

OVERVIEW of the Daf

1) Loss of collateral

The Gemara finishes its assertion that the dispute between R' Eliezer and R' Akiva revolves around Shmuel's position that collateral is given with the understanding that if the collateral is lost the loan may no longer be collected.

This understanding of the dispute is rejected and it is suggested that the dispute revolves around a ruling of R' Yitzchok.

This explanation is also rejected and an alternative explanation of the dispute is suggested.

This explanation is also rejected.

Another dispute between Tannaim is suggested to relate to Shmuel's ruling.

This suggestion is also rejected.

הדרן עלך שבועת הדיינין

2) **MISHNAH:** The Mishnah begins with the statement that Biblically one takes an oath and does not pay but Rabbinically there are cases in which one takes an oath to collect. The Mishnah elaborates on three of these cases. ■

REVIEW and Remember

1. What is R' Yitzchak's famous teaching regarding collateral?
2. What is the disagreement regarding the status of one who is the custodian of a lost object?
3. According to the Gemara's conclusion what is the point of dispute between R' Shimon ben Gamliel and R' Yehudah HaNasi?
4. What is the fundamental difference between a Biblical oath and a Rabbinic oath?

Today's Daf Digest is dedicated
 Mr. & Mrs. S.Y. Meystel
 in memory of her father
 Mr. Jules Behren
 ר' יהודה בן ר' אליעזר ע"ה

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Distinctive INSIGHT

Rabbi Yitzchak says that the lender acquires the item of collateral

וכדברי יצחק קא מיפלגי דאמר רבי יצחק מנין לבעל חוב שקונה משכון

A lender who collects collateral is responsible to watch and guard the item as he holds on to the item for the duration of the term of the loan. R' Yitzchak goes so far as to say that the lender acquires the item (בעל חוב קונה משכון) and is considered to be its owner until such time as the loan is paid back.

The Rishonim discuss the degree of responsibility that is assumed by the lender as he holds onto the collateral in his possession. Rashi and Ba'al HaMaor explain that the lender is responsible even for unforeseen circumstances (אונסין) which may occur, similar to the degree of responsibility of a שואל. Tosafos, together with many of the other Rishonim, contend that the lender is only responsible for mishaps to the degree of גניבה ואבידה, if the item is stolen or lost, but not for אונסין. This places the lender in the category of a שומר שכר.

Tosafos proves his view based upon a Gemara in Bava Metzia (80b) where the Mishnah reported that when a loan is extended based upon the collection of collateral, the halacha is that the lender is a שומר שכר. The Gemara there tries to explain that this statement is speaking about where the arrangement for the collateral was made after the loan was due, and not when the loan was originally given, and that it represents the opinion of R' Yitzchak who holds that the lender acquires the object. We see, notes Tosafos, that even according to R' Yitzchak the lender is only responsible to the degree of a שומר שכר, and not a שואל.

Ramban, in his Milchamos, points out that our Gemara tries to show that the opinion of Rabbi Akiva can be understood according to R' Yitzchak. Rabbi Akiva says that if the collateral is lost, the lender would no longer be able to collect his loan. This seems to suggest, says Ramban, that the lender only stands to lose if the item of collateral is lost, but not if something happens to it due to אונס.

There are several approaches given to understand the opinion of Rashi, which is that the lender has the law of a שואל and is liable for אונסין ש"ך (C.M. 72:#9) explains that R' Yitzchak holds that the lender completely acquires the item of collateral while he has it, but the borrower retains the right to pay the lender and to redeem the object at any time. Nevertheless, while the object is held by the lender, the loan is considered fully paid, and if the object gets lost, even by

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HALACHAH Highlight

Is one engaged in an optional mitzvah exempt from other mitzvos?

שומר אבידה ... ור' יוסף אמר כשומר שכר דמי

Regarding a custodian of a lost object ... And R' Yosef says that he is like a paid custodian

R' Yosef maintains that a custodian of a lost object is considered a paid custodian. The reason he assigns him this status is that while he is guarding the lost item he is exempt from other mitzvos based on the principle **העוסק** – one who is engaged in a mitzvah is exempt from performing another mitzvah. An example of the application of this is that if a poor person were to approach the custodian at the same time he was taking care of the lost object he would be exempt from giving money to the poor. This potential monetary benefit is the reason he is categorized as a paid custodian. Amoraim dispute whether a lender who is watching the borrower's collateral is also considered a paid custodian and Shulchan Aruch¹ rules that a lender is considered a paid custodian since he is doing a mitzvah by making the loan.

Nesivos Hamishpat² asserts that only a person like a custodian of a lost object or a lender will be categorized as one who is engaged in a mitzvah but a gabbai tzedaka who took collateral for a person's unpaid pledge would not be categorized as a paid watchman. The reason for the distinction is that the lender and the custodian of the lost object are performing an obligatory mitzvah and thus may not take pay-

(Insight...continued from page 1)

אונס, it is the loss of the lender. **ש"ך** acknowledges the difficulty which Ramban raises, that of the limitation that the lender is not fully in control and should not be responsible for **אונס**. Yet, he explains that the Torah commands that the lender forfeit the object upon demand, when he gets paid or when the borrower exchanges one item for another. The borrower retains the rights to use the item, but in the interim it belongs to the lender. ■

ment for the performance of that mitzvah. There is no mitzvah or obligation for a person to serve as a gabbai tzedaka; rather it is an obligation upon Beis Din to appoint a gabbai tzedaka and if needed pay him for the job he performs. Since his job is voluntary it does not qualify as a mitzvah, consequently, the principle of **העוסק במצוה פטור מן המצוה** does not apply.

Imrei Binah³ disagrees and maintains that the principle **העוסק במצוה פטור מן המצוה** applies to all mitzvos that one performs, even those that are not obligatory. As proof he cites the Gemara Sukkah (26a) that teaches that those who write or even sell Sifrei Torah, tefillin or mezuzos are exempt from Krias Shema and Shemoneh Esrei while engaged in their profession. Writing Sifrei Torah, tefillin or mezuzos is not an obligatory mitzvah and yet the Gemara states that they qualify for the exemption of **העוסק במצוה פטור מן המצוה**. Thus the gabbai tzedaka will also qualify for this principle and is considered a paid custodian. ■

1. שו"ע חו"מ סי' ע"ב סעי' ב'.
2. נתה"מ שם ביאורים סי"ק י"ט.
3. אמרי בינה או"ח סי' י"ג אות ג'. ■

STORIES Off the Daf

The Extent of Responsibility

"שומר אבידה..."

Today's daf discusses the halachos of one who has a lost object in his possession.

One of the many brilliant students of Rav Yisrael Salanter's yeshiva in Kovno was Rav Meir Michel Rabinovitz, zt"l, the author of Hameir La'aretz. For twenty years, this gaon presided as rav of Shat, a small town near Kovno. Although he was offered many more pres-

tigious positions, he would always refuse, claiming to be unworthy.

At age fifty, he decided to devote himself solely to Torah and left the city rabbinate. From then he learned with absolute diligence, never wasting a second. Even when he was forced to take a break for his health, he would not waste an instant from his Torah studies.

Once, when he was staying at such a pastoral spot, one of his friends came to speak with him in learning. This man was astounded when he saw the rav poised with a stick in his hand gently dusting out an old sefer Tehilim and

a tallis katan. Since this was the first time that he had ever seen the rav away from a sefer, he wondered what this could possibly mean. When he asked, the answer given was mindboggling.

"Twenty years ago, there was a fire in Shat. These two items were found in the street, and no matter how hard we looked, we could not locate the owners. As rav it was my responsibility to hold these objects until their owner was found. It is my halachic responsibility to shake out a sefer or garment once in thirty days, I took them with me to this vacation spot, to fulfill my obligation."¹ ■

1. במחיצתם של גדולי ישראל ■