

OVERVIEW of the Daf

1) Watchmen (cont.)

The Gemara elaborates on Rava's opinion.

Rava's interpretation is unsuccessfully challenged.

R' Ashi offers another exposition that demonstrates the timing for the exemption of **שמירה בבעלים**.

This interpretation is unsuccessfully challenged.

2) The borrower

Rami bar Chama presents four inquiries related to the liability of a borrower.

Three additional inquiries related to borrowers are presented.

Ravina asks R' Ashi whether a particular case constitutes **שמירה בבעלים**.

R' Acha the son of R' Ashi answers that a husband's watching over his wife's melog property is subject to a dispute between R' Yochanan and Reish Lakish and the question of an agent raised by Ravina is subject to a dispute between R' Yonason and R' Yoshaya.

The Gemara elaborates on the dispute between R' Yochanan and Reish Lakish concerning a husband and his wife's melog property.

The Gemara elaborates on the dispute between R' Yonason and R' Yoshaya concerning an agent.

R' Illish asks Rava about a lender who tells his slave to be "borrowed" together with his cow.

The Gemara elaborates on the different aspects of the inquiry.

Rava answers that the slave is like the owner and the exemption of **בעליו עמו** will apply.

3) Melog property

Rami bar Chama inquires whether a husband is considered a borrower or renter of his wife's property.

The Gemara searches for a case where this inquiry would

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REVIEW and Remember

1. What exposition does R' Ashi make from the phrase **מעם רעהו**?
2. What is the point of dispute between R' Yochanan and Reish Lakish?
3. In what case is Rami bar Chama's question regarding a husband's right to his wife's melog property relevant?
4. Is a borrower responsible if he returns an animal in a weaker condition than when he borrowed it?

Distinctive INSIGHT

*The exemption of **מתה מחמת מלאכה** for a **שואל***

לאו לאוקמה בכילתא שאילתא

The Gemara teaches that although a borrower is liable for whatever might happen to the animal in his charge, if the animal loses weight or dies due to nothing more than simply working under normal circumstances, the borrower is exempt. In these cases, he does not have to reimburse the animal's owner. The reason given in the Gemara is that the borrower can claim, "I did not borrow the animal to simply have it stand in a cage!" It was understood that the borrower would use the animal to work with, and if the animal was not capable of withstanding normal work, its death is not due to the negligence of the borrower.

Ramban probes to understand why a borrower is exempt for **מתה מחמת מלאכה**, while at the same time a borrower is liable even if the animal dies naturally. The same line of reasoning which the Gemara gives to exempt him for **מתה מחמת מלאכה** would exempt him if the animal dies naturally. On the one hand, if the animal dies while working while being rented, this is a case of **אונס**, and he is not liable for **אונס**. But a borrower is liable for **אונס**, as is evidenced by his having to pay even if the animal dies naturally. Why, then, is he exempt if the animal dies while working?

Ramban explains that a borrower is not required to pay for something that occurs due to the negligence of the owner, and we consider the owner negligent if he lends an animal which is not capable of working. On the other hand, the owner is not negligent if he lends an animal which eventually dies naturally. This is a situation which is taken as a risk by the borrower.

Ritva comments that according to Ramban, if the borrower overworked the animal, or if the animal became ill and the borrower then had the animal work even at a normal pace, in these cases the borrower is liable, because the owner was not the one who was negligent. Rashba explains that an owner understands that his animal might lose weight or even die due to work, and he lends it accepting the condition that he will not get reimbursed if this happens.

מחנה אפרים rules that according to Ramban, if someone borrows a book to use, and uses it to the point where the book falls apart, the borrower is liable. We do not use the rule of **מתה מחמת מלאכה** to exempt him, because in this case the owner was not negligent and did not lend a defective item. Although the borrower also did not act negligently, and he simply used the book normally, this would be under the realm of **אונס** for which a borrower must pay. According to Rashba, the borrower would be exempt, because the owner understands that books wear out. ■

HALACHAH Highlight

The exemption of מתה מחמת מלאכה

אפילו מתה מחמת מלאכה נמי פטור

Even if it dies as a result of its work the borrower is also exempt

According to the majority of Rishonim¹ the definition of מתה מחמת מלאכה is that the work the animal performed was the cause of its death even if the animal does not die until after it is done working. Rambam², however, holds that the exemption of מתה מחמת מלאכה applies only when the animal dies while it is working, e.g. while it is plowing a field. If the animal dies before or after plowing the borrower is liable. Magid Mishnah³ questions this definition. According to Rambam the exemption should be called מתה בשעת מלאכה – It died while working, rather than מתה מחמת מלאכה – It died as a result of working.

Rivash⁴ explains that Rambam's explanation is a response to the question, how is anyone to know if the animal died as a result of working or not. Since this factor is unknown it is more reasonable to assume that the exemption applies specifically when the animal dies while working since that is an objective criterion. In other words, if the animal dies while working it is assumed that it died as a result of working but if it dies before or after working it is assumed that there was another cause for the animal's death and the borrower is liable.

Chelkas Yoav⁵ poses an interesting challenge to Rambam's position. The Gemara Niddah (58a) discusses the case of a woman who borrows a garment from a friend and that garment becomes dirty with דם נידות. The conclusion of the Gemara is that the borrower is obligated to clean the garment. The question is, according to Rambam, why is it necessary for the borrower to clean the garment if it became soiled during

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be relevant.

Rava asserts that the husband is considered a purchaser of his wife's melog property.

Rami bar Chama inquires about who commits the transgression of מעילה when there were sacred coins in the woman's melog property.

Rava concludes that it is the husband who committed מעילה.

4) מתה מחמת מלאכה

The Gemara inquires about the liability of a borrower if the borrowed animal becomes weak.

The premise of the inquiry is challenged and Rava states that not only when the animal weakens is the borrower exempt but also even if the animal dies he will be exempt.

An incident involving someone who broke a borrowed ax while using it is presented.

The Gemara inquires about how much the borrower must pay if he cannot prove he used it responsibly.

A ruling of Rav is cited where he held the borrower accountable for the full value of the borrowed object. ■

the time she was wearing the garment? According to the other Rishonim there is no question since the exemption of מתה מחמת מלאכה is limited to where the object become ruined as a result of its use and דם נידות is not a consequence of the use of the garment. According to Rambam, however, the borrower should be exempt since any damage that occurs while using the garment should constitute an exemption of מתה מחמת מלאכה. ■

1. עי' רמב"ן ורשב"א וריטב"א לסוגיין.
2. רמב"ם פ"א מהלי שכירות ה"א.
3. מגיד משנה שם.
4. שו"ת הריב"ש סי' תכ"ג ד"ה ומש"כ בלשונו.
5. חלקת יואב קונטרס קבא דקשייתא קושיא ל"ט. ■

STORIES Off the Daf

A casualty of use

"מתה מחמת מלאכה פטור..."

Rav Zalman of Volozhin, zt"l, was famous for his amazing erudition and diligence. Everything he ever learned he reviewed until he knew it by heart. He was so learned that even in Volozhin, "the Jerusalem of Lithuania," his degree of scholarship was considered very rare.

It is not surprising that whenever he got his hands on a sefer he had not yet learned he would review it as many times

as he possibly could, or until he knew it from memory as well as if the sefer was still open in front of him.

One time, Rav Zalman finally found a person willing to lend him a Tana D'Vei Eliyahu, a sefer which was not in any public collection in Vilna or its environs at the time. Even though he only had permission to use the sefer for a few days, he spent virtually every waking hour learning it through again and again. Since he also didn't sleep much, he was able to learn it through very many times even in such a short span of time.

When he had received it the sefer had

been in perfect condition, but by the time he returned it, it looked very used. The owner had been glad to loan it to the famous scholar and felt honored that he had put the sefer to very good use, but Rav Zalman was first and foremost a ba'al halacha, so he immediately explained why he felt he was under no obligation to pay for the devaluation of the sefer.

"We find in Bava Metzia 96 that if something dies as a result of its usual melachah, the borrower is not obligated. The same is true in this case."¹ ■

1. סי' תולדות אדם, ועי' בשו"ת מנחת אלעזר, ח"ד, סי' ע' שהניח דבריו בצ"ע. ■