

## OVERVIEW of the Daf

### 1) Giving a borrowed animal to a messenger (cont.)

R' Nachman bar Pappa concludes his unsuccessful challenge to the ruling cited in the name of R' Chisda that once the term of the loan passes he is not fully liable even if the borrowed item is on his premises.

According to a second version R' Nachman bar Pappa sought to bring proof to R' Chisda's ruling.

The Gemara reports that Huna Mar bar Mereimar noted a contradiction between two Mishnayos and resolved it with the principle of R' Chisda.

### 2) The responsibility of a borrower after the completion of his term

The Gemara inquires whether a borrower after the completion of his term is left with the responsibility of a paid watchman or not even that.

Ameimar answers that it is logical he should be considered a paid watchman.

A Baraisa is cited that supports this assertion.

A related incident is recorded.

R' Nachman's ruling in the incident is unsuccessfully challenged.

### 3) "Watch for me and I will watch for you"

R' Pappa explains why this is not considered שמירה בבעלים.

A Baraisa is cited and R' Pappa again explains why it is not a case of שמירה בבעלים.

A related incident is presented.

The Gemara notes that this incident is consistent with the opinion which maintains that one is exempt for פשיעה בבעלים but is inconsistent with the opinion which maintains that one is liable for פשיעה בבעלים.

Some of the details of the incident are modified.

Two related incidents are recorded.

### 4) Accepting the responsibility of a watchman

R' Huna rules that one who declares "put it down in front of you" does not accept the responsibilities of a watchman.

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## REVIEW and Remember

1. What is the responsibility of a borrower after the term of the loan?  
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2. Explain שמירה בבעלים.  
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3. What was the point of dispute between Rava and Abaye concerning the donkey taken near the Pekod River?  
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4. What is the responsibility of a person who said "Put it down in front of you"?  
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## Distinctive INSIGHT

### Rava rules correctly

אתא לקמיה דרבא, חייביה. אכסיף- לטוף איגלאי מילתא...

The halacha discussed in the Gemara is that a watchman is exempt from liability if the owner of the object he is guarding is working for him (שאיילה בבעלים). The Gemara relates an incident between two travelers, one of whom was walking, and the other was riding an animal. The one walking took his own garment and placed it upon the animal which the other was riding. The one walking then took a garment to borrow from the rider, and that garment was lost by being swept away by the water. Rava initially ruled that the borrower was obligated to pay for the garment he had borrowed. The Rabbis quickly confronted Rava and asked him why he ruled strictly in this case, when it seems to have been a clear case of שאיילה בבעלים. Rava was embarrassed, until it became clear that the one walking had placed his item on the other's animal without permission, and he had also taken the rider's garment to borrow without permission. He obviously did not qualify for the exemption of שאיילה בבעלים, and Rava's ruling turned out to be perfect.

There is a case similar to ours found in Gittin (29b), where Rava issued a ruling that seemed to be clearly mistaken, and he was initially embarrassed. As more information surfaced, it became obvious that Rava's ruling was actually perfect, albeit unknowingly. There, Rabbi Akiva Eiger refers to three other places in shas where Rava issued rulings which were seemingly mistaken, only to be discovered to be correct and just. Sefer יוסף דעת notes that our Gemara is, in fact, a fifth example of the same scenario. It is certainly fascinating to note this pattern of Rava's ruling.

Sefer מי השילוח establishes a principle based upon a famous story in Nedarim (25a) known as "Rava's stick—קניא דרבא". Two people came to be judged in Rava's court. One claimed money from the other, and the one being asked for money denied any liability, insisting that he had already paid it back. As the defendant approached to take an oath, he handed his walking stick to the plaintiff to hold for him. He had secretly hidden the disputed money in that hollowed-out stick, and when he swore that he had already returned the money, the claimant angrily slammed down the stick. The stick broke, and the money flew out. The story became known as "Rava's stick," as it demonstrated that not only did Rava rule according to halacha, but also that cases that came before him resulted in truth being served. The guilty walked out guilty, and the innocent were exonerated.

"דין אמת לאמיתו" מי שילוח adds that the trait of judging "דין אמת לאמיתו" is characteristic of those from the tribe of Yehuda. This is why Rava, who was apparently from this tribe, was originally so upset (אכסיף) when his judgment seemed incorrect. ■

# HALACHAH Highlight

## Becoming a custodian without an explicit acceptance of responsibility

איבעיא להו הנח סתמא מאי

The question was asked: If the custodian responded, "Place them down" without any further qualification what is the halacha?

Reuven was planning a trip to another city by donkey. Shimon asked Reuven if he would mind transporting a pair of shoes to his destination. Reuven responded, "הניחם כאן על החמור" – put them down here on the donkey." Shimon put the pair of shoes on the back of the donkey and Reuven began his journey. At some point during the journey Reuven walked away from his donkey for a short period of time and when he returned the shoes were missing. Shimon wanted Reuven to pay for the missing shoes but Reuven argued that he never explicitly accepted the responsibility of a watchman and should be exempt. Rosh<sup>1</sup> cited our Gemara that does not come to a conclusion regarding the meaning of הנח סתם – place it down. Seemingly, this means that Reuven cannot be forced to pay for the shoes since it is not clear whether his verbal response is an acceptance of the responsibilities of a watchman. Rosh asserted, however, that in this case everyone would agree that Reuven did have the responsibility of a watchman. The Gemara's uncertainty concerning the meaning of the phrase הנח סתם applies in the house of the potential watchman where the response could be understood to mean, "You could use my house to store your items but I do not accept upon myself the responsibilities of a watchman." This offer may appeal to Shimon and he would store his items in Reuven's house without Reuven's accepting the liability of a watchman. In our case, once Reuven

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The Gemara inquires about the halacha of one who says "Put it down."

An unsuccessful attempt is made to resolve this inquiry.

It is suggested that the matter is the subject of a debate amongst Tannaim. This suggestion is rejected.

### 5) A lender who takes security

The Gemara assumes that the Mishnah's ruling that a lender who takes security has the responsibility of a paid watchman is inconsistent with R' Eliezer who holds that he has the responsibility of an unpaid watchman.

A way of reconciling the Mishnah with R' Eliezer is suggested. ■

agrees to transport Shimon's shoes he must be accepting the responsibilities of a watchman since it will be impossible for Shimon to watch the shoes and it is inconceivable that Shimon would knowingly put his shoes into a circumstance where they are exposed and no one is responsible for them. Therefore, Reuven has the responsibility of an unpaid watchman and since in this case he was negligent he must pay Shimon for the shoes.

Bach<sup>2</sup> questions Rosh's assertion that the Gemara's question concerning the meaning of the phrase הנח סתם is limited to where the conversation takes place in the potential watchman's house. He therefore suggests that the distinction is not related to the location where the conversation takes place; rather it depends on whether the depositor will be able to take responsibility for his item or not. In the case of the shoes since Shimon will not be able to watch the shoes it is assumed that Reuven takes responsibility for those shoes. ■

1. שו"ת הרא"ש כלל צ"ד סי' ב, ד.

2. בי"ח חו"מ סי' רצ"א סעי' ג'.

# STORIES Off the Daf

## The unwilling watchman

רבי אמר בכולם אינו חייב עד שיקבל על עצמו לשמור

On today's daf we find that one is only obligated as a watchman if he accepts this responsibility on himself.

A certain man heard that his friend was traveling to a distant place and wished to send an expensive object to the very same destination. He went over to the man's home to entrust his friend with the task of taking the object with him on his trip. To his disappointment, his friend was not even there. In a way, this was to his advantage since he was not certain if his friend would agree to take responsibility for

the item. Why should he pressure him and possibly elicit an unpleasant response? It appeared to be much better to just leave the item at his friend's house with a request that he take it with him on his trip.

The friend decided to take it along since he figured that he was not responsible for the object seeing that he had not explicitly accepted the responsibility for it. Unfortunately, he was very busy at a certain point of his travels and simply forgot about his friend's item, which was stolen as a result of his negligence.

When he arrived home his friend was understandably upset by this setback, but he comforted himself with the knowledge that he at least had not lost any money. It appeared to him that the person who had taken it was clearly responsible to pay for his obvious negligence. But the person who

had taken it along on the trip did not see things that way.

The returned traveler claimed, "I never agreed to be responsible for the item. It is true you left a request that I become a watchman and I did take it with me, but who said that this gives me any responsibility for even negligence?"

The two went to the Mabit, zt"l, for adjudication. He answered, "The fact that he took it with him on the trip was even more than he was required to do, since he never even agreed to this. Even placing the object with his own possessions was more shemirah than was required and was a favor in itself. Clearly he has no responsibility as a watchman since he never accepted this upon himself."<sup>1</sup> ■

1. שו"ת מבי"ט, ח"ג, סי' ל"ו

