

## OVERVIEW of the Daf

### 1) The worker's right to eat produce of the employer (cont.)

The Gemara finally concludes that the question of whether a worker eats his own food or Hashem's food is subject to a debate between Tannaim.

2) **MISHNAH:** The Mishnah begins with the halachos that relate to forgoing one's right to eat one's employer's produce in exchange for monetary compensation. The next section of the Mishnah deals with hiring a worker without informing that the food he is to work with may not be eaten. The Mishnah concludes with a ruling related to the rights of those who guard produce.

### 3) Guardians of produce

Rav and Shmuel disagree whether guarding is like doing actual work or not.

Two unsuccessful challenges are presented against Shmuel's position that guarding is not like doing actual work.

R' Ashi cites and explains a Mishnah that is consistent with Shmuel's position.

4) **MISHNAH:** The Mishnah presents the four categories of watchman and their respective degrees of responsibility.

### 5) Identifying the author of the Mishnah

R' Nachman in the name of Rabbah bar Avuha asserts that the Mishnah follows the position of R' Meir.

When challenged R' Nachman explained that the Mishnah's ruling that a renter is like a paid watchman is the part of the Mishnah that is characteristic of R' Meir.

This explanation is unsuccessfully challenged.

An incident involving a shepherd is presented and Rabbah and Abaye argue whether the shepherd was liable for the death of the animal in his care. The essence of the dispute is whether a watchman is exempt from liability if he watched the object in his care as others would watch it.

Abaye does not succeed at refuting Rabbah's position that as long as the watchman guarded the item as others would he is exempt.

The Gemara cites other Amoraim who disagree with Rabbah and claim that the money the paid watchman receives obligates him to guard the object in a more cautious manner.

Two related incidents are recorded.

A possible dispute regarding the second incident is suggested but rejected.

6) **MISHNAH:** The Mishnah presents different occurrences that could happen and rules whether they represent an אונס or not.

### 7) Clarifying the Mishnah

A Baraisa is cited that rules that one wolf is an אונס in contrast with our Mishnah.

R' Nachman bar Yitzchok resolves the contradiction.

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## Distinctive INSIGHT

### Leaving the flock to go to the city

אי הכי אמאי פטור? תחלינו בפשיעה וסופו באונס חייב, דשמע קל אריה ועל. אי הכי אומדים אותו- מאי הוה ליה למיעבד?

The Gemara presented a dispute between Rabbah and Abaye regarding the responsibility of a paid watchman. Rabbah holds that in the case of a shepherd, once a paid watchman guards and protects the sheep in his charge as much as a normal shepherd would do, he is exempt. In other words, the watchman may take a break, take a nap, or even go back to the city when it is normal to do so, and he would be exempt if anything happens at that point. Abaye contends that once a watchman is paid, he may not abandon the sheep at any point unless he makes sure that their safety has been secured.

Abaye brought a Baraisa as a question against Rabbah. In the Baraisa a shepherd went to the city, and the sheep were then attacked by a wolf. The ruling in the Baraisa is that if the shepherd could have prevented the attack of the wolf had he been with the sheep, he is liable to pay for the loss sustained due to his not being there. This seems to be an overt question against Rabbah, who said that the watchman is allowed to go back to the city under normal conditions.

According to the conclusion of the Gemara, this Baraisa is understood differently by Rabbah and by Abaye. Rabbah explains, based upon various considerations, that the shepherd in this case left at a time when it was not normal to leave. He left in the middle of the job, but it was because he heard the sound of wolves or lions. He should have gone to get help, but he was negligent and he did not round up any reinforcements, thus leaving the sheep unattended. If we determine that he might have saved the sheep, he is liable. If we determine that he could not have done anything even had he been here, he is exempt. The reason the Gemara determines that the case is where he heard wild animals approaching is that otherwise his leaving would have been

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## REVIEW and Remember

1. What law permits produce guards to eat the produce they are watching?  
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2. When are the respective responsibilities of the different watchmen?  
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3. What is the point of dispute between Rabbah and Abaye?  
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4. Who must litigate against the thief who stole something from a watchman?  
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Today's Daf Digest is dedicated  
 By Mrs. Rivka Wiznitzer in memory of her husband  
 Mr. Abraham Wiznitzer ר' אברהם בן ר' שמואל ע"ה

# HALACHAH Highlight

## A sleeping watchman

גנא פורתא בעידנא דגנו אינשי הכי נמי דפטור

If he [the watchman] slept a little at the time that others sleep, is he also exempt?

In the Gemara two Amoraim disagree over the liability of a paid watchman who falls asleep while he is watching a deposit during the time that watchmen go to sleep, and the deposit was lost. The outcome of this debate, according to the majority of Poskim, is that falling asleep is not considered an אונס and the watchman is therefore obligated to pay for the lost object. The conclusion that falling asleep is not considered an אונס is difficult to understand when one considers the case of someone who accepts upon himself the responsibility to be a paid watchman for an extended period of time. There is an assumption in halacha that a person can not go three days without sleep. What then is a paid watchman to do if he cannot stay awake for three consecutive days and has accepted upon himself the responsibility to watch a deposit for more than that period of time? One approach, to resolve this matter, is to assume that a paid watchman is liable only when he was not an אונס from sleeping. For example, the paid watchman could have found someone to watch the deposit for him while he was sleeping or he fell asleep when he was not an אונס.

Maharsham<sup>1</sup> was once asked about the liability of a paid watchman who was overcome by sleep in a train station. He ruled that in this case the paid watchman is liable even according to those Poskim who hold that a paid watchman who is overcome with sleep is ex-

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empt, and the rule is תחילתו בפשיעה וסופו באונס חייב. Here, though, the watchman might still be exempt.

Abaye understands that the watchman left when his shift was over, but this is considered irresponsible because the sheep were not yet secure. This is why he is liable if we determine that had he been present he would have been able to save the sheep from the wolf attack.

Tosafos notes that according to Abaye, even though the watchman is irresponsible for leaving before securing the flock, this is not an act of blatant negligence on his part, but rather a degree of carelessness similar to גניבה ואבידה. Here, we do not say תחילתו בפשיעה וסופו באונס is automatically חייב. ■

empt. The reason all opinions would agree that he is liable is that even those who maintain that falling asleep is an אונס would only subscribe to that position if he fell asleep when others fall asleep like when they are in their home at night. In the train station, where it is known that there are many thieves no one would say that a paid watchman should be exempt if he fell asleep. Furthermore, in the case presented to the Maharsham where the paid watchman saw someone who was known to be a thief he should have stayed awake and if the deposit went missing he is responsible. Divrei Gaonim<sup>2</sup> also addresses a case of someone who was hired to watch merchandise at night in a marketplace and was overcome by sleep and he ruled that the watchman is liable. The rationale is that one who was hired to watch merchandise in a marketplace is considered as if he was hired to not sleep and therefore is liable if he fell asleep. ■

1. שו"ת מהרש"ם ח"ב סי' ק.

2. דברי גאונים כלל צ"ו נ"ב. ■

# STORIES Off the Daf

## An unfair fight

אמאי לוקי גברא להדי גברא..."

It is certainly a great kindness to agree to watch another's possessions, but there is a big responsibility attached to it since one must be a faithful shomer. For this very reason, many people are careful to say that although they will be happy to watch another person's property, they only do so on condition that they have absolutely no responsibility whatever happens to the item, even as a result of their negligence. It is no surprise that a person who requires someone to be held accountable for his item often must pay for this service.

A certain man agreed to act as a paid guardian of his friend's valuable object. Although he was willing to watch it careful-

ly, he was not willing to take any risk to save his friend's property. It is not too surprising that when he was accosted by two unarmed hoodlums in a place where shouting for help would have been ineffectual, he gave the object over without even trying to resist.

When the owner of the object heard this he was furious. "How can you have just let my property go to these two robbers? They were not even armed!"

The shomer for his part felt that he had done the right thing. "Two people can take anything from one even if he puts up a fight. I believe I would likely have done the same thing with my own property since I was afraid for my life, even though they were unarmed. Clearly this is a case of אונס for which I am not obligated."

When the two consulted with Rav Moshe Feinstein, zt"l, regarding their dispute, he ruled that the shomer need not

pay. "We find on Bava Metzia 93 that a watchman is considered as coerced against one armed robber. But it is clear that he is responsible to resist one unarmed robber. Two, however, constitutes an אונס. This is only if he was afraid to resist. But if he tried to resist and failed, even one unarmed robber is considered a situation of coercion, as we find in the Nesivos Hamishpat."<sup>1</sup> ■

1. אג"מ, חו"מ, ח"א, ס' ס"ו

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The reason a bandit is considered an אונס is explained.

### 8) An armed shepherd

The Gemara inquires whether an armed shepherd is responsible to defend his flock against armed bandits.

The Gemara responds that it is logical that the shepherd should not have to risk his life.

Abaye begins an inquiry. ■