

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah discusses whether there is liability in different cases of renting a cow where the renter deviated from the agreement.

2) A broken plow blade

The Gemara inquires which of the workers is responsible to pay for a broken plow blade if the renter did not deviate from instructions.

One opinion asserts that it is the one who held the handle whereas another opinion maintains that it is the one who directs the plow blade.

The Gemara rules it is the one who directs the plow blade unless the land is known to be rocky, where both would pay.

3) Sale of a blemished animal

R' Yochanan discusses the validity of a sale where the seller attempts to mislead the buyer.

A Baraisa is cited that echoes the same parameters.

R' Mordechai clarifies with R' Ashi the halacha regarding a slave woman who was sold with blemishes.

4) **MISHNAH:** The Mishnah discusses whether there is liability in different cases of renting a donkey where the renter deviated from the agreement.

5) A *Iesech* of wheat and barley

Abaye and Rava disagree whether the Mishnah means like a load (כמשאוי) or to carry (למשאוי).

The rationale behind their respective interpretations is recorded.

The Gemara unsuccessfully challenges Rava's explanation.

An unsuccessful challenge to Abaye is presented.

6) Overloading

A Baraisa identifies what is considered an overload for different types of transportation.

Three different interpretations are presented for the Baraisa's ruling concerning a porter.

R' Pappa draws an inference from the Baraisa that relates to the minimum size of a boat.

7) **MISHNAH:** The Mishnah presents different scenarios and rules whether the custodian is considered a paid watchman or an unpaid watchman.

8) Identifying the author of the Mishnah

Assuming a craftsman and a renter have the same halacha the Gemara declares that the Mishnah does not follow R' Meir that a renter is like an unpaid watchman.

The Gemara makes numerous attempts to reconcile the Mishnah with R' Meir until it finally succeeds.

9) Giving a borrowed animal to a messenger

A Mishnah is cited that teaches that once an animal is given to the recipient's messenger the sender is relieved of responsibility.

Rafram bar Pappa in the name of R' Chisda asserts that

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Distinctive INSIGHT

A professional is a שומר שכר

בההיא הנאה דתפיש ליה אאגריה דלא בעי למיעל ולמיפק אזוזי הוי עליה שומר שכר

The Mishnah states that when a professional (אומן) has materials from a client, and he is paid to apply his trade to work with those materials to produce a product, the status of the worker is as a שומר שכר. The Gemara notes that this Mishnah seems to be unlike the opinion of R' Meir who holds that a renter has the law of a שומר חנם. Nevertheless, the Gemara responds that even according to R' Meir who says that a renter has the law of a שומר חנם, a professional has the advanced status of being a שומר שכר. Tosafos explains that the reason is that he has the advantage of being in possession of the materials of the owner, and he can hold them against the funds owed to him for his services. This is unlike most hired workers who work on site where they are employed and they have nothing in their hand to secure their wages. However, a professional who generally works at his own location has this advantage.

ש"ך (Y.D. 306, #1) writes that this distinction is only critical according to the opinion that an אומן is a שומר שכר although a שוכר is generally a שומר חנם. According to the other opinion, that all שוכרים are שומרי שכר, which is the halacha, there is no distinction to be made whether a worker does his job at his own location or at the home of his client.

Some poskim explain our Gemara differently than does Tosafos, and they maintain that an אומן is not a שומר at all when he works at the client's location. Accordingly, the Mishnah that reports that a professional is a שומר שכר is only dealing with the case where he works at his own shop and the materials are brought to him. And even so, this explanation is only relevant according to the opinion that a שוכר is generally a שומר חנם, and the distinction is being made why an אומן is

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REVIEW and Remember

- Under what conditions does a falsely claimed blemish serve as grounds to void a sale?
- What is the point of dispute between Abaye and Rava?
- What type of watchman is a craftsman?
- At what point is a borrower not fully responsible for a borrowed item that remains in his possession?

HALACHAH Highlight

The responsibility of a shopkeeper

All craftsmen are considered paid watchmen

Let us explore the halacha of a particular scene, but whose principles could be applied to many similar circumstances. A person drops off his suit at the cleaners and the shop owner takes the suit and puts it on the counter for tagging. Before he tags the suit he decides to quickly run into the bakery next door for a snack. He puts up the often-used sign that informs his customers that he will be back in five minutes and runs to get his treat. To his dismay when he returns the suit is gone. The question is whether the shop owner is responsible to pay the customer for the stolen suit. The crux of the matter revolves around the question of whether the cleaner is exempt because it is common for shopkeepers to put up a sign and leave the store unattended for short periods of time, therefore it is considered as though he watched the suit the way others watch their stores (כדנטרי אינשי) or not.

The Gemara (93b) rules that an animal's owner can expect his paid shepherd to put forward a greater degree of care for his animals since that is what the payment obligates him to do. Therefore, even though the shepherd claims that he followed the common practice of shepherds he will be responsible since he was paid extra to exercise greater caution. Teshuvah Maharshach¹ limits this ruling to the case of a paid watchman who is given money to watch an item but does not apply to those who for some other reason are assigned the responsibilities of a

כל האומנין שומרי שכר הן

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different. But whenever he works at the client's site, he is not a שומר at all. This opinion is that of ב"ח אפרים, "ב"ח סמ"ע".

Accordingly, Tosafos and ש"ך hold that a professional is a שומר no matter where he works, but according to the other poskim, a professional is only a שומר when he works at his own shop, but when he works at his client's location he takes no responsibility at all as a שומר for the materials.

ש"ך would agree, however, that a worker only assumes responsibility at the client's house when the employer is not present. If the employer is present, there is no reason for the worker to assume responsibility. ■

paid watchman like the case of a craftsman. A craftsman is given the responsibilities of a paid watchman but is not paid specifically for that task. Accordingly, the cleaners-owner has the right to claim that he behaved in a typical fashion and therefore is not obligated to pay. Mishnah Lamelech² disagrees with the ruling of Maharshach and asserts that it is irrelevant why a person is assigned the responsibilities of a paid watchman – once he has that status he takes on all of those responsibilities including an obligation to exercise greater care, even if that is beyond the standards that people commonly follow. The result of the approach of Mishnah Lamelech is that the cleaner is expected to exercise greater care than others may exercise and if the suit is stolen because it was left unattended he is responsible to pay. ■

1. שו"ת מהרש"ך ח"ב סי' קס"ט.

2. משנה למלך פ"י מהלי שכירות ה"א. ■

STORIES Off the Daf

The invalid sale

הרי זה מקח טעות

Today's daf discusses an invalid sale.

A certain man purchased what seemed to be a very worthy horse to ride to a distant city. When he was already several hours on his way, he noticed a serious flaw in the animal. The buyer rode all the way back to return the horse. When he arrived at the horse dealer's premises, the purchaser demanded a refund.

"I am sorry," replied the merchant. "You are correct that there is a blemish and I certainly would have given you your money back had you returned it to me without using it from the moment you

noticed the blemish. But since you used it after seeing the blemish, you clearly forgave the blemish."¹

"What absolute nonsense," spluttered the enraged purchaser. "How could you call riding back mechilah? What was I supposed to do—pull the wagon back myself?"

The horse dealer replied, "We will go to a Rav about this question but even if you are correct in general, you definitely did not have a right to ride back so quickly. You noticed a blemish and knew full well that a hard ride could damage the horse, as I deem it has. So even if you deserve some compensation, you still will not get a total refund."

"Why should I waste my time and ride slowly because you sold me a blemished horse?"

When they went to the Teshuvah Mai-

moni, zt"l, for adjudication, he ruled that they were both right. "Since the only way to get back was to ride, the buyer's ride back does not constitute mechilah. But since the buyer concedes that the ride back weakened the animal and lowered its value, this devaluation is subtracted from the refund, since he was not careful with his fellow Jew's property."² ■

1. ש"ע חו"מ, סי' רל"ב, סי"ג

2. שו"ת מיימוני השייכות לספר קנין, סי' ז',

מובא בפת"ש, חו"מ, שם ■

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ruling that the borrower remains responsible applies only when it is returned during the term of the loan but after the term of the loan the borrower is exempt.

R' Nachman bar Pappa begins to formulate a challenge to this ruling. ■