

## OVERVIEW of the Daf

### 1) Taking an oath on Beis Hamikdash property (cont.)

The Gemara completes formulating the challenge to the Mishnah's ruling that an unpaid watchman does not take an oath regarding property that belongs to the Beis HaMikdash.

Shmuel resolves the contradiction.

This resolution is unsuccessfully challenged.

R' Yochanan asserts that the Mishnah presented to challenge our Mishnah follows a minority opinion and is indeed inconsistent with our Mishnah.

R' Yochanan's explanation is rejected and R' Elazar offers an alternative resolution.

### 2) Paying for Beis HaMikdash property

R' Yosef bar Chama notes a contradiction between our Mishnah and a Baraisa whether a paid watchman must pay for a loss or theft to Beis HaMikdash property.

Rabbah suggested a resolution that was successfully challenged by R' Yosef bar Chama.

R' Yosef bar Chama suggested a resolution to the contradiction from a statement of R' Sheishes.

### 3) אונאה in cases of kodshim

A Baraisa is cited that elaborates on R' Shimon's statement in the Mishnah related to אונאה for kodshim.

R' Yitzchok bar Abba challenges the logic of the Baraisa but does not demand deletion of the Baraisa since it could be interpreted as referring to a different case.

### 4) Clarifying the Mishnah

A Baraisa explains why, according to R' Yehudah, there is no אונאה for a Sefer Torah or jewels and the subsequent exchange between Rababan and R' Yehudah about the matter.

R' Yehudah ben Besaira, cited in a Baraisa, enumerates

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## Distinctive INSIGHT

*A guard watching an object of the Beis HaMikdash is exempt*  
 אמר ליה הכי אמר רב ששת בשקנו מידו

The Mishnah (56a-b) taught that a paid watchman (נושא שכר) does not pay for the theft of slaves, land, documents, or any item left in his care by the Beis HaMikdash (הקדשות). Rav Yosef bar Chama asked Rabba to resolve a contradiction between our Mishnah and a Baraisa. The Mishnah teaches that a paid watchman does not pay if an item of hekdesch is stolen from him, while the Baraisa writes that if the treasurer of hekdesch gives an item to a daily worker to guard, and the item is given to be guarded on Shabbos, the watchman will not get paid for doing this job on Shabbos. Therefore, because he is not getting paid, he is not liable if the item is stolen. If the worker guards the item all week, he can get paid for Shabbos as part of the lump sum (הבלעה) with his wages for the rest of the week. Therefore, if the item is stolen, he is responsible for what happens on Shabbos. We see that one is liable for theft of an item owned by the Beis HaMikdash.

The Gemara answers that the Baraisa agrees that the guard is not liable for the theft in any case, but if he is being paid and the item is stolen, he will lose those wages which he would have earned. This is what is meant by אחריות שבת עליו, that he bears responsibility for the theft to the degree of forfeiting his wages.

The Gemara quickly notes that based upon the רישא, this interpretation of the words אחריות שבת עליו cannot mean just losing wages, and it must refer to actual culpability for paying for the theft. Rather, R' Sheishes answers that the guard is liable even though he is watching an item of the Beis HaMikdash because קנו מידו—he specifically made a legal commitment with a transaction to guard the item. Normally he would not be liable, but due to his extra gesture of promise, he is responsible.

The Rishonim note that later (94a) R' Yochanan states that an unpaid watchman (שומר חנם) can assume responsibility of a borrower (שואל) with a verbal commitment. Why, then, does R' Sheishes require a full transaction, and not just a promise?

Tosafos (ד"ה אמר) explains that here, when guarding an object of the Beis HaMikdash, the guard would have been totally exempt, and he would not even had to take an oath. Therefore, words are not enough in order to obligate himself to pay unless he expresses his commitment with a קנין.

Ramban and Rashba (et al.) explain that once a שומר חנם already has some obligations as a שומר, he can advance his responsibility to that of a שואל with a verbal agreement. Here, where the guard for הקדש is not in the realm of having any responsibility, he only enters into the realm of obligation with a full קנין. ■

## REVIEW and Remember

1. What is R' Shimon's position concerning consecrated items for which one bears responsibility?
2. What is a permissible method of arranging for payment of a job that was done on Shabbos?
3. What is an example of verbal אונאה?
4. Why is verbal אונאה more severe than monetary אונאה?

# HALACHAH Highlight

## Payment for Shabbos employment

השוכר וכו' לשמור את התינוק וכו' אין נותנין לו שכר שבת

Someone who hires... someone to watch a child... he is not given payment for the work he did on Shabbos

From the Gemara it is evident that one is not permitted to accept payment for work that was done on Shabbos. This restriction applies even though the employee did not violate any prohibition, neither Biblical nor Rabbinic in the course of his employment. For example, someone who babysits a child on Shabbos is not permitted to accept payment for that employment unless it is done **בהבלעה** – lit. absorbed, meaning the babysitter is paid at once for babysitting that was done during the week in addition to the babysitting that was done on Shabbos.

Tur<sup>1</sup> cites his brother Rabbeinu Yechiel who expressed astonishment at the common practice of paying the chazzan and the one who blows the shofar on Rosh Hashanah. Since their employment is performed on Yom Tov it should be prohibited for them to accept payment. Mordechai<sup>2</sup> also cites authorities who opposed the practice of paying a chazzan who led davening on Shabbos or Yom Tov but suggests an explanation to justify the practice. He cites authorities who maintain that if the employee is hired to perform a mitzvah the restriction against accepting payment for a job performed on Shabbos does not apply. In Hilchos Shabbos, Shulchan Aruch<sup>3</sup> cites both opinions whether one is permitted to hire a chazzan for Shabbos. In Hilchos Rosh Hashanah, Shulchan Aruch<sup>4</sup> implies that there is no prohibition against hiring someone to

additional items that are not subject to overpayment.

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5) **MISHNAH:** The Mishnah teaches that there is also a concept of oppressing someone with words and presents some examples of verbal oppression.

### 6) Clarifying the Mishnah

A Baraisa is cited that presents the source for the prohibition against verbally oppressing others and presents numerous examples of this type of oppression.

Different Tannaim emphasize the severity of this prohibition.

### 7) Verbal abuse

Teachings related to the severity of embarrassing others and other forms of verbal abuse are presented. ■

blow shofar on Rosh Hashanah.

Teshuvos Shevet Halevi<sup>5</sup> was asked about paying for use of the mikveh on Shabbos. There were those who claimed that paying for mikveh use involved the prohibition against earning wages on Shabbos. Shevet Halevi rejected that suggestion and ruled that payment must be made and explained that since payment is made for a mitzvah it is permitted similar to the common custom of paying a chazzan. A second rationale to allow payment is that payment does not only cover what the mikvah provides on Shabbos but it also covers the maintenance that occurs over the course of the week and thus it is permitted since payment is done **בהבלעה**. ■

1. טור או"ח סי תקפ"ה.
2. מרדכי לכתובות סי"ד.
3. שו"ע או"ח סי ש"ו סעי ה'.
4. שו"ע או"ח סי תקפ"ה סעי ה'.
5. שו"ת שבט הלוי ח"ט סי ס"ו. ■

# STORIES Off the Daf

## "As if he had shed blood"

"כאילו שופך דמים..."

People often have a strange notion that if they do something as a joke, it is for some reason not prohibited since they "didn't mean anything by it," or "were just having a little innocent fun" at their friend's expense. Such people may be very careful with the details of Torah law, but sadly use lame excuses like these to insult others in public even though the violation is compared to killing the victim! Unfortunately, it is often very difficult to break the habit of one who habitually embar-

rasses others, especially if he is wealthy or influential.

Once Rav Chudah Halberstam, zt"l, the Av Beis Din of Kalshitz and the author of *Direi Chudah*, visited a certain city whose Rosh HaKahal was known for his biting humor. This Rosh HaKahal would embarrass everyone, especially those he felt were of lower social status than himself. Although people had tried to explain the seriousness of this sin to the rosh hakahal he would just brush such rebuke aside, and continue publicly shaming others. The only way this problem could be corrected was through drastic measures.

Rav Chudah—who knew of the problem—turned to the Rosh HaKahal and said, "You should know that one is literal-

ly obligated to give up his life before embarrassing a fellow Jew. Everyone knows that we are obligated to give up our lives for the three cardinal sins of murder, idolatry, or gilui arayos. But it is not only these sins themselves but also the subsidiaries of these three sins that demand such a response. We find in Bava Metzia 58 that anyone who embarrasses another is compared to having killed him. Clearly one must give up his life before doing so, since this is just like murder!"

These fiery words of rebuke which were spoken with pain made a great impression on the Rosh HaKahal. From that day people noticed a marked improvement in his behavior.<sup>1</sup> ■

1. אמרי דבש, ע' קפ"ד