

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah discusses the right of a money-changer, private person or storekeeper to use money that was deposited into his possession.

2) Moneychanger

Two explanations are offered why a money changer is not permitted to use the money that was tied up and deposited into his possession.

A second version of R' Mari's explanation is presented.

R' Huna rules that the moneychanger is responsible even if the money was lost through an unavoidable accident.

This ruling is challenged and consequently further clarified.

R' Nachman asserts that if the money was lost to unavoidable circumstances he is not liable.

Rava unsuccessfully challenges R' Nachman's position.

R' Nachman unsuccessfully challenges R' Huna.

3) **MISHNAH:** Three opinions are presented regarding the liability of a custodian who misappropriates a deposit.

4) Stealing and then destroying a barrel of wine

Rabbah presents guidelines for determining liability for one who steals and then destroys a barrel of wine.

The rationales behind these two rulings are explained.

The Gemara clarifies the opinion of Beis Hillel which seemingly indicates that Rabbah follows the position of Beis Shamai. Rabbah offers an alternative explanation of Beis Hillel that resolves the challenge to his position.

This interpretation is challenged from a statement of Rava.

A new explanation of the dispute between Beis Hillel and Beis Shamai is presented.

This explanation is unsuccessfully challenged.

Support for this interpretation is inferred from the language of the Mishnah.

5) R' Akiva's position

R' Yehudah in the name of Shmuel rules in accordance with R' Akiva that the liability of misappropriation is calculated at the time of the claim but R' Akiva agrees that if there are witnesses to the misappropriation he will pay its value at the time of the misappropriation.

R' Yochanan is cited as stating that R' Akiva holds that even if there are witnesses to the misappropriation the value of the item is calculated based on its value at the time of the claim.

R' Yaakov bar Idi ruled in accordance with R' Akiva.

R' Ashi offers two explanations for R' Yaakov bar Idi's reference to the halacha "always" following R' Akiva.

Rava rules in accordance with Beis Hillel that the value of a misappropriated object is calculated based on its value at the time it was removed from the owner's possession.

6) **MISHNAH:** The Mishnah presents a dispute whether intent to misappropriate is sufficient for the custodian to become liable and emphasizes that misappropriation requires an act of acquisition. ■

Distinctive INSIGHT

The onset of שליחות יד according to Beis Shamai

החושב לשלוח יד בפקדון בית שמאי אומרים חייב

Many of the Rishonim (Rashi, Tosafos, Ramban, Ritva, et.al.) explain that discussion between Beis Hillel and Beis Shamai is regarding the misappropriation is perpetrated when the watchman verbalizes his intent to use or to take the object for himself. Although the Mishnah uses the term "החושב," which generally indicates "thinking," in our context it cannot be that Beis Shamai would obligate the watchman for שליחות יד for illicit thoughts alone. The reason the Mishnah uses this term is that according to Beis Shamai the watchman is liable even if he merely stated his intentions and did not follow through with his plan. Ritva explains that the term "חושב" is appropriate here because we are dealing in a case where the watchman did not necessarily make his statement in front of witnesses. This is similar to the law that "one should not make a ברכה in one's heart (בלבו)," where the meaning is not simply that one should not think about the ברכה in his mind, but that a person should not utter the ברכה quietly to the extent that he himself cannot hear it. So, too, in our Gemara, the meaning is that the watchman uttered his intent for שליחות יד, but others did not hear it.

Toras Chaim writes that the term "חושב" is used to teach that the watchman is not liable unless there are strong indications that he is not simply issuing empty threats, but that he actually intends to carry out his plans. We have to see that his real intent was to follow through and use the item in his trust, and not that he is just exaggerating.

Rashi in Kiddushin (42b) explains that the case is precisely as written, that the watchman thought that he would use the item, and that Beis Shamai rules that he is liable already at that point. Although the verse (Shemos 22:8) states, "For any דבר פשע," which suggests that שליחות יד is only when a word is spoken (דיבור), Rashash explains that until action is taken, thought and speech are just preliminary stages, and at any point they can be referred to as דבר פשע. This appears to be a contradiction in the comments of Rashi, as here he writes that דיבור means speech, while in Kiddushin he explains that it refers to thinking about שליחות יד. Bach explains that Rashi in Kiddushin cannot mean thought alone, and that it means that the watchman spoke out his intentions to witnesses.

Some Achronim learn from the words of Mechilta that even Beis Shamai only holds the watchman liable from the moment of מחשבה if he later carries through and takes or uses the object for himself. At that point, Beis Shamai would hold the watchman responsible back to the moment of דיבור. ■

Today's Daf Digest is dedicated by Mr. and Mrs. Ira Arthur Clair

In loving memory of their mother
מרת אסתר רייזל בת ר' אפרים פישל, ע"ה

Mrs. Esther Clair O.B.M.

HALACHAH Highlight

Verbalizing intent to do a mitzvah

החושב לשלוח יד

One who intends to misappropriate

Tosafos¹ explains that the Gemara's discussion of intent to misappropriate refers to where the custodian articulated his intent to misappropriate the deposit. Similarly, when the Gemara discusses *pigul* (intent to eat a korban beyond the proper time or place) it refers to where the guilty party verbalized his *pigul* intent. Mishnah Lamelech² infers from Rambam that the mere *pigul* thought is prohibited and it is unnecessary for that intent to be articulated. Minchas Chinuch³ suggests that this dispute is related to the disagreement whether the principle מצות צריכות כונה – mitzvos require intent, requires a verbal declaration or not.

In line with this discussion we find a disagreement whether those acts that must be done for the sake of the mitzvah – לשמה, require a verbal declaration of that intent or not. Radvaz⁴ rules that one must articulate his intent to perform an act for the sake of the mitzvah. Accordingly, when one is manufacturing a Sefer Torah, tefillin or mezuzos it is not sufficient to mentally intend that the steps are being performed for the sake of the mitzvah, halacha requires that intent to be verbalized. In his conclusion he emphasizes the importance of articulating intent for the mitzvah but adds that in the event a person did not verbalize that intent the item is kosher as long as mentally he had in mind the correct intent.

REVIEW and Remember

1. Is a custodian permitted to use the money that was deposited in his possession?

2. What is the issue under dispute between Beis Shammai, Beis Hillel and R' Akiva?

3. Explain שליחות יד אינה צריכה חסרון.

4. If someone tilts a barrel to take some wine, is he liable for misappropriation?

Another application of this principle relates to making tzitzis. Is it necessary for the one who is making tzitzis to verbalize that he is making the tzitzis for the sake of the mitzvah or not? Mishnah Berurah⁵ writes that one is required to articulate the intent to make the tzitzis for the sake of the mitzvah, whereas Rav Naftali Tzvi Yehudah Berlin⁶, the Neztiv, writes that mental intent is sufficient and it is unnecessary to verbalize that intent. ■

1. תוסי' ד"ה החושב.
2. משנה למלך פ"י"ג מהל' פסולי המוקדשין ה"א.
3. מנחת חינוך מצוה י'.
4. שו"ת רדב"ז ח"א סי' קנ"ד.
5. מ"ב סי' י"ד סק"ח.
6. שו"ת משיב דבר ח"א סי' ג'.

STORIES Off the Daf

Guarding a deposit

"השולח יד בפקדון... החושב לשלוח יד בפקדון"

Today's daf discusses a guardian who steals—or even considers stealing—a deposit.

Once, the Chofetz Chaim, zt"l, had to be in a certain town for Shabbos. He had in his possession a fairly large sum of money from selling copies of his Mishnah Berurah on the road, which he needed to deposit in a safe place for Shabbos. He went to the local rav's house and explained that he had money that he could not comfortably leave in his possession for the duration of Shabbos.

For a moment he looked out the window as if he was looking for someone besides the rav, but when no one passed by,

he placed the money on the rav's table and wished him a good Shabbos.

On Sunday, the Chofetz Chaim returned to the rav to say goodbye before leaving the town. The rav was very surprised that the strange meshulach did not ask for his money back. He assumed that any moment the meshulach would recall his deposit and he watched him from the window to see how long it would take before the forgotten money would sink in, but he was shocked to see the meshulach get into a wagon, clearly with every intention of departing the town.

The rav ran after the wagon but when it didn't stop, he began shouting to the driver. The wagon driver figured that the rav also wished to travel with them, so he immediately halted the wagon.

"Don't you remember that you left money with me before Shabbos?" blurted the rav.

"Of course I remember," replied the Chofetz Chaim.

"But why didn't you ask for it when we parted?" asked the puzzled rav.

"Chazal forbid us to lend or leave money with another without witnesses in order to spare the person receiving the money the challenge of denying that he received anything. In order to avoid violating this prohibition, I left the money on your table as a gift..."

"You can have it back!" replied the rav, impressed with such uprightness. "I give it to you wholeheartedly."

The rav was flummoxed when the Chofetz Chaim gently refused and explained that he never accepted personal gifts. It was only after the money was declared ownerless in the public domain that the Chofetz Chaim would take back what had been his own money!¹ ■

1. החפץ חיים חיינו ופעלו, ח"א, ע' 1250