DAF Notes
Insights into the Daily Daf
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Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

Tzvi Gershon ben Yoel (Harvey Felsen) o"h

May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Watching a Lost Object

It was stated: A person watching a lost object (*which he has found*) is according to regarded as an unpaid custodian, but according to Rav Yosef, he is considered a paid custodian. Rabbah said: He is regarded as an unpaid custodian, since what benefit (*from watching the object*) comes to him? Rav Yosef said: He is considered a paid custodian on account of the benefit he derives from not being required to give bread to the poor (*while occupied in watching the lost object found by him*). [*If a poor person were to come and ask him for charity while he was busy returning it, he would be exempt from giving a perutah of tzedakah, for someone who is occupied with one mitzvah is exempt from fulfilling another mitzvah. Rav Yosef holds that because of this, he is regarded as a paid custodian.*] Some, however, explain it as follows: Rav Yosef said that he would be like a paid custodian as the Torah placed this obligation (*of watching the lost object*) upon him even against his will; he must therefore be considered a paid custodian. (56b)

Liability After Returning

Rav Yosef asked on Rabbah from the following *braisa*: If a person returns the lost object (*which he had found*) to a place where the owner is likely to see it, he is not required to concern himself with it any longer. If it is stolen or lost, he is responsible for it. Now, what is meant by "If it is stolen or lost"? Does it not mean, "If it was stolen while in his house or if it was lost while in his house" (*and if the braisa rules that he is responsible for that, this would prove that he is regarded as a paid custodian*)!?

The *Gemora* answers: No; it means that it was stolen or lost from the place to which it had been returned (*the owner's house*).

The *Gemora* objects: But did the *braisa* not state: (*If a person returns the lost object to a place where the owner is likely to see it*) he is not required to concern himself with it any longer?

Rabbah answered him: We are dealing here with a case where he returned it in the afternoon. The *braisa* is teaching two separate cases and this is what it is saying: If he returned it in the morning to a place where the owner will likely see it, at a time when it was usual for the owner to go in and out so that he would most likely see it, he is not required to concern himself with it any longer, but if he returned it in the afternoon to a place where the owner might see it, at a time when it was not usual for the owner to go in and out and he is therefore not expected to see it, if it was stolen or lost from there, he would still be responsible for it. (56b – 57a)

Animals are Different

Rav Yosef asked on Rabbah from another *braisa*: The finder is always responsible (*if it gets stolen or lost*) until he has returned it to the owner's domain. Now, what is the meaning when the *braisa* uses the term "always"? Does it not mean that the finder is responsible even if it

was stolen or lost from his house? This would prove that he is regarded as a paid custodian!?

Rabbah said to him: I agree with you in the case of animals, for since they are in the habit of taking steps outside, they need extra special watching. [*If he doesn't watch it in this manner, it is considered a negligence and he will be liable if the animal does indeed become lost*.] (57a)

Garden or Ruins

Rabbah asks on Rav Yosef from the following *braisa*: It is written (*with respect to returning a lost object*): *Return*. This teaches us only that it can be returned to the owner's house. How would we derive that it may also be returned to his garden or to his ruins? It is written further: *You shall return them*. This teaches us that it may be returned everywhere. Now, to what kind of garden and ruins may it be returned? If you say that we are referring to a garden which is guarded and to ruins which are guarded, are these not equivalent to his house (*which the Torah already stated that the object can be returned there*)? Rather, it is obvious that it is referring to a garden that is not guarded and to ruins that are not guarded. Does not this indicate that a person taking care of a lost object is regarded as an unpaid custodian (*and that is why it is sufficient for him to return it to such a place, for if he would be considered a paid custodian, he would be required to safeguard it better and return it to a place that is protected from unusual mishaps as well*)!?

Rav Yosef replied: In truth, it refers to a garden which is guarded and to ruins which are guarded, and as for your question that these should be equivalent to his house, the answer would be that the *braisa* is teaching us that it is not necessary to notify the owner (*when returning his lost object*). This is indeed supported by Rabbi Elozar, for Rabbi Elozar said: In all cases (*when something is being returned*), notification must be given to the owner, with the exception, however, of returning a lost object, as the Torah included many expressions of returning (*hasheiv teshiveim*). (57a)

Claiming it was Stolen

Abaye asked Rav Yosef: Do you really not hold that a person watching a lost object is like an unpaid custodian? But Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: If a man puts forward a claim of theft (*and he swore to that effect*) regarding an object which had been found by him (*and witnesses testify that he has stolen it himself*), he must pay double payment! Now, if you hold that the person watching the lost object is like a paid custodian, why should he be required to pay the double payment? He should be obligated only to pay the principal (*for he was not attempting to exempt himself by claiming that it was stolen, for a paid custodian is liable to pay for theft*)!? [*This proves that the watcher of a lost object is considered an unpaid custodian and he is trying to exempt himself by saying that it was stolen; this is why he pays double when we find out that he himself stole it.*]

Rav Yosef replied: We are dealing here with a case where he claimed that it was stolen by armed bandits. [*This case is a mere accident as the paid custodian is not to blame and he would not be required to pay the principal; he is therefore attempting to exempt himself; if we find out that he himself stole it, he would have to pay double*.]

Abaye asked him: But an armed bandit is surely considered a robber (*gazlan*; *and he therefore should not required to pay the double payment*)? [*The obligation to pay double is only by a thief (ganav) and not by a gazlan. A gazlan is a robber who takes things forcibly from the owner. A ganav is someone who steals secretly.*]

Rav Yosef replied: I hold that an armed bandit is considered a thief because he hides himself from people (*he is afraid to steal openly and that is why he uses*

weapons; he therefore will be obligated to pay the double payment). (57a)

Armed Bandits

The *Gemora* asks on Rav Yosef (*who holds that an armed bandit is considered a ganav*) from the following *braisa*: [*According to Tosfos, the braisa wishes to derive the halachah of shlichus yad (if a shomer uses the item he is watching for his own purposes, h eis laible to pay even for unavoidable mishaps) by a paid custodian with a kal vachomer from the halachah of shlichus yad by an unpaid custodian. If an unpaid custodian, who is not liable for theft and loss, nevertheless has the stringency of shlichus yad; then, a paid custodian, who is liable for theft and loss, should certainly have the stringency of shlichus yad! The braisa here rejects this kal vachomer.*] No! The stringency of *shlichus yad* might apply to an unpaid custodian, for he can be subject to pay the double payment (*in a case where he claims that it was stolen and it was found that he stole it himself*); however, it (*the halachos of shlichus yad*) might not be applicable to a paid custodian, who does not pay the double payment (*for if he claims that it was stolen, he does not take an oath; rather, he pays the principle immediately*)! Now if you hold that an armed bandit is considered a *ganav*, it would be possible that even a paid custodian would be required to pay the double payment, for instance, if he would have claimed that the objects he was watching were taken by an armed bandit!? [*This braisa proves that an armed bandit is regarded as a gazlan, and for that reason the claim that it was stolen by armed bandits will not lead to an obligation to pay the double payment!?*]

Rav Yosef replied: This is the meaning of the *braisa*: No! The stringency of *shlichus yad* might apply to an unpaid custodian, for he can be subject to pay the double payment (*in a case where he claims that it was stolen and it was found that he stole it himself*) in all of his claims (*whether he claims it was stolen by an unarmed thief or by an armed one*); however, it (*the halachos of shlichus yad*) might not be applicable to a paid custodian, who does not pay the double payment (*for if he claims that it was stolen, he does not take an oath; rather, he pays the principle immediately*) unless he claims that it was stolen by armed bandits! (57a – 57b)

The Borrower's Liability

Abaye again challenged Rav Yosef from the following *braisa*: It is written (*with respect to a borrower*): *And if it breaks or dies*. We learn only that he is liable in the case of breakage or death. How do we know that he is liable for theft and loss? A *kal vachomer* may be applied here: If in the case of paid custodian, who is exempt for breakage and death, he is nevertheless liable for theft and loss; then, in the case of a borrower, who is liable for breakage and death, should he not certainly be liable for theft and loss!? This is a *kal vachomer* that has no refutation! Now, if you hold that an armed bandit is considered a thief, why would there be no refutation? It could surely be refuted as follows: Perhaps the stringency (*of being liable for theft and loss*) applies only to a paid custodian, for he could be required to pay double payment where he claims that an armed bandit stole the objects from him!?

Rav Yosef said to him: This *Tanna* held that the obligation to pay the principal even without taking a false oath (*a borrower is required to pay immediately upon claiming that it was stolen*) is of more consequence than the obligation for paying double only conditioned upon taking a false oath. [*It emerges that a borrower is still stricter than a paid custodian and the kal vachomer with respect to theft and loss is a valid one!*] (57b)

A Renter

The *Gemora* attempts to bring a proof to Rav Yosef (*that an armed bandit is regarded as a ganav*) from the

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following *braisa*: If a man rented a cow from his fellow and it was stolen, and the renter said, "I will pay and not swear," and afterwards the thief was found, he pays the double payment to the renter. [*A custodian who says that he will pay acquires the object and therefore the double payment belongs to him.*] Now it was presumed that the *braisa* is following the view of Rabbi Yehudah, who said that a renter has the same *halachos* as a paid custodian (*and he will be liable for theft and loss; Rabbi Meir holds that he is exempt from paying for this*). And since the *braisa* said that the renter said "I will pay and not swear," this indicates that had he wished, he could have exempted himself by taking an oath. Under what circumstances could a renter have exempted himself? It must be dealing with a case where he claimed that an armed bandit took it from him. And since the *braisa* ruled in that case that if afterwards the thief was found, he pays the double payment to the renter, it can be concluded that an armed bandit is considered as a thief (*and that is why he pays the double payment*)!?

The *Gemora* rejects the proof: They said: Who said that this *braisa* is following the view of Rabbi Yehudah, who said that a renter has the same *halachos* as a paid custodian (*and he will be liable for theft and loss*)? Perhaps it is following the view of Rabbi Meir who said that the renter has the same *halachos* as an unpaid custodian (*and he will not be liable for theft and loss; in which case, the braisa can be referring to a claim of an ordinary thief and it would not be a proof at all to the classification of an armed bandit*).

Rabbi Zeira answered: We are dealing here with a case where the renter claimed that it was taken by an armed bandit, and it was afterwards discovered that it was taken by an ordinary (*unarmed*) thief (*and that is why he pays the double payment*). (57b)

DAILY MASHAL

Can't Make 'em Pay

A Chazan was hired by a Kehilah for Yomim Noraim, to daven both Shacharis and Musaf. When the Kehilah discovered that the Chazan was also the Baal Tefilah at an earlier "Vasikin" minyan, they refused to pay him, claiming that since they were second, the Chazan was tired and did not daven with the fire and freshness that they were expecting. The Chazan came to the Maharsham and argued that the Gemora (Bava Kamma) states that if a thief stole a cow that had been designated for a Korban, he can repay the theft with a lamb or dove, which are also appropriate for a Korban. "I too am doing an adequate job for the Kehilah. They can't demand of me more than that". The Maharsham replied: It's true that the thief can get away with a dove. But here, you want them to pay. If they are not happy, you can't make them pay.

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