

OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

A Baraisa is cited that proves that an unpaid custodian does not swear about the properties listed in the Mishnah.

A Baraisa is cited that gives the source that a paid custodian does not pay for the properties listed in the Mishnah.

An explanation of the dispute between R' Meir and Rabanan is suggested and rejected.

R' Yosi bar Chanina offers an explanation of the point of dispute between R' Meir and Rabanan.

2) Swearing on something that cannot be quantified

Abaye asserts that the Mishnah's statement that one does not swear on something that cannot be quantified does not apply if the plaintiff refers to this household of produce.

Rava proves from the Mishnah that this explanation is not correct and maintains that one does not swear even if the plaintiff refers to this house of produce.

A Baraisa is cited that the Gemara explains supports Rava's explanation.

An explanation for one of the Baraisa's rulings is presented.

This explanation is unsuccessfully challenged.

3) MISHNAH: The Mishnah presents four cases of disagreements between a borrower and lender regarding the value of the object given for collateral and its relative value to the loan. The Mishnah concludes with the rule that the one in possession of the collateral takes the oath to determine its value.

4) Clarifying the last statement of the Mishnah

The Gemara questions to which of the cases of the Mishnah does the last ruling refer.

Shmuel and others explain that it refers to the last part of the first section of the Mishnah.

Another explanation of the Mishnah is suggested according to R' Ashi.

5) Loss of collateral

Shmuel, R' Nachman and Nehardai disagree about the extent to which a loan remains affixed to the collateral.

Shmuel's position that the lender loses the entire loan upon the loss of the collateral even if the collateral is worth less than the loan is unsuccessfully challenged.

The Gemara begins a suggestion that Shmuel's ruling is related to a dispute between Tannaim by citing a Baraisa that presents a dispute between R' Eliezer and R' Akiva. ■

Distinctive INSIGHT

An oath does not apply for items which cannot be measured
 אין נשבעין אלא על דבר שבמדה ושבמשקל וכו'

The Mishnah on the previous daf taught the halacha that an oath is only administered when the item being addressed in the oath is something quantifiable in terms of measure, weight or number. For example, the Mishnah gave an illustration where the depositor claims that he gave a building full of fruit, and the watchman says that he did not know the amount given, but the building and its contents were being returned as it was given. Even if there is a question regarding whether this is מודה במקצת, the watchman is exempt from any oath because his admission was indefinite, and it did not refer to a specific measurement of fruit.

On our daf, Abaye and Rava discuss the details of this halacha. The Rishonim present various explanations to why no oath is appropriate for a claim and denial which lacks specificity of measure. Tosafos (ד"ה אלא) brings, in the name of ריב"א, that the verse (Shemos 22:8) which teaches the law of oaths uses the word "שְׁלֵמָה—a garment" to describe a prototypical item of liability. The Gemara in Bava Kamma (63a) learns from this word that the halacha of paying כפל, double, is only required for an item that is מסויים, one that has specific identifiable markings. This word can also denote an item which has no clear measure. Tosafos acknowledges that there are those who say that the word "שְׁלֵמָה" comes to exclude a case where the claim is for half of a pomegranate or half of a nut. Nevertheless, Tosafos in Bava Kamma (ibid.) notes that according to this last opinion, the source for our halacha would be the words "כי הוּא זֶה" in that same verse.

Other Rishonim (Ramban, Rosh, Ritva, Ra"n) learn that that the source for the halacha that an oath does not apply to an item that has no specific measure or count is from the phrase in the verse (ibid., 22:6) "כסף או כלים—money or utensils." Just as money is generally counted, so, too, does the halacha men-

(Continued on page 2)

REVIEW and Remember

1. What is the point of dispute between R' Meir and Rabanan?

2. Who swears about the value of the collateral?

3. What happens to a loan if the lender loses the collateral?

4. What is the point of dispute between R' Eliezer and R' Akiva?

HALACHAH Highlight

Making hamotzi on Shabbos with challah that is partially burnt

דר' מאיר סבר כבצורות דמי

R' Meir holds that they (grapes that are ready to be harvested) are treated as though they were already harvested

The Gemara records a dispute whether something that will be harvested is considered as though it was already harvested. Another related dispute is whether something that will be cut is considered as though it was already cut. Teshuvos Sha'ar Ephraim¹ discusses the following application of this dispute. Someone baked a challah for Shabbos but part of it was burnt. The question is whether this challah is considered complete as far as the requirement to make hamotzi on a complete challah is concerned. Do we look at the challah as is, which is complete or do we say that since the burnt part will be removed and not eaten it is considered as though the challah is not complete even now? According to R' Meir that something that stands to be cut away is treated as though it is cut away one would not be permitted to use this challah to fulfill the obligation to make hamotzi on a complete challah. However, we hold that something that stands to be cut is not considered as though it is already cut and therefore it may be used as a complete challah for hamotzi on Shabbos.

Chacham Tzvi² writes that the position that something that stands to be cut is treated as though it was already cut can be understand in two ways. One could assume that something that stands to be cut is treated as though it has visibly been removed or it could be halachically "considered" as though it was

(Insight...continued from page 1)

tioned in the verse only apply to vessels that are counted or measured.

Chazon Ish notes that according to ריב"א in Tosafos, not only is the law of כפל excluded from items without identifiable markings, as the Gemara teaches in Bava Kamma (63a), but it is also excluded from items which are not מסויימים in terms of measurement and weight. These items would also be excluded from the halacha of the oath of the watchman. According to the Rishonim who learn this halacha from the words "כי הוא זה," the only case of an oath which is excluded is the case of מודה במקצת.

Ktzos HaChoshen (88:#20) extends the requirement of the item needing to be one which is measurable to the law of the oath of a deposited item (שבועת הפקדון). Chazon Ish disagrees, because שבועת הפקדון need not be a case where an oath is required. ■

removed but it is not treated as though it was visibly removed. He writes that according to halacha we treat something that stands to be cut as if it was already cut but it is not treated as though it was visibly removed. Accordingly, one could make hamotzi on a challah that is partially burnt even though one will remove the burnt portion. Proof to this is that if we were to consider something that stands to be cut as though it is visibly cut one would never be able to make hamotzi on a challah since immediately after the beracha it will be cut. It must be that for the mitzvah of hamotzi we require a loaf that appears whole and complete, regardless of whether halachically it has the status of something that was already cut. ■

1. שו"ת שער אפרים סי' א', סי' ל"ח.

2. שו"ת חכם צבי סי' ס"ב. ■

STORIES Off the Daf

A Shomer Chinam

"שומר חנם...שומר שכר"

Today's daf discusses the halachos of a shomer chinam and a shomer sachar.

When the Alter of Novhardok, zt"l, was first opening his yeshiva he wondered whether he should take money from the yeshiva for his family's upkeep, or perhaps he should act l'shem shamayim and refuse to accept a penny.

Since he was unsure which was preferable, he asked Rav Itzel'e Peterburger, zt"l, his opinion. "If you don't take a salary, you will be no more than a shomer chi-

nam," Rav Itzel'e tersely replied.

When Rav Shalom Shwadron, zt"l, recounted this story he explained, "It is certainly true that on the surface it seems better to refrain from taking money for holy endeavors. Rav Itzele's point was that while the Alter might feel that the more righteous way is to refrain, taking a salary would put him in a position of greater responsibility for the yeshiva. If it would fall into financial trouble, he would be more likely to act with self-sacrifice to keep it afloat. If not, if he would just be a 'shomer chinam' who is not responsible for unforeseen disaster, he might be more likely to decide that he did not have to bear its burden. After all, was he not a volunteer doing everything for no financial

remuneration?"

Rav Shalom concluded, "Now we can understand the two sides of the Alter's question. He too understood that while in a way it is better to work l'shem shomayim, he too was afraid that if there was hardship, he might shirk his duty to work to ensure that the yeshiva survives. Rav Itzel'e told him that it is human nature to avoid difficult situations. We can never be sure if we will evade our responsibility if there is an easy way out. It was better for the Alter to take money since then he will not have an easy answer when his conscience urges him to take responsibility to work for the yeshiva's survival."¹ ■

1. זקניך ויאמרו לך, עי קצ"ה. ■