

OVERVIEW of the Daf

1) Giving a borrowed animal to a messenger

The Gemara continues to try and reconcile the Mishnah with R' Eliezer but eventually agrees that it is more reasonable to assume that the Mishnah is inconsistent with R' Eliezer.

It is suggested that R' Akiva and R' Eliezer disagree about Shmuel's ruling that if a borrower put up the handle of a sickle as security for a loan and the sickle was lost – the lender will not be able to recover his money.

This suggested explanation of the dispute is rejected in favor of a second explanation.

The second explanation is also rejected and a third explanation is suggested.

The third explanation is refuted and the Gemara settles on a fourth explanation of the dispute.

2) Renting out a poor man's security

R' Chanan bar Ami in the name of Shmuel rules in favor of Abba Shaul that it is permitted to rent out a poor man's security and adds a qualification to that ruling.

3) **MISHNAH:** The Mishnah discusses whether a porter who breaks a barrel while transporting it takes an oath that he was not negligent or is obligated to pay for the barrel.

4) A porter who breaks a barrel

A Baraisa presents three different opinions regarding the liability of a porter who breaks a barrel.

A contradiction between two rulings of R' Meir is noted.

R' Elazar confirms that there are two contradictory versions of R' Meir's position.

The Gemara elaborates on the position's of R' Yehudah and R' Eliezer from the Baraisa. ■

REVIEW and Remember

1. Why is it untenable for a Mishnah to be inconsistent with R' Akiva?

2. What is the point of dispute between Rabbah and R' Yosef?

3. What limitation does the Gemara put onto Abba Shaul's position?

4. If R' Elazar agrees with R' Meir, why does he disagree?

Distinctive INSIGHT

Guarding and protecting a found object or an item of collateral

שומר אבידה וכו' רב יוסף אמר כשומר שכר

When someone finds an object which was lost from its owner, he must preserve and protect the object while he tries to identify the owner and reunite him with his property. During this time, while he is guarding and watching the object, Rav Yosef rules that he is a **שומר שכר**—a paid watchman. The Gemara in Bava Kamma (56b) gives two explanations why he is promoted to the level of a paid watchman, although he does not seem to be receiving any wages for his efforts.

One explanation is that while involved in the mitzvah of caring for the object, the finder is exempt from giving tzedaka to a poor person. This financial advantage is calculated as a benefit. The other answer given is that we recognize that the job of caring for this object was cast upon the finder without his consent. Because he is compelled to do this task, even though he did not willingly accept this responsibility, he is a **שומר שכר**.

Our Gemara extends the discussion regarding the status of one guarding a found object to where one is in possession of an object given to him as collateral for a loan (**משכון**). Tosafos (Shevu'os 44b) and Rosh (Teshuvos, 90:3) explain that the lender is a **שומר שכר** as long as he has the collateral in his hands, as he is exempt from giving tzedaka at any moment he is busy to maintain the object by shaking it to air it out, or to restore it to its proper place.

It is noteworthy that although every **שומר חנם** takes responsibility to maintain the upkeep of the object in his care, we do not consider him to be a **שומר שכר** due to any tzedaka savings while he is on task as we do for one who is caring for a found object or an item given as collateral. Why is there a difference?

Rosh notes that when a lender has an object of collateral, the borrower cannot service his own object, and he relies totally upon the lender to care for it. This is also the case regarding one who lost his object and where someone else found it. However, in a regular case of a **שומר חנם** the

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HALACHAH Highlight

To what degree does the creditor own the item he takes as security?

דאמר ר' יצחק מנין לבעל חוב שקונה משכון

As R' Yitzchok said, How do we know that the creditor acquires the item he takes as security?

There is a disagreement regarding the extent of R' Yitzchok's teaching that a creditor becomes the owner of the security that he took from the borrower. Does the creditor become responsible if an אונס happens to the security or not? Rashi¹ maintains that the creditor becomes responsible even for אונסים whereas Tosafos² holds that the creditor is considered a paid watchman and therefore exempt from אונסין. Shach³ asserts that Rashi's position seems more reasonable and offers a number of proofs for this assertion. The phrase שקונה משכון – that he acquires the security, implies that the creditor acquires the object fully, not like a paid watchman who does not have any ownership of the item that is in his care. Furthermore, R' Yitzchok derives his position from the pasuk that says ולך תהיה צדקה – and for you it will be an act of righteousness, and if the creditor is only considered a paid watchman the item belongs to the borrower so in what way is it considered an act of righteousness to return something that belongs to that person?

Ramban⁴ rejects the assertion that the creditor has the responsibility of a borrower. The reason is that the defining feature of a borrower is that the borrower has all the benefit

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owner himself does not rely upon the watchman to service his property, but only to guard it. The watchman does not assume any additional responsibility.

Ritva explains that a routine שומר חנם agrees voluntarily to guard the item, and it is clear that he has no more commitment than that. In a case of finding an object or taking collateral for a loan, it is a mitzvah for the watchman to perform this task for the owner who is absent, and this demands more responsibility, hence the status of being a שומר שכר. ■

of the agreement and in the case of the creditor taking something as security for a loan he does not have all the benefit since he provides benefit by returning the item to the borrower when he needs it. Furthermore, a borrower is never restricted from using the object he borrows and yet the creditor is not permitted to use the item he took as security. Shach, in defense of Rashi, suggests that the creditor is permitted to use the security. Granted, day items are returned to the borrower during the day and night items are returned to the borrower at night but the creditor is permitted to use the day items at night or night items during the day which is consistent with the allowance for any borrower to use the item that is in his possession. ■

1. רש"י ע"א ד"ה שקונה.

2. תוס' ע"ב ד"ה אימור.

3. ש"ך חו"מ סי' ע"ב סק"ט.

4. רמב"ן מלחמת ה' שבועות מ"ד. ■

STORIES Off the Daf

"And it will be charity for you..."

"ולך תהיה צדקה..."

On today's daf we find that a lender should return any collateral to one who borrowed money from him as an act of tzedakah. Some people spend their entire lives dedicated to giving whatever they possibly can to charity.

The Chazon Ish, ז"ל, would make time to go to the sea since swimming is a very healthy pastime which he believed was important for his wellbeing. At other times, he would go to the sea to immerse. When he went on such

trips he would take a companion along with him.

Once the Chazon Ish, ז"ל, went with someone to the shore near Tel Aviv to immerse. In the place where they went there were two options for swimmers to put their clothing. Swimmers could either pay out a full grush, or penny, and place their clothes in a shaded changing booth, or they could leave their garments in an open box under the baking summer sun for half as much.

To the surprise of the person accompanying him, the Chazon Ish made his way for the boxes in the open sun. When the companion suggested they take a shaded booth, the Chazon Ish

continued making his way towards the open boxes as though he had not heard him.

After they immersed they made their way to the boxes under the harshly beating sun. When they finally reached them, the companion commented, "Too bad we didn't take a changing booth..."

The Chazon Ish looked down at his walking stick and said softly "We can give the other half a grush to tzedakah."

When the companion told over this story he remarked, "That trip taught me the greatness of even half a penny of tzedakah!"¹ ■

1. מעשה איש, ח"ה, ע' ק"ו-ק"ז. ■