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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

***Scriptural Sources***

The *Gemora* asks: How do we know that a borrower is liable to pay if the animal gets stolen or lost? And if you will say that it can be derived from the fact that he is liable if it got injured or died (*which were unavoidable; so he should certainly be liable for loss or theft, which is avoidable*), I can answer that they are different: He is liable if it got injured or died, for it is not possible to bother oneself and bring it back; however, if it gets stolen or lost, perhaps the owner should trouble himself and bring it back!

Rather, the *Gemora* answers: It is from that which was taught in the following *braisa*: 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!

The *Gemora* notes: What could the refutation have been? 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 (*and then witnesses testified that he himself stole it*)!? This is not a refutation, for 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!*] Alternatively, it can be said that this *Tanna* holds that an armed bandit is 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.*]

The *Gemora* asks: We have found the source that a borrower is liable if it gets stolen or lost, but how do we know that he will be exempt (*if it gets stolen or lost when the owner is working with him*)?

The *Gemora* notes that it cannot be derived from the *halachah* regarding injury or death (*where the verse states that he would be exempt from liability if the owner was working with him*), for those are cases of unavoidable accidents (*and perhaps that is why he will be exempt; loss and theft, however, are not cases of unavoidable accidents, and perhaps he would be liable even if the owner is with him*).

Rather, it is derived from the laws of a paid custodian (*where he will be exempt if it gets stolen or lost when the owner is working with him*).

The *Gemora* asks: How do we know this *halachah*?

The *Gemora* answers: We derive the liability of a paid custodian from the liability of a borrower, and just as a

borrower is exempt from liability when the owner is with him, so too, a paid custodian will be exempt from liability when the owner is with him.

The *Gemora* asks: With what type of Scriptural exposition is this derived? If it is with an analogy (*mah matzinu; just like we find there, also it should apply here*), it can be refuted like before: Those are cases of unavoidable accidents (*and perhaps that is why the borrower will be exempt; loss and theft, however, are not cases of unavoidable accidents, and perhaps he would be liable even if the owner is with him*).

Rather it is derived from the following: It is written: ***And*** *if a man shall borrow*. The word "And" (*regarding a borrower*) is adding onto the previous topic (*concerning a paid custodian*), and we therefore derive the laws of the former from the latter.

[*The Gemora above had derived that a borrower will be exempt if it gets stolen or lost when the owner is working with him from the laws of a paid custodian, where he will be exempt if it gets stolen or lost when the owner is working with him. The Gemora now questions this.*] We cannot derive the laws of a borrower from a paid custodian, for it can be refuted as follows: A paid custodian will be exempt if it gets stolen or lost when the owner is working with him only because he is always exempt in cases of injury or death; perhaps it is different regarding a borrower (*and he will be liable if it gets stolen or lost even when the owner is working with him*), for he is ordinarily liable when it gets injured or dies!?

Rather, it is derived as follows: From where do we know that a borrower is liable for theft and loss? Is it not because we derived it from a paid custodian!? Then it is sufficient for a derivative to be the same as the original case from which it has been deduced (*but it cannot exceed it; this is known as "da'yo" – meaning, it is sufficient*): Just as theft and loss in the case of a paid custodian, when the owner is with him, there is no liability; so also with respect to theft and loss in the case of a borrower, when the owner is with him, there is no liability.

The *Gemora* asks: Now, that is well according to the view that accepts the principle of *da'yo*; but according to the one who rejects it, what can you say?

Rather, we derive as follows: It is written: ***And*** *if a man shall borrow*. The word "And" (*regarding a borrower*) is adding onto the previous topic (*concerning a paid custodian*), and we therefore derive the laws of the former from the latter (*just as a borrower is exempt from liability when the owner is with him, so too, a paid custodian will be exempt from liability when the owner is with him*) and the latter from the former (*just as a paid custodian is liable for theft and loss when the owner is not with him, so too regarding a borrower, he will be liable for theft and loss when the owner is not with him*). [*This is a hekesh both ways, and a hekesh cannot be refuted with simple logic.*] (95a)

### *Negligence when the Owner is with him*

It was stated: concerning a case where a custodian was negligent when the owner is pledged to the service of the custodian; Rav Acha and Ravina dispute this matter. One holds that the custodian is liable (*for the exemption of be'olov imo does not apply by negligence*), and the other holds that he is exempt.

The *Gemora* cites the Scriptural sources which prove their respective opinions.

The *Gemora* asks from our *Mishna*: If one borrowed a cow and borrowed its owner (*to work for him*) with it, or hired its owner with it, or, he borrowed the owner or hired him and afterwards borrowed the cow, and the cow died (*in any of the above cases*), he is exempt. The *Mishna* does

not mention the case of an unpaid custodian. [*An unpaid custodian is only liable for negligence. Since the Mishna omitted the case of an unpaid custodian concerning be'olov imo, this would indicate that he is never exempt from liability; whenever he is negligent, he will be liable! This refutes the lenient opinion!?*]

The *Gemora* replies: The *Mishna* did not mention a case of a paid custodian either (*where the halachah of be'olov imo certainly applies*)! It must be that the *Tanna* mentioned only the case of a borrower, since it is written explicitly in the Torah. The other custodians (*and perhaps even an unpaid custodian*) are not mentioned, for they are derived only exegetically.

The *Gemora* asks from a *braisa*: If one borrowed a cow and borrowed its owner (*to work for him*) with it, or he rented a cow and hired its owner with it, or, he borrowed the cow and hired the owner with it, or, he rented the cow and borrowed the owner with it, even though the owner is working in a different place (*not together with the cow*), if the animal died, he is exempt. The *Gemora* assumes that the *braisa* is in accordance with Rabbi Yehudah, who holds that a renter has the same laws as a paid custodian (*and he is liable for theft and loss*), and this *Tanna* is mentioning cases which are derived only exegetically (*for a renter is like a paid custodian, and his exemption from liability is derived from a borrower*), and yet, he did not mention the case of an unpaid custodian! [*This would indicate that he is never exempt from liability; whenever he is negligent, he will be liable! This refutes the lenient opinion!?*]

The *Gemora* answers that the *braisa* can be in accordance with the opinion of Rabbi Meir, who holds that a renter has the same laws as an unpaid custodian (*and he is exempt from liability for theft and loss*), and the *Tanna* mentions the case of an unpaid custodian (*by stating the case of a renter*), and the same *halachah* would apply to a paid custodian.

Alternatively, you can answer as Rabbah bar Avuha reversed the opinions of Rabbi Meir and Rabbi Yehudah. How does a renter pay (*for the Torah does not specify his status as a custodian*)? Rabbi Meir says that the renter has the same *halachos* as a paid custodian (*for he is deriving benefit from it by the fact that he is permitted to use it*). Rabbi Yehudah says that a renter has the same *halachos* as an unpaid custodian (*for he is not getting paid*). (95a – 95b)

***Owner is with him***

Rav Hamnuna said: He is always liable unless the owner is plowing with the cow, or the owner is driving the donkey by walking behind it, and furthermore, the owner must be in the custodian's service from the time of the borrowing until it is injured or dies.

Evidently, Rav Hamnuna holds that when the Torah wrote, "*its owner is with him*," it refers to the entire matter (*he must be working with the animal, and he must be in his service the entire time*).

Rava asks from a *braisa* cited above: If one borrowed a cow and borrowed its owner (*to work for him*) with it, or he rented a cow and hired its owner with it, or, he borrowed the cow and hired the owner with it, or, he rented the cow and borrowed the owner with it, even though the owner is working in a different place (*not together with the cow*), if the animal died, he is exempt. Does this not mean that he was busy with a different labor than the cow? [*This is a refutation of Rav Hamnuna!?*]

The *Gemora* answers: He was working with it, but not in the same exact place; i.e. he was loosening the ground ahead of the plowing cow.

The *Gemora* asks: But by the fact that the latter part of the *braisa* is dealing with a case where he is actually

working with the animal, this would imply that the first part of the *braisa* is discussing a case where he was involved with a different labor altogether!? For the latter part of the *braisa* states: If he borrowed the cow and then he borrowed the owner, or, if he rented the cow and then he hired the owner with it, even though the owner is plowing with the animal, if it dies, he will be liable (*since he was not in the borrower's service at the time that the cow was borrowed*). [*By the fact that the braisa uses different expressions, it would indicate that the first part of the braisa is discussing a case where he was involved with a different labor altogether!?*]

The *Gemora* answers: Both parts of the *braisa* are referring to a case where the owner was working together with the animal, and each of the cases teaches us a novel ruling. The first part of the *braisa* teaches us that he is exempt from liability even if the owner was not working directly with the animal; as long as he was involved in the same labor, the borrower is exempt. The latter part of the *braisa* teaches us that the borrower will be liable even if the owner is working directly with the animal; this is because the owner was not in the borrower's service at the time when the cow was borrowed.

The *Gemora* objects to this interpretation of the *braisa*, for there is no real distinction between a case where he is loosening the ground or leading the cow. Therefore, the *Gemora* concludes that the *braisa* is teaching us that the exemption of *be'olov imo* applies even if the owner is working in a different labor than the cow. This refutes Rav Hamnuna's first ruling!

The *Gemora* now asks on his second ruling (*that the owner must be there the entire time*) from another *braisa*, which derives from the verses that if the owner was in the borrower's service at the time the cow was borrowed, the borrower will be exempt from liability even if the owner was not in his service at the time when the animal broke a limb or died!?

The *Gemora* cites another *braisa* which teaches us that the borrower will be exempt as long as the owner was in the service of the borrower at the time that he borrowed the cow, even if it was only for a moment. This indeed refutes Rav Hamnuna!

Abaye and Rava explain how the Scriptural verses teach us this *halachah* according to Rabbi Yoshiya and Rabbi Yonasan. (95b – 96a)

## INSIGHTS TO THE DAF

### *Borrowing with the Owner*

Rav Hamnuna holds that the exemption of borrowing an animal with its owner only applies to a case where the owner is borrowed to work in the same labor as the animal, AND that the owner was there at the time that the accident occurred.

This approach in שאלה בבעלים is certainly the most rationale, because the reason for the exemption is that since the owner was there at the time of the accident doing the same work, he should have watched his own animal.

This is the approach of the GR"A in Aderes Eliyahu to explain the concept of שאלה בבעלים. However, the Meshech Chochma (Mishpatim 22:3) points out that this approach doesn't at all work with the halachic ruling, rejecting Rav Hamnuna entirely. We hold that שאלה בבעלים is completely dependent on the time that the object was borrowed, the owner must have already been in the borrower service (*or at least begin immediately*), AND it makes no difference if the owner is working with the object that has been borrowed or in something else. What then is the rationale behind this *halachah*?

The Meshech Chochma suggests that the rationale is based on a *Gemora* in Megillah (26b) which states that the sanctity of a Shul would go away, not only through a sale, but even if it is given as a gift because: if they would not have received any benefit from the recipient, they would not have given it to him (*therefore it is like a sale*). Here too, it is not common to do such a huge favor for the borrower to lend him an object and work for him at the same time. Therefore, we assume that the owner is only lending and working in exchange for something that he received. Since the owner received something in exchange, the borrower is no longer a borrower, but has been downgraded to a renter, who is exempt if an unavoidable accident occurs.

This approach doesn't explain those who hold that negligence is also exempt, and it also doesn't explain why he is exempt for theft according to those who hold a renter is normally liable for theft (*like a spaid custodian*). Perhaps we will have to assume a "*lo p'lug*" (*no distinction*) to explain those opinions.

With this, we can somewhat explain the Gemora's question (96a) whether שאלה בבעלים applies when the owner sends his messenger rather than going himself. Does the sending of a messenger also indicate that the owner must have received something significant in return for lending and supplying a worker, or do we only assume that when he himself goes? However, if this is in fact the question of the *Gemora*, it shouldn't really be dependent on the *halachah* of שלוחו של אדם במותו anywhere else; it should be an isolated question regarding the assumption in this specific situation. Yet, the *Gemora* compares it to the general *halachah* of שלוחו של אדם במותו by the annulment of vows.

**QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF**

to refresh your memory

Q: What is the *halachah* if a man tells a woman he is going to betroth her, "on condition that you do not claim marital relations"?

A: The condition is not valid according to all since it is not a monetary matter.

Q: Why does Rabbi Yehudah ben Teima hold that a condition that cannot eventually be fulfilled and the husband stipulates at the outset, it is not valid and the *get* is therefore valid.

A: We assume that he is just doing that to pain his wife.

Q: What is the logic that an extra verse is not necessary to teach us that one will not be liable until the animal breaks a limb and also dies?

A: For what would be the difference if the entire animal was killed or only part of the animal was killed!