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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

### **Cash Deposits**

The *Mishna* discusses one who gives an unpaid custodian money to guard. If the custodian guarded it as is customary, he is not liable for a loss of theft, but if he was derelict in guarding it – by hanging it over his back, or giving it to his little children, and not properly locking it up – he is liable for loss or theft.

The *Gemora* explains that the way to guard money is to keep them visible, and therefore one who hangs coins over his back is negligent. The *Gemora* quotes three statements of Rav Yitzchak:

1. One should keep his money accessible, so he can take advantage of investment opportunities. The Torah says in relation to the money used to redeem *ma’aser sheini* – *v'tzarta hakesef b'yadcha* – you should wrap the money in your hand, indicating that even wrapped money should be kept in your hands.
2. One should split his assets into three portions – one third in land (*i.e., long term investments*), one third in short term investments (*trade*), and one third liquid, to be able to take advantage of good investment opportunities. [*This last third is what Rav Yitzchak was referring to in his first statement.*]
3. Blessings occur only in things that are not visible. The verse says that Hashem will bless you *ba'asamecha* – in your silo. The word used for silo is similar to the word for hidden, hinting that only things that are hidden can receive full blessing. In the *Beis Medrash* of Rabbi Yishmael it was stated

that a blessing occurs only in things that an eye does not dominate, since a silo is beyond an eye's observation. (42a)

### **Blessings**

The *Gemora* quotes a *braisa* that discusses three stages of auditing the grain in a silo:

1. Upon entering the silo, one should pray that Hashem will send a blessing in this grain.
2. Upon beginning to count the grain, one should bless Hashem, Who sends blessing in this grain.
3. Once he has measured the grain, any prayers are meaningless, since blessings can occur only in things that have not been measured in any way. (42a)

### **Keep it Safe**

Shmuel says that money can be adequately guarded only by burying it. Rava explained that Shmuel agrees that if one was entrusted with money on Friday afternoon, that he need not bury it, but if he delayed burying it after *Shabbos*, he is liable for loss or theft. If the owner is a Torah scholar, he may need the money to buy wine for *havdalah*, so the custodian may delay burying the money.

The *Gemora* states that in later times, there were people who would search land for buried money, so a custodian would need to place it in the ceiling of his house. When there were people who would search ceiling boards, a custodian would be required to place it between the bricks of his house. Rava says that Shmuel agrees that a custodian may place it in the walls of his house, even not between bricks. When there were people who would tap walls to detect non hollow areas, a custodian would need



to place it in the bottom or top *tefach* of the wall space, since tapping there would not reveal enough for someone to detect it.

Rav Acha the son of Rav Yosef asked Rav Ashi if money must be buried at a depth of three *tefachim*, just as *chametz* must be buried at that depth to be considered destroyed. Rav Ashi responded that *chametz* buried in less than three *tefachim* may be sniffed and retrieved by dogs, and therefore is not considered destroyed. However, money buried in a depth of one *tefach* or more is sufficiently hidden to deter robbers. (42a)

#### ***Negligence***

Someone deposited money with a custodian, who placed it in the walls of a hunter's willow hut, and it was stolen. This location was regarded as a negligence concerning a potential fire, but not with regard to theft. This therefore depends on the general debate of whether initial negligence which concluded with an unavoidable damage is liable. The *Gemora* rules that the custodian is liable for such damage.

Someone deposited money with a custodian. When he came to collect his money, the custodian forgot where he placed the money. Rava stated that forgetting where he placed the money is negligence, and the custodian is liable. (42a)

#### ***Custodial Proxies***

Someone deposited money with a custodian, who gave it to his mother to watch. She placed it in a chest, and it was stolen. Rava explained that we can't fault the custodian, since a depositor assumes that the custodian's family will aid in the guarding, and we can't fault the mother, since she didn't know this was money deposited to guard (for if she would have known that, she would have been more careful). The custodian can claim that he didn't tell his mother the money was not his, since (he thinks) she would be even more careful if she thought that it belonged to her son. Therefore, the custodian swears that he gave the money to his mother, and his mother swears

that she placed the money in the chest and it was stolen, and both are not liable.

An estate administrator bought an ox for the orphans of the estate, and gave it to a herdsman. The ox didn't have teeth, so it starved and died. Rami bar Chama said that the administrator can claim that he was not negligent, since he gave it to the herdsman, whose profession is to guard cattle. The herdsman is not negligent since he didn't know it was lacking teeth, and placed it along with the other cattle, assuming it would eat.

The *Gemora* challenges this by noting that the herdsman was a paid custodian, and should therefore be responsible for inquiring to the welfare of the ox.

The *Gemora* clarifies that *vis a vis* the orphans, the herdsman would be responsible, but in this case, the sale of the ox was voided due to the lack of teeth, and the claimant was the seller of the ox. The herdsman was never hired by him, so he is not liable. The administrator is not negligent, since he didn't examine the ox, but gave it to the herdsman. The seller was a middleman, so he didn't examine this ox to realize that it lacked teeth. Therefore, the seller swears that he didn't know the ox was missing teeth, and the herdsman pays the seller a discounted value of the ox (*its value when sold for meat at a discount*).

Someone gave a custodian hops to guard, who stored them next to his own. When he was making beer, he told his attendant to make beer with some of the hops he had stored, and the helper took the deposited hops. Rav Amram said that the custodian is not liable, since he didn't tell the attendant to use the deposited hops, while the attendant is not liable, since the custodian didn't explicitly tell him not to take the deposited hops.

The *Gemora* qualifies that if the guarded hops were further, and the attendant took a long time, the custodian realized that he was taking the guarded hops and was



obviously pleased with that decision, and is liable if he didn't stop the attendant. The *Gemora* explains that if the hops produced good beer, the custodian must pay from his hops, since he benefited equally from the guarded hops. However, if the hops produced vinegar, he did not benefit, and is not liable. Alternatively, if the hops were inferior, and mixed in with twigs, he would be responsible to pay the beer-making value of inferior hops to the depositor. [Although they would have been worth more as animal feed, since the custodian wasn't negligent in using them for beer, he need only pay the benefit he gained from their use.] (42a – 43a)

### INSIGHTS TO THE DAF

#### *Money Matters*

The *Gemora* begins by stating that a custodian should keep deposited money on his body, and then later quotes Shmuel's statement that money must be buried. The Rambam (She'eila u'Pikadon 4:6) explains that when the money is deposited with the custodian at home, he must bury it, while if the deposit was to transport the money somewhere, he must keep it on his body.

Shmuel states that a custodian must guard money entrusted to him by burying it, and anything short of that is negligence.

The Rosh quotes Ri Barceloni that says that Shmuel is only discussing a situation where burglary is common. However, if it is not common, a custodian need only guard the money as he guards his own. The *Gemora* implies this in its follow up discussion of different ways of storing the money, which the *Gemora* explicitly ties to the prevailing form of burglars at the time.

The Rambam (She'eila u'Pikadon) seems to imply that Shmuel's statement is not subject to variation in different times and situations.

The Shulchan Aruch (HM 291:18) rules like the Rosh. See the Gra (HM 291:28) for a discussion of how this debate depends on differing texts in our *Gemora*.

The Sma (C" M 291:24) says that now our houses are much more solid than in the *Gemora's* time, and therefore a custodian may store the money in a locked house.

Shmuel is also implicitly stating that if the custodian did bury the money, and it was stolen, he is not liable.

The Rishonim debate the rule for a paid custodian. Unlike an unpaid custodian, a paid custodian is fundamentally liable for theft, but he is also not liable for unavoidable loss of the deposited item.

The *Gemora* states a number of times that a paid custodian is not liable for an item that is taken through armed robbery, since that is unavoidable. When a paid custodian buries money, but it is still stolen, he may be liable, since it is theft, but he may not be liable, since it seems like an unavoidable loss.

Rabbi Akiva Eiger (HM 303:2) lists three positions of the Rishonim on this question:

1. Tosfos (BK 57a K'gon) and the Rosh (BM 3:21) say that a paid custodian is liable, even if he buried the money, since that is included in the liability for theft. Every theft is akin to an unavoidable loss, so a theft that is more unavoidable is still a theft. Only in the case of an armed robber, where the paid custodian was present and powerless to stop the theft is considered truly unavoidable.
2. The Ramban says that a paid custodian must keep the money in his presence. Therefore, theft of buried money is not considered unavoidable, and a paid custodian is liable. However, if something unavoidable occurred to the paid custodian, making it impossible to keep the money with him (e.g., a sudden severe sickness), he is not liable.



3. Tosfos (BM 42a Amar Shmuel) says that a custodian is not liable for unavoidable theft, which includes buried money, as well as an unavoidable event which prevented his guarding.

The Rambam (She'eila u'Pikadon 4:4) applies Shmuel's statement to any item that has two things in common with money:

1. Valuable enough that burglars look for it
2. Not ruined by being underground

Therefore, blocks of precious metals and stones also must be buried when being guarded.

#### **Diversification**

Rav Yitzchak says that one should split his assets in three, with one third going to land. The Maharsha offers two explanations for this:

1. Buried underground, as Shmuel requires of the custodian
2. Invested in real estate

#### **Unobserved Blessings**

The *Gemora* says that blessings only occur to items that are not measured and observed.

The Meiri explains that the *Gemora* is referring to the blessing of successful returns on investments.

Rabbeinu Manoach says that the *Gemora* means that the blessing will be that the ultimate measure will be larger than the original estimate, in a miraculous fashion.

The Sfas Emes echoes this position, by explaining that Hashem does not make miracles that openly subvert nature, and therefore this blessing only occurs before the produce is measured.

The Ritva quotes the Ramban who says that one makes a *brachah* on this occurrence only when measuring produce for the purpose of separating tithes, since Hashem promised us a blessing for fulfilling this *mitzvah*. When

otherwise measuring, one is not certain a blessing will occur, so he may not make a *brachah*.

#### **Household Custodians**

The *Gemora* states that a custodian may entrust his deposited item with members of his household.

The Rishonim debate what the rule is if the ones entrusted were negligent.

Rabbeinu Tam (42b kol) says that the custodian is ultimately liable for the negligence of members of his household, while the Ramban, Rashba (BM 36a) and Rambam (She'eila u'Pikadon 4:9) say that the member entrusted with the item is liable.

#### **The Ox who couldn't Eat**

Rami bar Chama debates how to judge the case of an estate administrator who gave an ox without teeth to a herdsman, where it died. The *Gemora* explained that the orphans had already voided the sale, so the potential litigant is the seller.

Tosfos (42b Hacha) explains that Rami bar Chama is assuming that we rule like Rabbi Yosi (35b), who says that an owner of an item can deal directly with a custodian appointed by his custodian. Within Rabbi Yossi's position, Rami bar Chama was unsure whether the seller can address the herdsman via his appointment by the orphans, or whether the orphans are removed from the transaction, since the sale was retroactively voided. Rami bar Chama's conclusion is that the orphans are considered unpaid custodians, and the seller does have legal standing *vis a vis* the herdsman.

Rami bar Chama says that the herdsman must pay the seller the value of the ox, when sold for discounted meat.

Rashi explains that this is a compromise. Technically, the herdsman is not truly at fault and not liable, but he does compensate the herdsman minimally for his loss.

Rabbeinu Tam (42b Demai) says that this rule was a bona fide legal obligation. The herdsman should have notified the seller of the ox's lack of teeth, and therefore is liable for its death. However, since an ox without teeth must be sold for meat, and may not even wait until the day of the market, it would have only been worth the price of discounted meat.

preparation of food (ochel nefesh) should be performed during that time (Sha'arei Teshuvah, O.C. 300; see Mishnah Berurah, ibid, S.K. 2). The Klausenburger Rebbe zt"l (Responsa Divrei Yatziv, O.C. 136) adds that a person should not do any work before the meal lest it distract him to the point of forgetting to eat it.

## DAILY MASHAL

### Customs of the melaveh malkah meal

Shulchan 'Aruch (O.C.300) devotes a chapter, containing a single paragraph, to the meal after Shabos known as the melaveh malkah: "A person must always set his table after Shabos to part with the Shabos, even if he only feels like eating a kezayis." (A kezayis is the amount of an average olive in Eretz Israel before the destruction of the Temple; there are a few opinions as to the exact amount but it is usually thought to be equivalent to a slice of bread from the middle of a loaf). The melaveh malkah is meant to honor the departing Shabos, compared to a queen, "just as someone accompanies a king as he leaves a city" (Rashi, Shabos 119b, s.v. "Bemotzaei Shabos"). People are therefore accustomed to light candles on the evening after Shabos (Mishnah Berurah, 300, S.K. 3) and sing songs of praise, as mentioned in Machzor Vitry (siman 150): "Just as a king's subjects accompany him with their voices, harps and lutes, the Jews accompany Queen Shabos with joy and songs".

When does the neshamah yeseirah depart? Some people also have the custom to refrain from major chores till after the melaveh malkah as the meal is intended to accompany the departure of Shabos and should be held immediately after nightfall without interference (Sha'ar HaTziyun, S.K. 5). A tradition has also been received in the name of the disciples of the Ari z"l that the neshamah yeseirah does not completely depart till after the meal. Hence, no work (melachah) not relevant to the