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Guarding Collateral

The *Gemora* asks: The second part of the *Mishna* says that Rabbi Yehudah states that if he lent money to the borrower he is a *shomer chinam* (*unpaid custodian*), while if he lent him fruit he is a *shomer sachar* (*paid custodian*). This implies that the *Tanna Kamma* does not differentiate between the two types of lending!?

The *Gemora* answers: In fact, the entire *Mishna* is in accordance with the opinion of Rabbi Yehudah. It is as if it said, "If he lent him money and received collateral, he is a *shomer sachar* (*on the collateral*). This is in a case only where he lent him fruit. However, if he lent him money, he is a *shomer chinam* on the collateral. This is as Rabbi Yehudah states: If he lent money to the borrower he is a *shomer chinam*, while if he lent him fruit he is a *shomer sachar*.

The *Gemora* asks: If so, our *Mishna* is unlike the opinion of Rabbi Akiva!? [*Rabbi Akiva holds that even if one lends money, he is a shomer sachar on the collateral.*]

The *Gemora* answers: Rather, it is clear that the *Mishna* is unlike Rabbi Eliezer. (82a)

The Crux of Their Argument

The *Gemora* asks: Why don't we say that Rabbi Eliezer and Rabbi Akiva are arguing about a case where the collateral is less than the amount of money loaned to the borrower, and they argue concerning Shmuel's law. Shmuel states: If someone lends one thousand *zuzim* to his friend and he gives him a handle of a sickle as collateral, if the lender loses the handle, he also loses his right to the thousand *zuz*.

The *Gemora* rejects this and says that it is clear that both Rabbi Akiva and Rabbi Eliezer do not hold of Shmuel's law. Instead, the *Gemora* entertains that they argue in a case where the collateral is worth the loan. Their argument is regarding the law of Rabbi Yitzchak. Rabbi Yitzchak says: How do we know that a lender acquires collateral? The verse states, "And for you it will be charity (*to give back the collateral during the time of the loan when the borrower needs to use it*)." If he wouldn't acquire it, why would it be considered charity? Rather, it must be that he acquires the collateral (*to a certain extent)*.

The *Gemora* asks: Do you think this is really correct? Rabbi Yitzchak said his law only regarding collateral taken after the loan was already issued. [*Rashi explains that the verse is referring to collateral*

forcibly taken by a messenger of Beis Din, which is clearly meant for purposes of collection.] However, he did not say his law regarding collateral taken at the time of a loan (*which Rabbi Eliezer and Rabbi Akiva are clearly arguing about*).

The *Gemora* therefore says: Everyone agrees that Rabbi Yitzchak is correct regarding collateral that is taken after the loan. The argument between Rabbi Eliezer and Rabbi Akiva is regarding collateral taken at the time of the loan. Their argument hinges on the status of a guardian of a lost object. It was taught: The guardian of a lost object, according to Rabbah, is a *shomer chinam*. Rav Yosef says: He is a *shomer sachar*. Let us say that they argue regarding the law of Rav Yosef! [*See Tosfos who argues with Rashi regarding the reason why the Gemora does not suggest that they argue regarding Rabbah's position.*]

The *Gemora* rejects this, and says that both Rabbi Akiva and Rabbi Eliezer agree that Rav Yosef is correct. Their argument is regarding a case where the lender uses the collateral during the time of the loan (*and subtracts the value of the usage from the loan*). Rabbi Akiva holds that it is still a *mitzvah* that he lent him the money, and he therefore still has a status of a *shomer sachar*. [*This is because Rav Yosef's reason that he is a shomer sachar is that the guardian benefits from the collateral, as when he is actively taking care of the collateral he is not obligated to give charity.*] Rabbi Eliezer maintains that being that his intent is to use the item for his own purposes as well, he is considered to have selfish interests in mind. He is therefore a *shomer chinam*.

Abba Shaul states: A lender can rent out the collateral of a poor borrower, in order to lessen the amount the borrower must pay back.

Rav Chanan bar Ami says in the name of Shmuel: The law follows Abba Shaul. However, even Abba Shaul said his law only regarding a shovel, chisel, and double-sided ax which rents for a nice amount of money and does not suffer greatly from wear and tear. (82a – 82b)

Mishna

If someone moves a barrel from place to place and he broke it, whether he was a *shomer chinam* or *shomer sachar*, he should take an oath. Rabbi Eliezer says: I also heard that he takes an oath, however, I do not understand how. (82b)

Tripping

The *braisa* states: If someone moves a barrel from place to place and he broke it whether he was a *shomer chinam* or *shomer sachar*, he should take an oath. These are the words of Rabbi Meir. Rabi Yehudah says: A *shomer chinam* should take an oath, while a *shomer sachar* should pay. Rabbi Eliezer says: I also heard that they take an oath. However, I do not understand how they should take an oath and be exempt.

The *Gemora* asks: This implies that Rabbi Meir holds that one who trips is not deemed negligent. However, the *braisa* states: If one's pitcher broke and he did not pick it up, or if his camel fell and he

did not pick it up, Rabbi Meir says he is liable for any damages caused by this. The Chachamim say: He is exempt in Beis Din but liable in Heaven. We have already established that their argument is whether or not one who trips is deemed negligent! [*If so, how can Rabbi Meir say the shomrim may be exempt if they take an oath?*]

Rabbi Elozar says: We must separate the two *braisos*. Whoever taught one clearly did not hold of the (*validity of the*) other.

The *Gemora* continues: Rabi Yehudah says: A *shomer chinam* should take an oath, while a *shomer sachar* should pay. Each (of the guardians) pay according to their laws (*he holds that tripping is not negligence, thereby exempting the shomer chinam*). Rabbi Eliezer says: I indeed heard that the law is like Rabbi Meir. However, I do not understand how he should take an oath and be exempt.

The *Gemora* explains: It is understandable that a *shomer chinam* can take an oath (*and be exempt*) that he was not negligent with it; but how can a *shomer sachar* take an oath? Even if he was not negligent, he still should be liable to pay (*for tripping is similar to it getting stolen*)!?And even a *shomer chinam* (*it can be asked*); it is understandable if he tripped in a sloping area (*for then he will be exempt, since it is close to unavoidable*), but when he tripped in a place that was not sloping at all, how can he take an oath that he was not negligent (*it most definitely was a negligence*)? And even if it was a sloping area (*it can be asked*); it is understandable if there was no proof (*there were no witnesses*), but when there was a proof (*witnesses saw what happened*), let him bring the proof (*that it broke by accident*) and he will be exempt, for we learned in a *braisa*: Issi ben Yehudah said: It is written: *If nobody saw, the oath of Hashem shall be between them both*. We can infer from here that if there were those that saw, he can bring them as proof and be exempt. (82b – 83a)

INSIGHTS TO THE DAF

Osek b'Mitzvah

In the *sefer*, Nasiach B'chukecha (pg. 61), Reb Avi Lebovitz quotes the Mishnah Berurah (38:24), who quotes the Magen Avraham that when one is doing a *mitzvah* and also profiting such as *tefillin* merchants, they are only considered *osek b'mitzvah* to be exempt from another *mitzvah* when their primary intent is the *mitzvah*. The Magen Avraham infers from Rashi in Sukkah (26a) that if their primary intent is for profit, they don't have the status of *osek b'mitzvah* to exempt them from another *mitzvah*.

The Biur Halacha asks on this from our *Gemora*. The *Gemora* concludes that although a lender who takes a *mashkon* (*security*) is technically a *shomer sachar* on the *mashkon* based on the same *halachah* of a *shomer aveidah* (*a watcher of a lost article*) - namely, he is involved in a *mitzvah* and therefore exempt from giving *tzedakah*. But, when he takes the *mashkon* for his personal use (*and will deduct some amount from the loan to avoid the ribbis problem, as Rashi writes*), we have a dispute between Rabbi Eliezer and Rabbi Akiva. Rabbi Eliezer holds that since his intent is really for personal benefit, he is not considered to be doing a *mitzvah* and therefore he doesn't become a *shomer sachar* on the *mashkon*.

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We rule according to Rabbi Akiva that he is considered to be doing a *mitzvah* and therefore does become a *shomer sachar* on the *mashkon*.

The Biur Halachah points out that this seems to imply that even if one's primary intent is for profit, he is considered to be doing a *mitzvah* and therefore becomes a *shomer sachar*, which is against the Magen Avraham!?

The Biur Halachah suggests that the case must be where his primary intent is not for personal benefit; rather to do a *mitzvah* of lending and that is why Rabbi Akiva still considers him to be *osek b'mitzvah*.

The approach of the Biur Halachah doesn't fit well with Rashi. Rashi explains that when the lender takes a *mashkon* to use for personal benefit, Rabbi Akiva holds that he is doing a *mitzvah* and he is therefore a *shomer sachar*. Rashi doesn't say that his primary intent is to do a *mitzvah*, rather Rashi says that even though he is intending for his benefit, as the *Gemora* says, nonetheless, it is an act of a *mitzvah* to consider him an *osek b'mitzvah*. Rashi implies that Rabbi Akiva doesn't disagree with Rabbi Eliezer about the premise of his primary intent being for personal benefit, just that he holds that even so, since he is doing a *mitzvah*, he is considered *osek b'mitzvah* to be exempt from *tzedakah* and he is regarded as a *shomer sachar*. This seems to be pretty clearly against the approach of the Biur Halachah.

DAILY MASHAL

Horav Yechezkel Abramski, zl, gave the following illustration: Imagine sitting at a distance of one hundred yards from a given point and asking a group of people if they are able to see a picture at this distance. One person will say he can only see thirty yards, while another will see forty yards, and yet another will see up to seventy yards. Suddenly, someone comes along with incredible eyesight who can see up to one hundred yards! Indeed, if all of the other people would get together, they could nevertheless not see as well as he, because the sight is limited. Having them all get together is to no avail because the eyesight of the individuals is still deficient.

The same idea applies to our Torah leaders: They see what others cannot; their vision extends beyond the grasp of the average person. Thus, if an entire group gets together to express their opinion in opposition of one gadol, their position carries no weight, because they cannot see what he sees. Their vision is stinted; their perspective is myopic. This is the reason that our Torah leaders are referred to as "einei ha'am," the eyes of the nation.

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