

OVERVIEW of the Daf

1) The renter and the borrower

R' Yirmiya relates that sometimes the renter and borrower both bring a Korban Chatas, sometimes they both bring a Korban Asham and sometimes one brings a Korban Chatas while the other brings a Korban Asham.

The Gemara elaborates on the circumstances of the four cases.

The novelty of R' Yirmiya's ruling is explained.

2) A custodian who transfers a deposit to another custodian

Rav and R' Yochanan disagree whether a custodian who transfers a deposit to another custodian is liable for damages to the deposit.

Abaye elaborates on their two opinions.

R' Chisda asserts that Rav never stated the opinion attributed to him and it was inferred from another statement that he made and he disagrees with that inference.

Two unsuccessful challenges to R' Yochanan's position are presented.

Rava rules that when a custodian transfers a deposit to another custodian he remains liable for damages.

3) A negligent custodian

Abaya and Rava, both citing Rabbah, disagree whether a custodian is liable if he was negligent and allowed an animal to escape to a marsh where the animal died of natural causes.

Abaye elaborates on his ruling that the custodian is liable.

Rava elaborates on his ruling that the custodian is exempt.

The Gemara finds some common ground to which Abaye and Rava agree.

Rava's position is unsuccessfully challenged.

Abaye's position is unsuccessfully challenged.

4) Doing business with a friend's cow

R' Yehudah in the name of Shmuel rules like R' Yosi that the custodian may not profit from his friend's cow.

R' Shmuel bar Yehudah asks whether it is true that R' Yosi disagreed with rulings in earlier Mishnayos and secondly does halacha follow his opinion even in those cases. ■

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Distinctive INSIGHT

When a שומר חנם gives the item to a שומר שכר

אמר אביי לטעמיה דרב לא מיבעיא שומר חנם שמסר לשומר שכר דעלויי עלייה לשמירתו

Rav and R' Yochanan argued regarding the halacha of a watchman who entrusts the object he was given to another watchman (שומר שמסר לשומר). Rav rules that the first watchman is exempt from any additional responsibilities beyond his original level of obligation, whereas R' Yochanan holds the first watchman liable for any mishaps or loss of the object, even beyond his original level of commitment. Abaye explains that Rav not only considers the first watchman exempt if he gives the object to a watchman who has more responsibility than himself (i.e. where a שומר חנם gives the item to a שומר שכר), but he is exempt also where he gives it to a watchman who is less obligated than himself (i.e. where a שומר חנם gives the item to a שומר חנם).

Tosafos HaRosh explains that Abaye does not intend to say that by handing the object from a שומר חנם to a שומר שכר the degree of protection is increased due to the fact the שומר שכר is liable for theft, which is more than what the שומר חנם must pay. Rather, the increased level of guarding is due to the general assumption that a שומר שכר extends himself to do a better job of guarding the object in his trust, and this additional level of care is due to his being a paid watchman. Rosh uses this approach to explain the words of Abaye in order to understand the parallel case of a שומר שכר who gives an object to a שומר חנם. There, the degree of protection is defined as "גרועי גרעה" - being lessened." Here, we cannot say that the obligation of a שומר שכר to pay for theft is being waived with his giving the item to a שומר חנם, because the שומר שכר maintains his obligations when he gives the item in his trust to the שומר חנם. Rather, Abaye there refers to the tendency of the שומר חנם not to be as conscientious as is a שומר שכר simply due to the fact that he is not being paid, besides the fact that his degree of liability is less.

Ritva also explains that when a שומר שכר gives the object to a שומר חנם, the שומר שכר is still liable for any mishap for which he would have been responsible while the item was in his possession. Accordingly, the "lessening of the guard" is not in terms of which categories of damage will be paid, as this remains the same. Rather, the guarding of the object is diminished due to the fact that a שומר חנם does not extend himself with the same dedication as does a paid watchman. Alternatively, the loss is in a case where the second watchman is negligent. Here, it is he who is liable to pay, not the first watchman (the שומר שכר). If the שומר חנם has no money to pay, the original owner would lose, as the first שומר does not have to pay in his stead, even if he has money. ■

HALACHAH Highlight

Is a watchman responsible if the housekeeper stole the deposited jewelry

כל המפקיד על דעת אשתו ובניו הוא מפקיד

Whoever deposits an object does so with the expectation that it will be guarded by his wife and children

There was once a woman (Sarah) who agreed to watch her friend's (Rivkah) expensive jewelry for a fee. Sarah took the jewelry and placed it into the safe where she stored her own jewelry. Unfortunately for Sarah, her housekeeper broke into the safe and took all of the precious items that were stored there including Rivkah's piece of jewelry. Sarah turned to the author of Teshuvos Perach Shushan¹ for a ruling whether she must pay Rivkah the value of the stolen jewelry. Sarah's argument that she was not liable was based on our Gemara that teaches that when one gives an object to a watchman the depositor has in mind that it will also be watched by the watchman's wife and children. Accordingly, this principle applies to the other members of the household, including the housekeeper, and thus the watchman (Sarah) should not be responsible if the housekeeper stole the jewelry.

Teshuvos Perach Shushan wrote that Teshuvos Maharshach² addressed a similar question and in doing so also analyzed our Gemara. His conclusion was that the ruling in the Gemara is limited to an unpaid watchman (שומר חנם) who does not bear the same degree of responsibility as a paid watchman. In such a case the Gemara rules that the depositor has to expect that the watchman's wife and children will also be involved in

REVIEW and Remember

1. How is it possible for a renter to bring a Korban Asham and a borrower to bring a Korban Chatas?
2. How does Abaye further explain Rav's position?
3. What is the point of dispute between Abaye and Rava in the name of Rabbah?
4. Under what conditions is it normal to bring an animal to the top of a mountain?

watching the deposited item but a paid watchman has a greater responsibility to assure the safety of the deposited item. A watchman with that degree of responsibility is not permitted to allow his wife and children to watch the deposited item. This position, however, is not universally held as we find that Teshuvos Mahari Halevi³ rules that there is no difference between a paid or unpaid watchman and in both cases the item is deposited with the understanding that it would be watched by members of the watchman's household. According to this opinion Sarah would be exempt from liability. Nevertheless, Teshuvos Perach Shushan follows the strict opinion of Maharshach since his position is supported by Ritva and thus ruled that Sarah is obligated to pay Rivkah for the stolen jewelry. ■

1. שו"ת פרח שושן חו"מ כלל א' סי' א'.
2. שו"ת מהרש"ך ח"ב סי' פ"ה, סי' קס"ט.
3. שו"ת מהר"י הלוי סי' פ"ז. ■

STORIES Off the Daf

Stealing from the guardian

"אדאזל ואתא אגניב מרייהו..."

Today's daf discusses an object stolen from its guardian.

In Israel, a certain observant bus driver was once performing the required search of his bus before going off duty when he noticed a camera. Obviously, this was an expensive item that the owner was likely to try to recover. The driver placed it in his bag of personal belongings, in the hope that he would be able to restore it to its rightful owner.

The next day the bus driver was appalled to find that the camera—along with

all of his belongings—had vanished from the bus. Clearly a thief had broken in and stolen whatever he could find. The driver wondered if he had an obligation to repay the owner if he was ever found and the thief remained undiscovered. After all, why would he be responsible for another's misdeed?

But he knew that in Choshen Mishpat things are not always as they seem, so he asked a friend to ask Rav Yitzchak Zilberstein, shlit"a, regarding this question.

Rav Zilberstein answered, "Clearly, the driver has the halachic status of any person guarding a lost object. Although the mehaber rules that he has the status of a paid watchman who must pay if his charge is stolen, Rema holds he is merely an unpaid watchman. If the halacha follows Rema,

the driver only needs to pay for negligence."¹

He continued, "Although though the driver can say that he holds like Rema, it is possible that locking an item in an empty bus parked in a largely deserted bus lot is negligence. It is very well known that thieves have an easy time breaking in and the driver should have been more careful. The fact that he took this risk for his own property does not make him any less culpable regarding the lost object, as we see from the Ginas Veradim.² Another possible reason why the driver may be obligated is that he is paid a salary, and part of his job is to look after lost objects!"^{3,4} ■

1. כמבואר בחו"מ, סי' רס"ג, סי' ט"ז.
2. מובא ברעק"א, חו"מ, סי' רצ"א.
3. מובא בפתחי תשובה, סי' ש"ג.
4. עלינו לשבח, ח"א, ע' תרכ"ז.