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CHICAGO CENTER FOR Torah & Chesed
Friday, December 30 2016 ■ א' טבת תשע"ז
בס"ד

OVERVIEW of the Daf

1) Watchmen (cont.)

The Gemara explains how R' Yoshaya could agree with R' Nosson regarding the exposition from the phrase ונשבר או מת.

2) Borrower

The source for liability of a borrower for theft and loss is sought.

On the second attempt the Gemara identifies the source.

The possible refutation of the relevant קל וחומר is identified and refuted.

The Gemara begins to search for the source that the exemption of בעליו עמו applies when the deposit is stolen or lost.

After a thorough analysis of the relevant sources the Gemara finally identifies an acceptable source for this ruling.

3) Negligence with the owner

R' Acha and Ravina disagree whether one is liable for negligence with the owner – פשיעה בבעלים.

The rationales for the two positions are presented.

The lenient opinion is unsuccessfully challenged.

Another unsuccessful challenge against the lenient opinion is presented.

4) The owner is with him – שמירה בבעלים

R' Hamnuna expresses a narrow definition of the exemption of שמירה בבעלים.

The Gemara successfully challenges both parts of R' Hamnuna's ruling.

5) Watchmen (cont.)

Referring back to the earlier-mentioned dispute between R' Yoshaya and R' Yonason, the Gemara relates that Abaye follows the approach of R' Yoshaya, whereas Rava follows the approach of R' Yonason.

The Gemara elaborates on Abaye's opinion. ■

REVIEW and Remember

1. What is the source that a borrower is liable for theft and loss?

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2. What is the source that the exemption of שמירה בבעלים applies to a paid watchman?

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3. According to R' Hamnuna, when does the exemption of שמירה בבעלים apply?

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4. How does the Gemara refute R' Hamnuna's position?

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Distinctive INSIGHT

How do we rule in a case of פשיעה בבעלים?

איתמר פשיעה בבעלים- פליגי בה רב אחא ורבינא, חד אמר חייב וחד אמר פטור

The Gemara cites a dispute between R' Acha and Ravina regarding the Torah's exemption to not pay if an item being guarded belongs to one's employee. The question is whether this exemption extends to where the guard was negligent, and, as a result, the object was lost. The question ultimately boils down to whether or not the rule of פטור בבעלים which is written in the episode of שואל is extended and understood to apply also to a שומר חנם and his unique level of responsibility, which is פשיעה.

The Gemara presents two attempts to resolve this issue, but it is ultimately unsuccessful in coming to a final conclusion.

In Tosafos, Rabeinu Chananel says that although this issue is unresolved in our Gemara, the general rule is that whenever Ravina and R' Acha have a dispute, the halacha is according to the more lenient opinion. In our case, claims Tosafos, this would mean that the guard is exempt in a case of פשיעה בבעלים. Tosafos acknowledges that being lenient to the watchman and exempting him from paying is actually a strict ruling against the owner, but the rule is we consider it to be a lenient ruling when the person holding the money is allowed to keep it.

אמרי בינה explains that the reason we are lenient is that whether the guard must pay or not is a ספק ממון—a doubt in a financial case, and the general rule here is המוציא מחבירו עליו הראיה, the one who wishes to extract money has the burden of proof. Being that we cannot prove that the halacha is for the owner to collect in the case of פשיעה בבעלים, the guard keeps his money and does not pay.

Rambam (שאילה ופקדון ב:ד) also rules that the guard is exempt "as in any case of monetary doubt." Rambam also writes that if there is a doubt whether the פשיעה was done at a time when the owner of the object was in the employment of the watchman or not, in this case the watchman would pay. The Gr"a (C.M. 346:#14) explains that in this case, there would be a double doubt (ספק ספיקא) whether he is exempt, so the guard cannot excuse himself.

In a later story (97a) Rava ruled that a watchman had to pay, and the Gemara reports that Rava was embarrassed that he erred when he then heard that it might have been a case of פשיעה בבעלים. The Gemara wonders why he felt he erred according to the opinion that פשיעה בבעלים is חייב, which implies that the Gemara prefers to consider this opinion as dominant. Nevertheless, it could be that we want to resolve Rava according to all opinions. ■

HALACHAH Highlight

Negligence with the owner

פשיעה בבעלים וכו' חד אמר חייב וחד אמר פטור

Negligence with the owner... one opinion says that he is liable and one opinion says that he is exempt

R' i of Lunil[1] offers the following explanation for the dispute regarding פשיעה בבעלים – a borrower who was negligent with a borrowed item when the lender was working for the borrower at the time of the loan. The opinion that maintains the borrower is liable holds that one who is negligent is categorized as a מזיק – a damager and the exemption of בעליו עמו does not apply. The dissenting opinion maintains that although he was negligent he does not lose his status as a watchman and the exemption of בעליו עמו will still apply. There is a second disagreement within the position that exempts the watchman who was negligent. Does that exemption apply only when he was negligent watching the item or does it even apply when he was negligent and damaged the item with his hands?

Ra'avad[2] writes that even if the watchman damaged the item by hand (מזיק בידים) the exemption will apply, thus we find Ra'avad ruling that a wife does not have to pay her husband for utensils that she broke since the husband is obligated to perform tasks on her behalf and the exemption of בעליו עמו applies. Mishnah Lamelech[3] notes that Ra'avad seems to contradict himself on this matter. He rules that the exemption of בעליו עמו does not apply to someone who damages the item by hand since at that time he is not acting as a watchman. How then could Ra'avad rule that a woman is exempt when she damages her husband's property by hand? He answers that the exemption of בעליו עמו applies even when one damages the item by hand as long as he did not intend to damage that item, like the case of a wife. On the other hand, if there was intent to damage the exemption does not apply and the person is categorized as a מזיק who must pay for damages.

Meiri[4] distinguishes between one who is negligent and one who damaged the deposit by hand. One who was merely negligent is still afforded the exemption of בעליו עמו as opposed to one who damaged the deposit by hand. The rationale for the distinction, explains Nesivos Hamishpat[5], is that one who damages an item is liable not due to his watchman responsibilities but due to the fact that he was a מזיק, therefore the watchman exemption of שמירה בבעלים does not apply. ■

1. ר"י מלוניל ד"ה גמרא איתמר פשיעה.
2. ראב"ד פכ"א מהל' אישות ה"ט.
3. משנה למלך פ"ב מהל' שכירות ה"ג.
4. מאירי להלן צ"ה: ד"ה אף על פי.
5. נתיבות המשפט סי' רצ"א ס"ק י"ד. ■

STORIES Off the Daf

Mutual respect

"בבעלים פטור..."

People have a tendency to automatically devalue someone they believe is making an essential mistake and even try to force the person to take on their point of view as if there can be no other valid way to look at things. It is important to note that even when gedolim argue vehemently, they still respect the authority with whom they disagree.

For example, although the Chofetz Chaim, zt"l, was vehemently against learning secular studies and convinced others not to teach such topics in yeshiva, he did not attempt to force his understanding on other greats who held differently.

When he was told that Rav Bloch of Telz, zt"l, had instituted secular studies in his yeshiva, the Chofetz Chaim insisted that he had a right to his halachic opinion and it was not his right to meddle into such a great man's affairs. Not surprisingly, this shocked the askan who had brought this subject up to no end.

It is well known that when the Russian authorities insisted that yeshivos learn secular studies, there was a very great altercation between the greatest authorities of the time. Rav Meir Simcha of Dvinsk, zt"l, was in favor of learning secular studies when the only other choice was to close the yeshiva. But many other authorities, notably Rav Chaim Brisker, zt"l, at first allowed secular studies to be taught, but when the governmental authorities increased their demands, he held that it was better to close the yeshiva than to teach secular studies to the extent required by the Russian government.

After a very draining and bitter altercation regarding this matter in Petersburg, Rav Chaim made what seemed to people to be a surprisingly warm remark regarding his chief opponent in the conference.

He said, "Rav Meir Simcha is 'gevaldig grois'—incredibly great in Torah!"

When asked to explain how he had seen this, Rav Chaim explained that during the conference he had asked Rav Meir Simcha if the blanket waiver of payment because 'בעליו עמו' applied to the guardian of a lost object.

Rav Meir Simcha immediately answered that it certainly did. "There is no difference between a shomer aveida and a regular shomer." He then explained the only possible question that Rav Chaim could have had and brought a clear proof from a different Gemara.

This was the way of the truly great. Even if they disagreed, they never lost sight of the greatness in one another![1] ■

1. לולי תורתך, ע' קע"ב-קע"ג

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