



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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

### Who's an Agent

The Mishnah had stated: He may not give it to the victim's son, nor to his agent.

[When one person sends an item to another, each of the parties – the sender and the receiver – have the power to appoint an agent to do their action. The sender's agent is an extension of the sender, while the receiver's agent is an extension of the receiver. The distinction between these agents is relevant when the agent lost the item on the way to the receiver. If the agent is the receiver's agent, the transfer has already occurred, and the sender has no further obligation. However, if the agent is the sender's agent, the loss occurred in the realm of the sender, and is the responsibility of the sender.] The *Gemora* cites a dispute whether an agent appointed by the receiver in front of witnesses is considered his agent. Rav Chisda says that such an agent is fully authorized as the receiver's agent. Rabbah says that this agent is not fully empowered. Rav Chisda says that such an agent is fully authorized as the receiver's agent: The reason the person bothered to appoint the agent in front of witnesses was to empower him to receive payment in place of him. Rabbah says that this agent is not fully empowered, and payments that are given to him are not considered completed until the appointer receives it. According to Rabbah, the only reason the person appointed the agent was to indicate that he trusts him to not steal the money paid, but not to make him his true representative.

The *Gemora* asks on Rav Chisda from a *Mishnah* in Bava Metzia: [If one borrows an item, he is liable for any damage or loss of the item, unless these are a result of using the item. However, this liability only begins once the borrower receives the item, and his borrowing thus begins.] The *Mishnah* states that if one borrows a cow, and the lender gives the cow to his son, his slave or agent, or he sent it with the son, slave or agent of the borrower, and it died (before reaching the hands of the borrower) the borrower is not liable if the cow dies (as the borrowing has not begun). - Now, what is the case of the agent? If he did not appoint him in the presence of witnesses, how do we know? It must therefore be referring to a case where he appointed him in the presence of witnesses, and the *Mishnah* rules that the borrower is not liable. [The *Mishnah* therefore seems to indicate that such an agent does not fully represent the appointer.] - The *Gemora* says that we can deflect this proof: Just as Rav Chisda said (*below*) that the agent is the borrower's worker or companion, so too here as well, the agent is the borrower's worker or companion. [Since such a person is a close confidant of the borrower, we may have thought that he is authorized to receive the cow.]

The *Gemora* challenges Rav Chisda from our *Mishnah*: The *Mishnah* (102b) had stated that if one stole an item, he must repay the stolen item himself, and may not fulfill his obligation by giving it to the victim's son or agent. Now, what is the case of the agent? If he did not appoint him in the presence of witnesses, how do we know? It must therefore be referring to a case where he appointed him in the presence of witnesses, and the *Mishnah* rules



that the borrower is not liable. Rav Chisda interpreted the Mishnah to be referring to a case where the agent is the borrower's worker or companion (who we may have considered his full representative).

The *Gemora* challenges this interpretation: But what would be the law where the agent was appointed in the presence of witnesses? Would he indeed have to be considered a [properly accredited] agent? The *Mishnah* later states that if one submits payment to an agent appointed by the court, he *has* fulfilled his obligation. If Rav Chisda is correct, and an agent appointed in front of witnesses is sufficiently authorized, the *Mishnah* should have made the distinction in the same case by saying that these statements refer only to an agent who was not appointed in the presence of witnesses, whereas if the agent was appointed in the presence of witnesses he would indeed be considered a [properly accredited] agent? — The *Gemora* answers that the Tanna was unable to make an absolute statement. Regarding the agent of the court, no matter whether the victim appointed him or whether the robber appointed him, he could state it absolutely that he is considered a [properly accredited] agent, whereas regarding an agent appointed in the presence of witnesses who if he were appointed by the victim would be considered an agent, but if appointed by the robber would certainly not be a valid agent, he could not state it so absolutely.<sup>1</sup>

The *Gemora* says that the *Mishnah*, which allows both the victim and the thief to create a fully authorized agent via the court, is in dispute with a certain Tanna, for it was taught in a Baraisa: Rabbi Shimon ben Elazar says: If the agent of the court was appointed by the victim [to receive payment] though not appointed by the robber [to act on

his behalf], or if he was appointed by the robber [to act on his behalf] and the victim sent and received the payment out of his hands, there would be no liability in the case of accident.

Rabbi Yochanan and Rabbi Elazar both said that an agent appointed in the presence of witnesses would be a [properly accredited] agent; for if you raise an objection from the ruling in our Mishnah, [it might be answered] that the agent there was [not appointed but] placed at his disposal, as where he said to him, "There is some money owing to me from a certain person who does not forward it to me. It may therefore be advisable for you to be seen by him, since perhaps he has found no one with whom to forward it," or as explained by Rav Chisda, that he was his worker or companion.<sup>2</sup> (104a1 – 104a4)

Rav Yehudah said in the name of Shmuel that one should not pay back money to his creditor's agent, even if the agent brings a document with the creditor's seal or other identifying signs, since these do not empower the agent to receive the money on behalf of the creditor. This is true even if witnesses attest to the seal belonging to the creditor. Rabbi Yochanan, however, says that if witnesses signed the document, the agent is authorized, and one may pay the money to him.

The *Gemora* questions, according to Shmuel, what option one has to fully empower an agent to receive his money for him. [The first option considered is writing a document stating that the creditor will have received the money once the agent receives it. The *Gemora* rejects this as a full solution from a story.] Rabbi Abba lent money to Rav Yosef bar Chama. When Rav Safra was traveling to Rav Yosef's area, Rabbi Abba asked him to retrieve his money

per se, but rather someone who the victim instructed to offer his services to the thief for delivering the payment. Such an agent is only an agent for the thief's delivery, and not an agent for the victim's acceptance. The second response is that the *Mishnah* is Rav Chisda's case of a worker or companion.

<sup>1</sup> The *Mishnah* preferred the case of an agent of the court, since such an agent can be created by the thief or the victim, while only the victim can create an authorized agent through witnesses.

<sup>2</sup> They have two responses to the seeming proof from our *Mishnah*. The first is that our *Mishnah* is not a case of an agent,

from Rav Yosef for him on the way back. When he went to Rav Yosef, Rav Yosef's son, Rava, asked him: Did Rabbi Abba write for you a document stating, "I have received the money" (and that would be considered as if Rabbi Abba received it)? When Rav Safra said that he hadn't written that, Rava told him to go back and let Rabbi Abba write for you a document stating, "I have received the money." On further consideration, Rava said that even if Rabbi Abba would write for you a document stating, "I have received the money" it would not suffice, since by the time you come back here, if Rabbi Abba would die, the money would fall to the orphans, and Rabbi Abba's (document of) "I have received the money" would be worthless. What then, Rav Safra said to him, can be the remedy? — Go back and let him transfer to you the ownership of the money by dint of land (by using a *kinyan agav* – transferring them as an adjunct to a real estate transfer), and then you come and write, "I have received the money." [Once this *kinyan* is done, the agent actually is a party to the transaction, since he owns the money that he is retrieving.]

Rav Pappa did this, when he was owed 12000 *zuzim* by people in Bai Chozai. He transferred the money to Rav Shmuel bar Abba along with his door post (*which is real estate*), using *kinyan agav*, and when Rav Shmuel bar Abba returned with the money, Rav Pappa went out to greet him all the way to Tavach. (104a4 – 104b2)

### Is Chomesh Money?

The *Mishnah* had stated that if one paid back the principle, but not the one fifth fine (*chomesh*), he need not bring the *chomesh* all the way to the victim. The *Gemora* proves from three sources that *chomesh* is a bona fide monetary obligation:

<sup>3</sup> The Baraisa states that an heir does not pay *chomesh* for his late father's theft, whether he and/or his father falsely swore, since the verse says that one pays *chomesh* for the money *asher*

1. From the fact that our *Mishnah* must tell us the exclusion of responsibility to deliver it to the victim, we see that *chomesh* is considered bona fide monetary payment owed by the thief, and if he dies, it must be paid by his heirs.
2. Similarly, we can see this from the continuation of the *Mishnah*, which states that if the thief denies owing the *chomesh*, falsely swears, and then admits, he must pay the *chomesh*, with a one fifth fine on the *chomesh*, just as he would on any other money.
3. The *Gemora* also proves this from a BaBaraisa which states that if one stole, falsely swore that he didn't, and then died, his heirs must pay the principle and *chomesh*, but not bring the *asham gezeilah* sacrifice.

The *Gemora* then brings a Baraisa that seems to contradict this concept. I would still say that the case where a son does not pay the fifth for a robbery committed by his father is only where neither he nor his father took an oath. From where could it be proved that [the same holds good] where he though not his father, took an oath, or his father but not he took an oath or even where both he and his father took oaths? From the significant words: That he robbed and that he acquired fraudulently, whereas in this case he has neither robbed nor has he defrauded anybody.<sup>3</sup>

Rav Nachman says that this is not difficult, as here (in the *Mishnah* and the first *Baraisa*) it refers to a case where the father admitted to the theft (before he died, and therefore was obligated to pay the *chomesh*; once the father was obligated to pay the *chomesh*, when he dies, his heir must pay it). But here (in the second *Baraisa*), it refers to a case where he did not admit (and therefore was never obligated to pay the *chomesh*).

*gazal* – that he stole or *asher ashak* – that he unfairly got, and the heir didn't take any money illegally.

The *Gemora* challenges this answer, since the *Baraisa* that exempts the heir from *chomesh* is only discussing *chomesh* payment, implying that the heir must pay the principle. If the father never admitted his theft, the heir need not pay the principle either. To prove this, the *Gemora* cites another *Baraisa*: I would still say that the case where a son has to pay the principal for a robbery committed by his father was only where both he and his father took oaths, or where his father though not he, or he though not his father took an oath, but from where could it be proved that [the same holds good] where neither he nor his father took an oath? From the significant words: The robbed article and the fraudulent gain, the lost article and the deposit, as Yeish Talmud (which will be explained shortly). And when Rav Huna was sitting and repeating this teaching, his son Rabbah said to him: Did the master mean to say Yeish Talmud [i.e., there is a definite teaching on this subject] or did the master mean to say Yishtalmu [i.e., it stands to reason that the heirs should have to pay]? He replied to him: I said Yeish Talmud, as I maintain that this could be amplified from the [added] Scriptural expressions.<sup>4</sup>

The *Gemora* clarifies that Rav Nachman meant that the *Baraisa* refers to a case where the father didn't admit the theft, but the heir did. Therefore, the heir must pay the principle, but not the *chomesh*. The *Gemora* asks why the heir is not then obligated to pay the *chomesh* for his own false oath, as the *Baraisa* included a case where the heir himself swore falsely. The *Gemora* says that the case is where the stolen item does not exist. [In this case, even if the heir admits his father's theft, he is not obligated to

pay, so his denial did not cause any monetary loss.] - But if the stolen article was no longer extant, why should he pay even the principal? -Even so, if he has real estate that he inherited, the principle must be paid from the estate. - But were even real estate left, of what avail would it be since the liability is but an oral loan, and, as known, a liability by mere word of mouth can be enforced neither on heirs nor on purchasers? — It may however be said that we are referring to a case where the father's theft was adjudicated before his death. [Once it was adjudicated, it can be collected from real estate, even from someone who bought and inherited it.] - But if he had already appeared in court (and liability had been established on the denial of which the son took a false oath), why then should the son not pay even the fifth? — Said Rav Huna the son of Rav Yehoshua: The heir does not pay *chomesh* on this money, since *chomesh* (similarly to *kefel*) is not paid on the denial of a lien on real estate.

Rava answers that the case of the *Baraisa* is when the stolen item still exists, but was in someone else's possession when the heir falsely swore. Since the item exists, the principle (i.e., the item) must be returned, but since the heir didn't knowingly swear falsely, he need not pay *chomesh*. (104b2 - 105a1)

## INSIGHTS TO THE DAF

### **Agent authorization**

The *Gemora* discussed a number of different types of appointments of agents. Below is a summary of the points cited in the *Gemora*:

*and his son Rabbah asked whether the end of the Baraisa is read "yishtalmu" - they should be paid, from a purely logical perspective, or "yeish talmud" - we have a textual source, but otherwise, we wouldn't know this. Rav Huna answered that the correct reading is "yeish talmud", i.e., this Halachah is derived solely from the verse.)*

<sup>4</sup> The *Baraisa* states that an heir must pay principle that was stolen by his father only if both he and his father falsely swore to deny the theft. If either he or his father did not falsely swear, the heir is not obligated to pay the principle. (The *Gemora* parenthetically discusses the end of this *Baraisa*. The *Baraisa* quotes a verse as a proof to its statement, and then says "yeish talmud" - there is a source. Rav Huna was teaching this *Baraisa*,

Case	Opinions	Why
In front of witnesses	Rav Chisda, Rabbi Yochanan, and Rabbi Elazar:— authorized	The use of witnesses was for authorization
	Rabbah — not authorized	Witnesses simply established the agent as trustworthy
Court agent, appointed by victim	Authorized	Power of court
Court agent, appointed by thief	<i>Mishnah</i> -authorized	Power of court
	Rabbi Shimon ben Elazar — not authorized	Court can't act for victim
Dyukni — symbol, with witnesses identifying the symbol	Shmuel — not valid	Not proper authorization
	Rabbi Yochanan — valid	Tantamount to witness authorization

The Rishonim discuss what exactly are the details of the first case. Rashi says that the case is where the victim said to the agent, in front of witnesses, that he should act as his proxy and receive the money from the thief. Even in such a case, Rabbah holds that the agent is not authorized, since only directly telling the thief to give the

money to his agent is full authorization. According to Rashi, if the victim simply told the agent to offer his services as a proxy, this would not suffice, and this is the explanation Rabbi Yochanan and Rabbi Elazar gave for the misna — *mamtzi lo* — when the agent makes himself available. The Rosh, however, says that the case is also where the victim told the agent, in front of witnesses, to offer his services as a proxy to the thief. Since he instructed the agent in front of witnesses, Rav Chisda and Rabbi Yochanan hold that this empowered him to act on the victim's behalf. Rabbah, however, holds that this format is incorrect. The case of *mamtzi lo* is limited to a situation where the victim told the proxy to go to the thief, in the hopes that he will send it with him, but not explicitly telling the thief of this plan. According to both opinions, if the victim explicitly commanded the agent, in the presence of witnesses, to tell the thief that he is his proxy to receive the money, even Rabbah would agree that he is authorized.

In the first case, the Shulchan Aruch (421:1-2) rules like Rav Chisda, since Rabbi Yochanan concurs. The Shulchan Aruch follows the Rosh's explanation, and therefore only excludes the case of where the victim tells the proxy to go to the vicinity of the thief, in the hopes of bringing the money back. In the second case, the Shulchan Aruch rules like Shmuel, since the *Gemora* discusses Shmuel's opinion at length.

See Shach 421:10 for a discussion of the various opinions about *mamtzi lo*.

#### DAILY MASHAL

I once came across the story of a businessman who was approached by a person who was not a very good candidate for a loan. Others had turned him away based on his poor history when it came to repaying and he had now come in desperation to this well-to-do businessman. Seeing how desperate he was, the businessman hoped



that there would be a sense of gratitude that he had helped him in his time of need. He was sure that the loan would be paid back on time and he lent him the money.

Months went by and the loan's due-date arrived. The businessman waited to hear from the borrower but heard nothing. He figured he might need a little more time so he didn't say anything right away. When the days turned into weeks, his patience began to run thin. He approached the borrower and asked about the money he owed him.

"Money? What money? I never borrowed money from you! I don't know what you are talking about!"

The businessman was stunned. He had expected to hear some excuses and a request for an extension. But an outright denial?! After he had helped him when no one else would?! In a state of angry shock he stormed over to the Beis Din {court based on halachic law}. The halachah is that in a case without written documentation, the alleged borrower must swear while holding a Sefer Torah that he didn't borrow the money. A date was set by the Beis Din.

The businessman, sure that the borrower wouldn't have the audacity to swear falsely while holding a Sefer Torah, looked forward to having the matter settled. The date arrived and, true to form, this borrower got up and, while holding the Sefer Torah, denied that he had ever borrowed the money.

At that point the businessman lost it. "I don't care about the stupid money but how can you lie while holding a Sefer Torah?!" he shouted. And for the next few weeks, whenever the conversation would turn to the court case, he would passionately exclaim, "The money's not the issue—how could he swear falsely while holding a Sefer Torah?"

The months turned to years and the incident was all but forgotten until one day when the businessman got up in synagogue to make a public announcement. "Years ago," he said, "I spoke very harshly about the fellow with whom I had the court case. I would now like to publicly ask his forgiveness."

The place was in shock. Everyone wondered what had happened. Had he made a mistake? Did he really not borrow the money?

After the services, the businessman explained. "I was away traveling on business and I came to a certain town. I had some free time so I decided to sit in on the local Beis Din. Interestingly enough, the same case that had occurred with me had come before this Beis Din. Once again, one person claimed to have lent money and the other denied it. They asked him to swear while holding a Sefer Torah and he did.

"I witnessed him swearing and it didn't really bother me. I then realized that I had been fooling myself all along. I had always maintained that it wasn't the money that bothered me but it was the false oath. Yet, when it wasn't my money, although it was the same oath, I wasn't upset by what had been done...

"I was therefore slandering that person because of my own personal loss—not to defend the honor of Hashem. That is why I needed to ask his forgiveness."

By: Rabbi Yisroel Ciner