



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**  
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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

The Mishnah had stated: Rabbi Yosi said: How shall one do business with his fellow's cow etc.

Rav Yehudah said in the name of Shmuel: The halachah is as Rabbi Yosi. Rav Shmuel bar Yehudah asked Rav Yehudah: You

have told us in Shmuel's name that Rabbi Yosi disputed in the first [Mishnah] too: now, is the halachah as his view [there too] or not? — He replied: Rabbi Yosi did indeed dispute in the first too, and the halachah agrees with him in the first too.

It has been stated likewise: Rabbi Elazar said: Rabbi Yosi differed in the first too, and the halachah agrees with him there also. But Rabbi Yochanan maintained: Rabbi Yosi agreed in the first [Mishnah], seeing that he [the custodian] had already paid for it. [What!] only if he actually paid, but not otherwise? Yet didn't Rabbi Chiya bar Abba say in the name of Rabbi Yochanan: 'He paid' is not literally meant, but once he says, "I will pay," even if he has not done so [the ruling of the Mishnah holds good]? — Say thus: Rabbi Yosi agreed in the first [Mishnah], seeing that he had already declared, "I will pay for it." (36b3 – 37a1)

**Mishnah**

If a person said to two people: I have stolen a *maneh* from one of you, but I am not sure who (*was the victim*). Similarly, if a person tells two people: One of your fathers deposited a *maneh* (*one hundred zuz*) with me, and I do

not know who (*it was*). He should give each one a *maneh*, as he admitted (*the Gemora will explain this statement*).

Two people deposited money with a guardian, one deposited one hundred and one deposited two hundred, and each claims that he was the one who deposited two hundred. Each one receives one hundred, and the other hundred is left until Eliyahu ha'Navi arrives (*to settle the issue for us*). Rabbi Yosi says: If this is the law, what does the liar lose by lying? [*He will receive his money back, and merely cause the other person to lose!*] Rather, all of the money deposited is left until Eliyahu ha'Navi arrives.

Similarly, two people deposited vessels with a guardian, one is worth one hundred and one is worth one thousand, and each claimed that they were the owner of the expensive vessel. The smaller vessel should be given to one, and from the value of the expensive vessel should be given the value of the smaller vessel to the other, and the rest should be left until Eliyahu arrives. Rabbi Yosi says: If so, what does the liar lose by lying? Rather, both of the vessels are left until Eliyahu ha'Navi arrives. (37a1 – 37a2)

**Contradictions**

The *Gemora* asks: The first case of the *Mishnah* implies that we will take away money from a person due to a doubt, and we do not say that the money remains by its original owner. However, the *Mishnah* continues: Two people deposited money with a guardian, one deposited one hundred and one deposited two hundred, and each claims that he was the one who deposited two hundred.

Each one receives one hundred, and the other hundred is left until Eliyahu ha'Navi arrives. [*This implies that we do not take away money from the guardian because of a doubt!?*]

He said to him: Are you asking a question from a case of a deposit to a case of a thief? In a case of theft where the person took the money illegally, the Rabbis penalized him. In a case of a deposit where he received the money legally, they did not penalize him.

The *Gemora* proceeds to ask a contradiction in cases of deposit and in cases of theft. The beginning of the *Mishnah* states: If a person tells two people that one of your fathers deposited a *maneh* with me and I do not know who, he should give each one a *maneh*, as he admitted. However, the second part of the *Mishnah* says: Two people deposited money with a guardian etc. (*we wait until Eliyahu comes*). [*In this case we do not take away money from the guardian!?*]

Rava answers: In the first case where one person made the deposit, it is as if two people deposited money with him in two separate bundles. He should have been careful to note which bundle belonged to which person. In the second case, it is as if two people deposited money with him in one bundle. In such a case he is not blamed for not knowing how much money each one had, as it is like they deposited with him at the same time. He can tell them: If you yourselves are not careful to separate between your monies (*as you deposit together in the same package and at the same time*), why should I be careful?

There is an apparent contradiction (*as mentioned above*) regarding cases of theft. Our *Mishnah* says: I have stolen a *maneh* from one of you, but I am not sure who (*was the victim*). Similarly, if a person tells two people: One of your fathers deposited a *maneh* (*one hundred zuz*) with me, and I do not know who (*it was*). He should give each one a *maneh*, as he admitted. However, a *Mishnah* states: If

someone stole from one of five people and he does not know which one he stole from, and each of the five claims that he is the victim, he can put the amount that he stole among them and leave. These are the words of Rabbi Tarfon. This implies that due to a mere doubt we do not say that he has to pay more money, and we instead say that the money can remain by its original owner (*in this case, the thief*). How do we know that our *Mishnah* is according to the opinion of Rabbi Tarfon? This is because there is a *Baraisa* stated regarding that *Mishnah* that says: Rabbi Tarfon agrees that if someone says that he has stolen a *maneh* from one of two people, but he is not sure who, that he gives each a *maneh*.

The *Gemora* answers: The *Mishnah* there is discussing a case where the five are claiming money from him (*and he only wants to pay what Beis Din will make him pay*). Our *Mishnah* is discussing a case where he wants to repent and fulfill any Heavenly claim on him (*for stealing and not returning the theft*). [*He is therefore going beyond the letter of the law to ensure that he has done complete repentance.*] This is also apparent from the *Mishnah's* statement: He admitted on his own (*implying that he wants to do what he can to ensure his repentance*). (37a2 – 37a3)

### **Thief's Claim**

The *Gemora* stated: The *Mishnah* there is discussing a case where the five are claiming money from him.

The *Gemora* asks: What is the thief's reply to their claim?

Rav Yehudah says in the name of Rav: He is being quiet. Rav Masnah says in the name of Rav: He is shouting (*and saying to each that he does not know who they are*). According to the opinion who says he is shouting, if he would be quiet, it would be deemed admittance. According to the opinion that he is quiet, this type of quiet is not admittance. He could explain: The reason I was

quiet to each one is because I thought that perhaps he is indeed the one whose money I stole. (37a3 – 37b1)

### **Leave it!**

The *Mishnah* had stated: He puts the money amongst them and leaves.

The *Gemora* asks: Can they all just take whatever they can and leave? Doesn't Rabbi Abba bar Zavda say in the name of Rav: Any item that seems like it was placed where it is on purpose should not be picked up to be returned (*as it does not have a siman, and the owner will not be able to claim it*). If he picks it up, he should not return it (*he cannot return to it to any claimant, for there is no siman; he cannot put it back because the owner might have come back in between and will not return here again*). [*It would therefore seem that if we are unclear regarding who deserves this money, it should not be fully acquired by anyone (besides for safekeeping).*]

Rav Safra answers: It indeed should be left (*meaning it should not be taken to be owned, but rather to be guarded (some say by Beis Din) until the real owner can be determined*). (37b1)

### **Matters of Uncertainty**

Abaye said to Rava: Didn't Rabbi Akiva say that this is not the way to take him away from a sin? He should pay to each person (*of the five people the amount that they claim that he stole*). This implies that Rabbi Akiva argues that we do take away money due to a doubt, and we do not say the money should stay by its owner.

This is contradicted from the following *Baraisa*: There was a case where a house fell on a person and his mother. The inheritors of the son claim that the house first fell on the mother and killed her. The inheritors of the mother claim the son died first. [*If the mother died first, the son*

*inherited her before he died, and passed this along to those who inherit him. If he died first, he never received a portion from her estate.*] Both (*Beis Shammai and Beis Hillel*) agree that it should be divided. Rabbi Akiva says: I admit that the possessions should stay where they are. [*Rashi and Tosfos argue regarding why Rabbi Akiva said "I admit."* Their argument hinges on whether Rabbi Akiva was one of the disciples of Hillel or a disciple of Shammai. In any event, in this case, Rabbi Akiva does not say that we take away money due to a doubt!?

Rava answered: In the case of the house, each party is in doubt whether its claim is indeed accurate. [*He therefore rules that the property should retain its previous status.*] However, in the case of the theft, it is a case of five people who claim they were definitely the victims, and one person who claims he is not sure which one of them was a victim.

The *Gemora* asks: In our *Mishnah*, the thief says that he stole from one of two people a *maneh* and does not know who it was, yet he still has to pay each one a *maneh*! The implication is that this is even when the victims are unsure if they indeed deserve the money!?

One could counter that our *Mishnah* perhaps is unlike the opinion of Rabbi Akiva. However, that does not seem correct, as earlier we quoted a *Baraisa* that taught that Rabbi Tarfon agrees that if someone says that he has stolen a *maneh* from one of two people, but he is not sure who, the *halachah* is that he gives each a *maneh*. This implies that Rabbi Tarfon is agreeing to Rabbi Akiva, the one who argues with him.

The *Gemora* asks: How do we know that the *Mishnah* is a case where both parties are not sure?

The *Gemora* answers: Firstly, the *Mishnah* does not say that they claimed the money from the thief. Additionally, didn't Rabbi Chiya teach (*in his version of this teaching*)



that each potential victim said that they don't know if they were the victim?

The *Gemora* answers: We already established that the first case of the *Mishnah* is not discussing what must be done, but rather is discussing a thief who wants to ensure he is not prosecuted in the Heavenly court. [*He therefore does more than would be required of him by Beis Din.*] (37b1 – 37b2)

### **Not Particular**

Ravina asked Rav Ashi: Did Rava indeed say that if a person received a deposit of two different packages that they had to be careful not to mix them up? Didn't Rava say, and some say Rav Papa said, that everyone agrees that if two people put their sheep by a shepherd (*one deposited two sheep and one deposited one, and both claim two*) the shepherd can leave the sheep among them and go away? [*The shepherd is not liable for being unable to identify who deposited two sheep.*]

Rav Ashi answered: The case there is when the deposit was made into the herd without the shepherd's knowledge. [*He therefore was not negligent.*] (37b2 – 37b3)

The *Mishnah* had stated: Similarly, two people deposited vessels with a guardian, one is worth one hundred and one is worth one thousand etc.

And both [instances] are necessary. For if the first alone were stated, I might argue as follows: Only there [sc. in the case of money] do the Rabbis rule [thus], because no loss is caused; but in the latter case, where great loss is involved [in the breaking of the larger utensil], they agree with Rabbi Yosi. And if the latter case [alone] were stated, I might argue: Only here does Rabbi Yosi rule [thus], but in the former, he agrees with the Rabbis. Thus both are necessary. - But Rabbi Yosi's reason is that the deceiver

may suffer loss! — Hence both are necessary according to the view of the Rabbis, and he [the Tanna] teaches it in a format of 'not only this, but this as well.' (37b3 – 38a1)

### **INSIGHTS TO THE DAF**

#### **200 – 1,000!?!?**

The *Mishnah* had stated: Two people deposited money with a guardian, one deposited one hundred and one deposited two hundred, and each claims that he was the one who deposited two hundred. Each one receives one hundred, and the other hundred is left until Eliyahu ha'Navi arrives (*to settle the issue for us*). Rabbi Yosi says: If this is the law, what does the liar lose by lying? [*He will receive his money back, and merely cause the other person to lose!*] Rather, all of the money deposited is left until Eliyahu ha'Navi arrives.

Similarly, two people deposited vessels with a guardian, one is worth one hundred and one is worth one thousand, and each claimed that they were the owner of the expensive vessel. The smaller vessel should be given to one, and from the value of the expensive vessel should be given the value of the smaller vessel to the other, and the rest should be left until Eliyahu arrives.

Why by the case of money is the example of "two hundred" given, and by the case of the vessels – "one thousand" is given?

Imrei Daas answers: The *Gemora* below (38a) states: A person would prefer a *kav* of his own produce more than nine *kavs* belonging to his fellow. This is because that which he toils for is regarded as more precious to him.

Accordingly, we can explain as follows: With respect to money, a person is willing to lie that the two hundred is his when, in truth, he only gave one hundred. However, with respect to vessels, if his friend's vessel is merely



worth two hundred, he will not wish to lie, for he would rather have his own although it is worth less. If his friend's vessel, however, is worth more than nine times the value of his own, he would be willing to lie. This is why the *Mishnah* gives the example where his vessel was worth one hundred and the other vessel was worth a thousand.

This explanation is based upon two assumptions: 1. The logic that a person would prefer to have one of his own than nine of his friend's is precise, and if his friend's value exceeds his by more than nine times the value, he would not want his own. It is quite possible that the *Gemora* means that he would prefer his own over that of his friend's even if his friend's vessel is worth ten or twenty times the amount! 2. This logic applies by vessels as well as produce. It is quite possible that the *Gemora's* logic applies only with respect of produce, where he toiled in the land – that is why the produce is more precious to him. However, with respect to vessels, it wouldn't make any difference to him.

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

to refresh your memory

Q: What is the *halachah* if one *shomer* gives the deposit to another *shomer*?

A: Rav – he is exempt. Shmuel – he is liable.

Q: When would Shmuel agree that one *shomer* may give a deposit to someone else?

A: When he gives it to his wife or children.

Q: What is the *halachah* if a *shomer* was negligent, and the animal he was watching escaped to a marsh, but it died naturally there?

A: It is an argument between Abaye and Rava.

#### DAILY MASHAL

The Sages say: The one seeking to exact payment from his fellow bears the burden of proof.

The *Olas Chodesh* writes: There is a hint in this principle relevant to those who rebuke others, and that is: How can they recognize if their words are truthful and are they for the sake of Heaven? The answer is: "One seeking to exact from his fellow" – if the one giving the rebuke causes with his words that the listeners accept his words, "the burden of proof is upon him" – he then knows that he indeed fears God and is worried about fulfilling the words of Hashem, and that is why his words which emanated from his heart entered into the hearts of the listeners.