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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

**Cash Deposits**

The *Mishnah* discusses one who gives an unpaid custodian money to guard. If the custodian guarded it as is customary, he is not liable for a loss of theft, but if he was derelict in guarding it – by hanging it over his back, or giving it to his little children, and not properly locking it up – he is liable for loss or theft. If he did guard the money in the proper manner of custodians, he is not liable. (42a1)

As for all, it is well, since indeed he did not guard it in the manner of custodians; but if he bound it up and slung it over his shoulder — what else should he have done? — Said Rava in the name of Rav Yitzchak: Scripture said: and you shall bind up the money in your hand — even if bound up, it should be in your hand.

Rava said in the name of Rav Yitzchak: One should keep his money accessible (so he can take advantage of investment opportunities). The Torah says in relation to the money used to redeem *ma’aser sheini* – *v’tzarta hakesef b’yadcha* – you should wrap the money in your hand, indicating that even wrapped money should be kept in your hands.

Rav Yitzchak said: One should split his assets into three portions – one third in land (*i.e., long term investments*), one third in merchandise (*short term investments - trade*), and one third liquid (to be able to take advantage of good investment opportunities). [*This last third is what Rav Yitzchak was referring to in his first statement.*]

And Rav Yitzchak said: Blessings occur only in things that are not visible. The verse says that Hashem will bless you *ba’asamecha* – in your silo. The word used for silo is similar

to the word for hidden, hinting that only things that are hidden can receive full blessing.

In the *Beis Medrash* of Rabbi Yishmael a Baraisa was taught that a blessing occurs only in things that an eye does not dominate (since a silo is beyond an eye’s observation), as it is said: Hashem will command the blessing to be with you in your hidden storage places. (42a1)

**Blessings**

The *Gemora* quotes a *Baraisa* that discusses three stages of auditing the grain in a silo:

1. Upon entering the silo, one should pray that Hashem will send a blessing upon the work of our hands.
2. Upon beginning to count the grain, one should bless Hashem, Who sends blessing in this grain.
1. Once he has measured the grain, any prayers are meaningless, since blessings are not found in that which is [already] weighed, measured, or counted, but only in that which is hidden from the eye, for it is said: Hashem will command the blessing to be with you in your hidden storage places. (42a1 – 42a2)

**Keep it Safe**

Shmuel says that money can be adequately guarded only by burying it. Rava explained that Shmuel agrees that if one was entrusted with money on Friday afternoon, that [he need not bury it] as the Sages did not burden him (to such an extent), but if he delayed burying it after *Shabbos* the time it takes to bury the money, he is liable (for loss or theft). If the owner is a Torah scholar, he may need the money to buy wine for *havdalah*, so the custodian may delay burying the money.



The *Gemora* states that nowadays (in later times), there were people who would strike the land (searching) for buried money, so a custodian would need to place it in the beams (of his house) below the ceiling. When there were people who would break roofs, a custodian would be required to place it between the bricks (in a wall) of his house. Rava says that Shmuel agrees that a custodian may place it in the walls of his house, even not between bricks. Nowadays, when there were people who would tap walls to detect non-hollow areas, a custodian would need to place it in the bottom *tefach* of the floor or top *tefach* of the wall space (since tapping there would not reveal enough for someone to detect it). (42a2)

Rav Acha the son of Rav Yosef said to Rav Ashi: We learned elsewhere in a Mishnah: If ruins collapsed on chametz, it is regarded as removed. Rabban Shimon ben Gamliel said: Provided that a dog cannot search it out. And it was taught [regarding this]: How far is the searching of a dog? Three handbreadths. How is it here? Do we require [that it shall be covered by] three handbreadths or not?<sup>1</sup> Rav Ashi responded that *chametz* buried in less than three *tefachim* may be sniffed and retrieved by dogs, and therefore is not considered destroyed. However, money (buried is sufficiently hidden to deter robbers) does not require three *tefachim*. – and how much (depth) is required? – One *tefach*. (42a2 – 42a3)

### **Negligence**

Someone deposited money with a custodian, who placed it in the walls of a hunter's willow hut, and it was stolen.<sup>2</sup> Rav Yosef said: Though it was proper care in respect to thieves, yet it was negligence in respect to fire; accordingly, the beginning [of the trusteeship] was with negligence though its end was through an accident, [and therefore] he is liable.

<sup>1</sup> Does money need to be buried at a depth of three *tefachim*, just as *chametz* must be buried at that depth to be considered destroyed.

Others Say: Though it was negligence in respect to fire, it was due care in respect to thieves, and when its beginning is with negligence and its end through an accident, he [the custodian] is not liable. And the law is that when the beginning of it is with negligence and the end through an accident, he is responsible.

Someone deposited money with a custodian. When he came to collect his money, the custodian forgot where he placed the money. He appeared before Rava. He said to him: when a custodian says, "I do not know," it is regarded as negligence; go and pay! (42a3)

### **Custodial Proxies**

Someone deposited money with a custodian, who gave it to his mother to watch. She placed it in a chest, and it was stolen. Rava said: How should judges rule in this case? If we tell the custodian to go and pay, he can claim: All who deposit do so with the understanding that the wife and children [may be entrusted with the object]. If we tell his mother to go and pay, she can claim: He did not tell me that it [the money] was not his own, that I should bury it. Shall we say to him: Why did you not tell her? he can counter: If I told her it was mine, she was the more likely to guard it well. Therefore, said Rava: The custodian swears that he gave the money to his mother, and his mother swears that she placed the money in the chest and it was stolen, and he is not liable. (42a3 – 42b1)

An estate administrator bought an ox for the orphans of the estate, and gave it to a herdsman. The ox didn't have molars or teeth, so it starved and died. Rami bar Chama said: How should judges rule in this case? If we tell the administrator to go and pay, he can claim: [I was not negligent, as] I gave it to the herdsman (whose profession is to guard cattle, and it was his responsibility to tell me that it was not eating). If we tell the herdsman to go and pay, he will say: [I was not

<sup>2</sup> This location was regarded as a negligence concerning a potential fire, but not with regard to theft. This therefore depends on the general debate of whether initial negligence which concluded with an unavoidable damage is liable.

negligent, as] I placed it along with the other oxen, and I threw food to it; I did not know that it was not eating!

The *Gemora* challenges this by noting that the herdsman was a paid custodian, and should therefore be responsible for inquiring to the welfare of the ox.

The *Gemora* clarifies that *vis a vis* the loss to the orphans, the herdsman would be responsible, but in this case, there was no loss to the orphans, because the [first] owner of the ox was found and they received their money back from him. - Then who is the plaintiff? — The owner of the ox, who pleads that he should have informed him. - But what was he to inform him? He knew full well that it was a sale under false pretenses! — He [the owner of the ox] was a middleman, who buys here and sells there. Therefore [rules Rami] he [the middleman] must swear that he did not know [of the animal's toothless condition], and the herdsman must pay at the cheap price of meat.<sup>3</sup> (42b1)

Someone gave a custodian hops to guard, who stored them next to his own. When he was making beer, he told his attendant to make beer with some of the hops he had stored, and the helper took the deposited hops. Rav Amram said: How should judges rule in this case? Shall they say to him: Go and pay, he can plead: I said to him, 'Take from this [pile].' Shall we say to the brewer: Go and pay? He can argue: He did not say to me, 'Take from this [pile] but not from that.' - But if he [the brewer] tarried sufficient time to bring him [his own hops], yet did not do so, then he [the custodian] revealed his mind that he was pleased with it!<sup>4</sup> — There was no tarrying. - Yet after all, what loss is there; did

<sup>3</sup> The herdsman was never hired by him, so he is not liable. The administrator is not negligent, since he didn't examine the ox, but gave it to the herdsman. The seller was a middleman, so he didn't examine this ox to realize that it lacked teeth. Therefore, the seller swears that he didn't know the ox was missing teeth, and the herdsman pays the seller a discounted value of the ox (*its value when sold for meat at a discount*).

<sup>4</sup> The *Gemora* qualifies that if the guarded hops were further, and the attendant took a long time, the custodian realized that he was taking the guarded hops and was obviously pleased with that decision, and is liable if he didn't stop the attendant.

he [the depositary] not benefit from it? — Rav Sama, son of Rava said: The beer turned into vinegar. Rav Ashi said: The reference is to thorns, and he must pay him the value of the thorns.<sup>5</sup> (42b2 – 43a1)

## INSIGHTS TO THE DAF

### **Money Matters**

The *Gemora* begins by stating that a custodian should keep deposited money on his body, and then later quotes Shmuel's statement that money must be buried. The Rambam (She'eila u'Pikadon 4:6) explains that when the money is deposited with the custodian at home, he must bury it, while if the deposit was to transport the money somewhere, he must keep it on his body.

Shmuel states that a custodian must guard money entrusted to him by burying it, and anything short of that is negligence.

The Rosh quotes Ri Barceloni that says that Shmuel is only discussing a situation where burglary is common. However, if it is not common, a custodian need only guard the money as he guards his own. The *Gemora* implies this in its follow up discussion of different ways of storing the money, which the *Gemora* explicitly ties to the prevailing form of burglars at the time.

The Rambam (She'eila u'Pikadon) seems to imply that Shmuel's statement is not subject to variation in different times and situations.

<sup>5</sup> The *Gemora* explains that if the hops produced good beer, the custodian must pay from his hops, since he benefited equally from the guarded hops. However, if the hops produced vinegar, he did not benefit, and is not liable. Alternatively, if the hops were inferior, and mixed in with twigs, he would be responsible to pay the beer-making value of inferior hops to the depositor. [Although they would have been worth more as animal feed, since the custodian wasn't negligent in using them for beer, he need only pay the benefit he gained from their use.]



The Shulchan Aruch (HM 291:18) rules like the Rosh. See the Gra (HM 291:28) for a discussion of how this debate depends on differing texts in our *Gemora*.

The Sma (C" M 291:24) says that now our houses are much more solid than in the *Gemora's* time, and therefore a custodian may store the money in a locked house.

Shmuel is also implicitly stating that if the custodian did bury the money, and it was stolen, he is not liable.

The Rishonim debate the rule for a paid custodian. Unlike an unpaid custodian, a paid custodian is fundamentally liable for theft, but he is also not liable for unavoidable loss of the deposited item.

The *Gemora* states a number of times that a paid custodian is not liable for an item that is taken through armed robbery, since that is unavoidable. When a paid custodian buries money, but it is still stolen, he may be liable, since it is theft, but he may not be liable, since it seems like an unavoidable loss.

Rabbi Akiva Eiger (HM 303:2) lists three positions of the Rishonim on this question:

1. Tosfos (BK 57a K'gon) and the Rosh (BM 3:21) say that a paid custodian is liable, even if he buried the money, since that is included in the liability for theft. Every theft is akin to an unavoidable loss, so a theft that is more unavoidable is still a theft. Only in the case of an armed robber, where the paid custodian was present and powerless to stop the theft is considered truly unavoidable.
2. The Ramban says that a paid custodian must keep the money in his presence. Therefore, theft of buried money is not considered unavoidable, and a paid custodian is liable. However, if something unavoidable occurred to the paid custodian, making it impossible to keep the money with him (e.g., a sudden severe sickness), he is not liable.

3. Tosfos (BM 42a Amar Shmuel) says that a custodian is not liable for unavoidable theft, which includes buried money, as well as an unavoidable event which prevented his guarding.

The Rambam (She'eila uPikadon 4:4) applies Shmuel's statement to any item that has two things in common with money:

1. Valuable enough that burglars look for it
2. Not ruined by being underground

Therefore, blocks of precious metals and stones also must be buried when being guarded.

#### **Diversification**

Rav Yitzchak says that one should split his assets in three, with one third going to land. The Maharshsa offers two explanations for this:

1. Buried underground, as Shmuel requires of the custodian
2. Invested in real estate

#### **Unobserved Blessings**

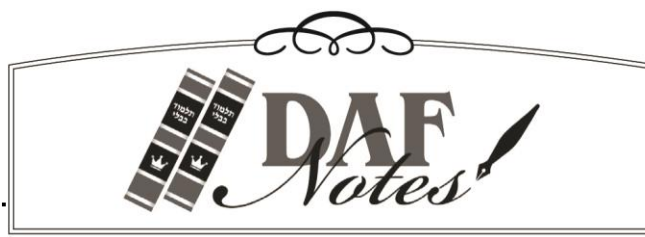
The *Gemora* says that blessings only occur to items that are not measured and observed.

The Meiri explains that the *Gemora* is referring to the blessing of successful returns on investments.

Rabbeinu Manoach says that the *Gemora* means that the blessing will be that the ultimate measure will be larger than the original estimate, in a miraculous fashion.

The Sfas Emes echoes this position, by explaining that Hashem does not make miracles that openly subvert nature, and therefore this blessing only occurs before the produce is measured.

The Ritva quotes the Ramban who says that one makes a *brachah* on this occurrence only when measuring produce for the purpose of separating tithes, since Hashem promised us a blessing for fulfilling this *mitzvah*. When otherwise



measuring, one is not certain a blessing will occur, so he may not make a *brachah*.

### **Household Custodians**

The *Gemora* states that a custodian may entrust his deposited item with members of his household.

The Rishonim debate what the rule is if the ones entrusted were negligent. Rabbeinu Tam (42b kol) says that the custodian is ultimately liable for the negligence of members of his household, while the Ramban, Rashba (BM 36a) and Rambam (She'eila u'Pikadon 4:9) say that the member entrusted with the item is liable.

### **The Ox who couldn't Eat**

Rami bar Chama debates how to judge the case of an estate administrator who gave an ox without teeth to a herdsman, where it died. The *Gemora* explained that the orphans had already voided the sale, so the potential litigant is the seller.

Tosfos (42b Hacha) explains that Rami bar Chama is assuming that we rule like Rabbi Yosi (35b), who says that an owner of an item can deal directly with a custodian appointed by his custodian. Within Rabbi Yossi's position, Rami bar Chama was unsure whether the seller can address the herdsman via his appointment by the orphans, or whether the orphans are removed from the transaction, since the sale was retroactively voided. Rami bar Chama's conclusion is that the orphans are considered unpaid custodians, and the seller does have legal standing *vis a vis* the herdsman.

Rami bar Chama says that the herdsman must pay the seller the value of the ox, when sold for discounted meat.

Rashi explains that this is a compromise. Technically, the herdsman is not truly at fault and not liable, but he does compensate the herdsman minimally for his loss.

Rabbeinu Tam (42b Demai) says that this rule was a bona fide legal obligation. The herdsman should have notified the

seller of the ox's lack of teeth, and therefore is liable for its death. However, since an ox without teeth must be sold for meat, and may not even wait until the day of the market, it would have only been worth the price of discounted meat.

### **DAILY MASHAL**

#### **Customs of the melaveh malkah meal**

Shulchan 'Aruch (O.C.300) devotes a chapter, containing a single paragraph, to the meal after Shabos known as the melaveh malkah: "A person must always set his table after Shabos to part with the Shabos, even if he only feels like eating a kezayis." (A kezayis is the amount of an average olive in Eretz Israel before the destruction of the Temple; there are a few opinions as to the exact amount but it is usually thought to be equivalent to a slice of bread from the middle of a loaf). The melaveh malkah is meant to honor the departing Shabos, compared to a queen, "just as someone accompanies a king as he leaves a city" (Rashi, Shabos 119b, s.v. "Bemotzaei Shabos"). People are therefore accustomed to light candles on the evening after Shabos (Mishnah Berurah, 300, S.K. 3) and sing songs of praise, as mentioned in Machzor Vitry (siman 150): "Just as a king's subjects accompany him with their voices, harps and lutes, the Jews accompany Queen Shabos with joy and songs".

When does the neshamah yeseirah depart? Some people also have the custom to refrain from major chores till after the melaveh malkah as the meal is intended to accompany the departure of Shabos and should be held immediately after nightfall without interference (Sha'ar HaTziyun, S.K. 5). A tradition has also been received in the name of the disciples of the Ari z"l that the neshamah yeseirah does not completely depart till after the meal. Hence, no work (melachah) not relevant to the preparation of food (ochel nefesh) should be performed during that time (Sha'arei Teshuvah, O.C. 300; see Mishnah Berurah, *ibid*, S.K. 2). The Klausenburger Rebbe zt"l (Respona Divrei Yatziv, O.C. 136) adds that a person should not do any work before the meal lest it distract him to the point of forgetting to eat it.