



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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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

Rulings

A person borrowed an ax from his friend, and it broke while he was using it. He came before Rava, who told him that he must bring witnesses that he did not do anything abnormal with it, and he would be exempt from paying.

The *Gemora* asks: What would be the *halachah* if there are no witnesses?

The *Gemora* resolves this from the following: A person borrowed an ax from his neighbor and (*through negligence*) broke it. He came before Rav, who said to him: Pay the lender for a good ax (*and the borrower may keep the broken one*).

Rav Kahana and Rav Assi asked Rav, “Is this truly the *halachah*?” and he kept quiet. [*He agreed with them that the broken ax is returned and the borrower must pay the difference.*]

The *Gemora* rules that the *halachah* follows Rav Kahana and Rav Assi that the borrower returns the broken ax and makes up its full value (*by paying the difference*).

A man borrowed a bucket from his friend and it broke. When he came before Rav Pappa, he said to him: Go and bring witnesses that you deviated from the agreed upon usage and you will be exempt from liability (*since it is a work-related breakage*).

A man borrowed a cat from his friend (*in order to drive away mice*). The mice formed a united party and killed it.

Rav Ashi sat and inquired: How is it in such a case? Is it as though it had died through its work, or not? Rav Mordechai said to Rav Ashi: Avimi from Hagronia said in the name of Rava: Concerning a man whom a woman killed, there is no judgment, nor judge (*since it is so unexpected*)! [*The cat’s death is not considered a negligence, but rather, a work-related death.*]

Others say: The cat ate many mice, whereby it became sick and died. Rav Ashi sat and inquired: How is it in such a case? Rav Mordechai said to Rav Ashi: Avimi from Hagronia said: Concerning a man whom women killed (because of excessive sexual activity), there is no judgment, nor judge (*since it is so unexpected*)! [*The cat’s death is not considered a negligence, but rather, a work-related death.*]

Rava said: If a man wishes to borrow something from his fellow and yet be free from liability, he should say to him, “Give me a drink of water,” so that it would be regarded as a loan together with the owner’s service. But if the lender is smart, he should answer him, “First borrow it, and then I will give you a drink.”

Rava said: A teacher of children, a gardener, a butcher, a blood-letter and a town barber - if they lend something while they are at work, it is treated as a loan while they are in the service of the borrower (*since they are obligated to serve every member of the community*).

The students said to Rava: You, master, are loaned to us (*to teach us Torah, and therefore, if we would borrow*

something from you and an accident happened, we would not be liable). Rava retorted: You wish to take away my possessions! On the contrary, it is you who are loaned to me! For I can change from one tractate to another, while you cannot!

The *Gemora* rules: Neither of them were entirely correct. He is lent to them during the *Kallah* days (thirty days before a festival, for he cannot change to learn what he wants), while they were loaned to him for the rest of the year.

Mereimar bar Chanina rented a mule to the inhabitants of Bei Chozai and went with them to assist them in loading it, but through a negligent act on their part, it died. When they came before Rava, he held them liable. His students objected: But it is a negligence together with the owner in service (and they should be exempt)!? He became embarrassed. Subsequently, it was revealed that he had gone with them to supervise the loading (but not to work).

The *Gemora* asks: According to the one who maintains that for negligence with the owner in service there is no responsibility, it is understandable why he became embarrassed. But according to the one who holds that one is liable, why was he embarrassed?

The *Gemora* answers: They were not negligent with it, but rather, it was stolen, and afterwards it died naturally in the thief's possession. They came before Rava, who ruled that they were liable. His students objected: But it is a theft together with the owner in service (and they should be exempt)!? But subsequently it was revealed that he had gone with them to supervise the loading (but not to work). (96b – 97a)

Mishna

If one borrowed a cow: He borrowed for half a day and hired it for half a day, borrowed it today and hired it

tomorrow, rented one and borrowed one and it died - if the lender says, "The borrowed one died"; "It died on the day when it was borrowed"; "It died during the hour it was borrowed," and the other one says, "I do not know," he is liable. If the renter says, "The rented one died"; "It died on the day it was rented"; "It died during the hour it was hired," and the other one says, "I do not know," he is exempt. If one says, "It was the borrowed one," and the other one says, "It was the rented one," the renter takes an oath that the rented one died. If one says, "I do not know," and the other says, "I do not know," they must split it.

Owner	Custodian	Custodian liability
Borrowing section	Don't know	Full
Don't know	Rental section	None
Borrowing section	Rental section	Oath
Don't know	Don't know	Half

(97a – 97b)

Arguments

The *Gemora* cites a dispute between Rav Nachman and Rabbi Yochanan vs. Rav Yehudah and Rav Huna. If a creditor claims that someone owes him money, and the defendant says he doesn't know if he does, Rav Huna and Rabbi Yehudah say that the debtor must pay, while Rav Nachman and Rabbi Yochanan say he is not liable.

The first case of the *Mishna* seems to disprove Rav Nachman and Rabbi Yochanan, since the custodian must pay, even though he doesn't know whether he's obligated.

The *Gemora* explains that Rav Nachman explains that our *Mishna* is a case where there is an existing oath interaction between the guardian and the owner. (97b)

INSIGHTS TO THE DAF

Assessing for a Borrower and a Custodian

The *Gemora* concludes that if one steals an item and ruins it, he is not able to simply return the broken item and pay for the damage; rather, he must pay in cash for the entire item, or replace it with an equivalent item. However, when one damages, or borrows an item and it gets damaged by accident, he can simply return the item and pay the depreciation amount. Why? Tosfos explains that when one steals an item, they immediately acquire the item by removing it from the domain of its owner, and therefore are liable to reimburse the owner for the entire item (*not just the difference from the time it was stolen and the time it is returned*). But, when one damages, he is only responsible for the amount that the item depreciated due to the damage, but whatever remains still belongs to the original owner. Based on this, a borrower, who is responsible if an accident happens, since he is regarded as acquiring the object when he borrows it, he therefore is responsible for the entire item.

Why do we say that a borrower is making a *kinyan* and acquiring the object at the time that he accepts responsibility? Just as a paid custodian is only responsible for what was stolen but he can return whatever remains and just pay the difference, a borrower should be able to do the same? Tosfos understands that since a borrower is responsible for unavoidable accidents, his responsibility cannot begin at the time that the accident occurs because one cannot be liable for a complete accident. The only way that a borrower can be responsible for an accident is because he makes a *kinyan* on the object when he borrows it. Based on this, there is a major difference between the liability of a (*paid or unpaid*) custodian and that of a borrower. A custodian is responsible for their negligence in not protecting the object, and that obligation begins at the time of the incident. A borrower, on the other hand, is not responsible for the incident, but

responsible at the moment he borrows it to return the item as it is at that moment.

DAILY MASHAL

Kol Nidrei and a Cat

Our *Gemora* tells of someone who borrowed a cat to kill mice but, unfortunately, they bit it to death. Apropos, we shall tell a story about another cat, in another era, employed for a most important task.

At the start of Yom Kippur, the congregation assembled, all in white in the beis midrash of Rav Yisrael Salanter zt"l. The chazzan took his place and the gabbai opened the lock of the aron kodesh but Rav Yisrael's seat remained empty. After a while passed without his arrival, the most honored members of the congregation went worriedly to look for the tzaddik. To their astonishment, they found him holding a saucer of milk and trying to coax a big cat into his home. After much effort he succeeded and rushed to the beis midrash, telling his companions that he had borrowed expensive books, kept at home. "All year round there are people at home, so I'm not worried about the books. Today, though, everyone goes to shul. I thought the mice might come out of their holes and chew the books so I had to get the cat in."