisa is cited.

3) A custodian of cash

Shmuel teaches that money is only protected when it is buried in the ground.

Numerous qualifications to this ruling are cited.

R' Acha inquires whether the money must be buried three tefachim in the ground similar to the law of chometz.

R' Ashi answers that three tefachim is not necessary and Rafram of Sichra says that one tefach is sufficient.

Two versions of a related incident are cited and the Gemara concludes that in a circumstance that began with negligence and ended with an accident, the custodian is liable.

Four more related incidents are presented. ■

REVIEW and Remember

1. How should a person divide his assets?

2. Where should a custodian keep money deposited in his care?

3. Who is responsible to check if an ox has teeth needed for eating?

4. Is a custodian liable if he did not give sufficiently clear instructions?

Today's Daf Digest is dedicated
 In memory of my grandfather
 Yoseph Chaim Ben Dov Baer Halevi
 by his grandson, Richard Ehrlich

Distinctive INSIGHT

The only way to secure money is to bury it in the ground
 שאין הכלב יכול לחפש אחריי

Shmuel ruled that a watchman who is entrusted with money must hide it by burying it in the ground. Rava clarifies that the guidelines of Shmuel to bury money in the ground must sometimes be adjusted. For example, many dishonest people developed a system of using metal bars to poke and tap the ground checking for underground cavities where money might have been hidden. Money was no longer safe when buried, so it was necessary to hide money high atop the beams of the roofs of houses. When thieves began cracking beams of houses for hidden money, it became necessary to hide money among bricks in walls, and even then near the roof or near the ground to avoid being detected by thieves who would tap the walls for hollow spots.

In reference to Shmuel's original rule, Rav Ashi was asked how deep in the ground the money must be placed to be considered securely hidden. As a frame of reference, the Mishnah from Pesachim (31b) is cited which discusses chometz which was buried by a fallen wall. There, once the chometz is three tefachim deep it is beyond detection by any dogs which might have otherwise dug it up, and the chometz is therefore considered destroyed. Rav Ashi responded that although chometz must be buried three tefachim deep, this depth is only necessary regarding food, which has an aroma which dogs can detect. Here, we are dealing with money which has no smell, so one tefach depth is adequate in order that it be out of the range of sight.

In his halachic synopsis of our Gemara, Ri"ף does not mention anything about the thieves who poke the ground or search the beams of houses. He only cites the ruling of Shmuel to hide money in the ground, or to place it in a wall near the ground or near the ceiling, to avoid being detected by tapping. We see that the text of Ri"ף did not have any mention of the pokers or roof beam breakers. This seems to be the basis for the ruling of Rambam (שאלה ד: ד: (ופקדון ד: ד:), who states that burying money one tefach deep is adequate, or in a wall near the ground or near the ceiling. A support for this text and its conclusion can be seen in the Gemara itself, where, after the ruling of Shmuel is brought regarding burying money, the Gemara references our discussion to that of buried chametz. The Gemara concludes that burying money one tefach deep is secure, and no mention is made to the problem of pokers which made burying money no longer a secure method. ■

HALACHAH Highlight

Is forgetting considered negligence?

כל לא ידענה פשיעותא היא

A claim, "I don't know" is considered negligent

The Gemara tells of an incident in which a custodian was given money for safekeeping and when the owner returned for his money the custodian informed him that he did not recall where he put the money. Rava ruled against the custodian and offered the explanation, "כל לא ידענה" – Whenever a custodian states that he does not know where the item is to be found, he is considered negligent. A question many commentators ask is that we find in other contexts that forgetting is not considered negligence. For example, Shulchan Aruch¹ rules that a person who missed davening because he figured he had more time and then forgot² is permitted to make up the missing prayer (תשלומין) because forgetting is considered a circumstance beyond his control (אונס) rather than negligence. Why then is the custodian who forgets where he hid the deposit considered negligent?

Shvus Yaakov³ suggests that under normal conditions forgetting is not considered negligence. There are, however,

certain circumstances where a person is expected to exercise greater care and forgetting in those circumstances is seen as an act of negligence. Thus we find⁴ that a person who forgets to make an eruv tavshillin two times in a row is considered negligent, even though it came about through forgetting. Rashi⁵ explains that there is an expectation for people to exercise greater care and when a person fails to do so he is considered negligent. So too, a custodian is expected to exercise greater caution with the item placed in his care and forgetting is thus considered negligence. Nesivos Hamishpat⁶ offers an alternative explanation. He suggests that when someone takes another person's object and forgets where he placed it he is categorized as a מזיק – one who damaged the item. The rationale is that anytime one takes someone else's item and places it somewhere that it cannot be retrieved, whether it is destroyed or whether it simply cannot be accessed because he does not recall its location, he has damaged the item by preventing the owner from being able to reach his object and thus he must pay the owner for the loss. ■

1. שו"ע או"ח סי' ק"ח סעי' ח'.
2. מ"ב שם ס"ק כ"ג.
3. שו"ת שבות יעקב ח"ב סי' קמ"ח.
4. שו"ע או"ח סי' תקכ"ז סעי' ז'.
5. רש"י ביצה ט"ז: ד"ה לדידך אסור.
6. נתיבות המשפט סי' רצ"א ס"ק י"ד. ■

STORIES Off the Daf

Safe investing

"לעולם ישריש אדם מעותיו..."

A certain Jewish investment broker went out of business. He lost hundreds of thousands of dollars of other people's money, often their entire life's savings. Unfortunately, some young men also invested every cent they had based on this man's assurances and became destitute with the loss. Many people felt pained by the predicament of these bnei Torah, since some had large families and absolutely no means of supporting them.

But when Rav Moshe Feinstein, zt"l, heard about this he was very upset at their foolishness. "Chazal in Bava Metzia 42 tell us what we should do

with any capital we have. A third of the money should be left liquid, a third in land, and a third in an investment. Clearly, one should never sink it all into one place for this very reason.

"Although one who violates a rabbinical prohibition is a sinner, it is definitely possible that one who stubbornly refuses to listen to chazal's advice is worse. How could they have felt they were smarter than chazal? These people are learned and surely knew chazal's advice. It would be a good idea to check into their ideological leanings!"¹

Rav Elchonon Wasserman, zt"l, would say from the Chofetz Chaim, zt"l: "If a person is in a quandary regarding what to do he may be shocked to hear that he can ask Hashem. 'What? How is that possible?' the astounded person would likely reply. But you can tell him that in addition

to the mitzvos and aveiros recorded and explained in the Torah, we also find advice regarding all the important issues of life.

"For example, regarding money chazal tell us to split what one has to invest into three portions. One is not obligated to do this, since it is just advice, but it is the tried and tested advice of chazal to ensure that one does not lose everything he has."

Rav Elchonon would add, "If one person tells his friend that his face is dirty and another person says that his face is really clean, the confused man would surely seek out a mirror to see for himself. The Torah is our mirror. When one has questions the first thing he should do is look at what the Torah says!"² ■

1. מגד גבעות עולם, ח"ב.
2. מרביצי תורה ומוסר, ח"ב, ע' קצ"ט.