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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

**Mishna**

If one deposits money with a moneychanger, if it is tied up, he may not use it. Therefore, if it gets lost, he is not responsible for it. If it were loose, he may use it. Therefore, if it gets lost, he is responsible for it.

If one deposits money with a householder, whether tied up or loose, he may not use it. Therefore, if it gets lost, he is not responsible for it.

A storekeeper is like a householder; this is the opinion of Rabbi Meir. Rabbi Yehudah says: A storekeeper is like the moneychanger. (43a)

**Tied Up**

The *Gemora* asks: Just because the money is tied up, is that a reason not to use it?

The *Gemora* gives two answers:

1. Rav Assi said in the name of Rav Yehudah that it was tied up and sealed.
2. Rav Mari said that it was tied in an unusual type of knot.

The *Gemora* cites an alternative version, where Rav Mari inquired as to what the *halachah* would be if it was tied in an unusual type of knot, and the *Gemora* concludes without resolving it. (43a)

**Liability for O’nes**

The *Mishna* had stated that if the money was loose, it may be used, and therefore, if it gets lost, he is responsible for it.

Rav Huna rules that he will be liable even if it gets lost through an unavoidable accident (*o’nes*).

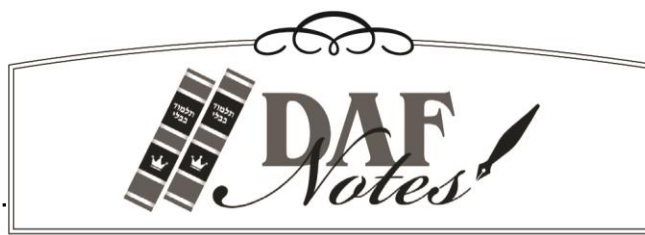
The *Gemora* asks: But the *Mishna* said “lost” (*which seems to indicate a regular loss, not a case of o’nes*)?

The *Gemora* answers: This is like Rabbah said: When the *Mishna* says, “it was stolen,” it means through armed bandits, and when the *Mishna* says, “it was lost,” it refers to a case where one’s ship sank in the sea (*a case of o’nes*).

Rav Nachman rules that he will not be liable if it gets lost through an unavoidable accident.

Rava asked Rav Nachman: Since you maintain that he will not be liable if it gets lost through an unavoidable accident, you obviously hold that he is not regarded as a borrower. If he’s not a borrower, he should not be regarded as a paid custodian either (*for is he not getting paid to watch it?*)!?

Rav Nachman answered: He is regarded as a paid custodian for the following reason: Since he (the banker) derives benefit from the money (*that he is able to use the money to make a purchase which has a potential profit in it*), he provides a benefit to the owner (*that he is regarded as a paid custodian*). (43a)



### **Mishna**

If a custodian misappropriated a deposit (*shole'ach yad*; and afterwards, he destroyed it), Beis Shammai say: He must suffer the loss if it decreased or increased (*he pays for the value of the object when it was worth more*). Beis Hillel say: He pays according to what it was worth at the time it was taken out. [The Gemora will explain this opinion.] Rabbi Akiva says: He pays according to what it was worth at the time of the claim. (43a)

#### **For what Value does the Thief Pay?**

Rabbah said: If someone stole a barrel of wine from his fellow and it was worth one zuz at the time it was stolen and four zuzim at the end (*when it was destroyed*), the *halachah* is as follows: If he broke the barrel or drank the wine, he would pay four (*for up until the time of destruction, it belonged to the owner; the thief would have been obligated to return the barrel which was worth four zuzim; if he directly destroys it, it is considered as if he is stealing it again and therefore, he pays four*). If it broke by itself, he pays one (*for that is what it was worth at the time it was stolen*).

Why does he pay four when he destroyed it? Since if it were in existence, it must be returned to the owner as it is, it emerges that at the time in which he drank it or broke it, he is stealing it from him, and we learned: All thieves pay according to the time of robbery.

If it broke by itself, he must pay a zuz. Why? Now he did nothing at all to it then. For what should he be liable? For the time of the robbery! Then it was only worth a zuz. (43a)

#### **Beis Shammai and Beis Hillel**

We learned in our *Mishna*: Beis Hillel say: He pays according to what it was worth at the time it was taken out.

The *Gemora* asks: What does it mean “at the time it was taken out”? If the meaning is “at the time it was taken out of this world (*when it was destroyed*),” what case are we referring to? If it decreased in value, how can they rule that he pays according to the value at that time (*one zuz*)? Did we not learn that all thieves pay according to the time of robbery (*and then it was worth four*)!? And if it increased in value, their opinion will be identical to that of Beis Shammai (*who also ruled that he pays four*)!? Rather, it is evident that the meaning is “at the time it was taken out from the owner’s possession” (*he pays according to what it was worth at the time that he was shole'ach yad*).

The *Gemora* asks: According to this, Rabbah (*who ruled that he would pay four – as that is what it was worth at the time that he destroyed it*) would be following Beis Shammai’s opinion (*who also says that he pays four – unlike Beis Hillel, who rules that he pays only one zuz*)!?

Rabbah answers: [*Beis Hillel means that he pays according to what it was worth when it was taken out of this world.*] If it increased in value, there is no argument (*for he would certainly pay according to what it was worth at the time that he destroyed it*). They argue when it decreased in value. Beis Shammai hold that it is regarded as *shlichus yad* even if there is no loss (*for he took it with intention of using it, but it decreased before he used it*). It emerges that when it decreased, it decreased in the custodian’s possession (*he therefore pays according to what it was worth at the time that he misappropriated it*). Beis Hillel hold that it is not considered *shlichus yad* without a loss. It emerges that when it decreased, it decreased in the owner possession (*and accordingly, he pays according to what it’s worth at the time that he destroyed it*).



The Gemora asks: But Rava rules that *shlichus yad* does not require a loss! Shall we say that Rava follows the opinion of Beis Shammai!?

Rather, we are dealing with a case where he moved the barrel (*to stand on*) in order to fetch some pigeons, and they are arguing regarding the *halachah* of a borrower without permission. Beis Shammai hold that one who borrows from the owner without his permission is regarded as a thief. It emerges that when it decreased, it decreased in the custodian's possession (*he therefore pays according to what it was worth at the time that he misappropriated it*). Beis Hillel hold that a borrower without the owner's permission is regarded as a borrower (*and not a thief*). It emerges that when it decreased, it decreased in the owner possession (*and accordingly, he pays according to what it's worth at the time that he destroyed it*).

The Gemora asks: But Rava rules that a borrower without the owner's permission is regarded as a borrower! Shall we say that Rava follows the opinion of Beis Shammai!?

Rather, they are arguing regarding the improvements of the stolen object. Beis Shammai hold that these improvements belong to the owner, and Beis Hillel hold that they belong to the thief.

This argument is identical to a *Tannaic* dispute in a *braisa*, for we learned: If someone steals a sheep and shears its wool, or steals a cow and it gives birth, he pays for the animal in addition to the wool and calf. These are the words of Rabbi Meir. Rabbi Yehudah says: Whatever was stolen should be returned as is (*and he must pay the value of the wool or calf based on its value when it was stolen*). [When Beis Shammai said in the Mishna that the thief suffers the loss whether it increased or decreased, they meant that the physical improvements belong to the owner. Beis Hillel disagree and hold that the thief may keep the improvements – this is because a thief may

acquire a stolen object if it is changed from when it was stolen.] (43a – 43b)

### Rabbi Akiva

Rabbi Akiva had stated in the *Mishna*: He pays according to what it was worth at the time of the claim (*for up until that time, it still belongs to the owner*).

Rav Yehudah said in the name of Shmuel: The *halachah* follows Rabbi Akiva.

The Gemora notes: Rabbi Akiva would admit that he would pay according to what it was worth at the time of *shlichus yad* if witnesses saw the custodian misappropriate it. This is based upon a Scriptural verse, which teaches us that he pays according to its value at the time which he is deemed guilty. When there are witnesses, he is deemed guilty from that time.

It was said in the name of Rabbi Yochanan that Rabbi Akiva argues even when there are witnesses, for he is deemed guilty only by a *Beis Din* (*not on account of witnesses*).

Rabbi Zeira said to Rabbi Abba bar Pappa: When you go to *Eretz Yisroel*, take a circuitous route to the ascent of Mount Tzur and make your way up to Rabbi Yaakov bar Idi and ask him if he had heard from Rabbi Yochanan whether the *halachah* is like Rabbi Akiva or not. He answered him: Thus did Rabbi Yochanan say: The *halachah* is like Rabbi Akiva always.

The Gemora asks: What is meant by “always”?

Rav Ashi said: The *halachah* is like Rabbi Akiva even when there are witnesses. Alternatively, it may also refer to the case where the thief returned it to its place and it broke. He said “always” to preclude Rabbi Yishmael's opinion, who maintained that the owner's knowledge is

unnecessary. Therefore Rabbi Yochanan informed us that the owner's knowledge is required.

But Rava said: The *halachah* follows Beis Hillel. (43b)

### INSIGHTS TO THE DAF A New Thief

Rabbah ruled: If someone stole a barrel of wine from his fellow and it was worth one *zuz* at the time it was stolen and four *zuzim* at the end (*when it was destroyed*), the *halachah* is as follows: If he broke the barrel or drank the wine, he would pay four (*for up until the time of destruction, it belongs to the owner; the thief would have been obligated to return the barrel which was worth four zuzim; if he directly destroys it, he pays four*). If it broke by itself, he pays one (*for that is what it was worth at the time it was stolen*).

The Ketzos Hachoshen explains that the reason he must pay four *zuzim* when he breaks it or drinks it is because he is regarded as a damager, and he pays for the object's value at the time of the damage. It cannot be considered stealing at that time, for once an object has left the possession of the owner and enters the thief's domain, there can be no more responsibility for stealing. This is because it is written: *and it was stolen from the owner's house*. The *Gemora* learns from there that something cannot be stolen if it is in the house of the thief. Here, where, at the time it was damaged, it was in the thief's domain, there cannot be a new "stealing." This would be similar to one who steals from a thief, where the *halachah* is that the second thief is exempt from paying the principle. Therefore, in our case, when the thief breaks it or drinks it, he can only be liable for damaging it, not for stealing it.

The Nesivos Hamishpat disagrees and holds that while it is true that one who steals from a thief is exempt from paying the principle and he is not regarded as a thief, that

is only when he did not add anything to the original thievery. This is why the second person cannot be regarded as a thief. However, if he caused a change to the stolen object, he has added to the thievery and can now also be regarded as a thief. Therefore, when the thief breaks it or drinks it, he has added to the original stealing by the fact that he has destroyed the object. He is therefore responsible on account of stealing.

### Safeguarding money in a bank

Reuven asked Shimon to keep some money for him. Shimon deposited the amount in a bank and earned a nice profit. On returning the original sum to Reuven, the latter claimed the profits for himself but Shimon cited our Mishnah which indicates that he must return only the capital amount. The Mishnah states that a merchant or money-changer may lend out funds deposited with them without informing the depositor. Any depositor knows that those professionals deal in finance and agrees in advance that they may lend the money for their own profit. The only exception is if he deposited the money in a tied or sealed packet, indicating that the money-changer should not use it. *Poskim* assert that in our era **everyone is considered a merchant** who may use funds deposited with him: As opposed to former times, most people do not perform manual work but conduct financial deals (*Shach, C.M. 292, S.K. 12; Sema, ibid, S.K. 18*) and as everyone uses money, a person who deposits funds with anyone agrees that he may use them. By this reasoning, Shimon is justified in that he may invest or lend out Reuven's money as he sees fit.

**A mutual benefit:** Still, HaGaon Rabbi Moshe Feinstein (*Responsa Igros Moshe, C.M., II, 53*) suggests an opinion that may invalidate this rule in our era. Our sages allowed a *shomer* to use money deposited with him as both he and the depositor benefit thereby. As our *Gemara* states (42a), "money must be safeguarded only **under ground**". A *shomer* must dig in the ground but by



using the funds, he saves that trouble. The depositor benefits because if the *shomer* does not use the money, he is regarded as a *shomer sachar* or non-paid *shomer* (*shomer chinam*), according to their agreement, who does not have to compensate the depositor in cases of *ones*. If, though, he uses the funds, he is a borrower who must return them unconditionally.

In our era the most accepted and apparently best way to guard money is to deposit it in a bank – a method that saves bother and yields profits. As a result, though, it again becomes unclear if a depositor would agree for the *shomer* to use his funds. On the contrary, the *shomer* **must** put them in a bank to guard them. Rabbi Feinstein therefore ruled that Shimon must give Reuven the profits: "...And this is a logical ruling, though lacking explicit evidence".

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

to refresh your memory

Q: Why is a *shomer* liable when he places the money in a sack and slings it behind him?

A: We learn that money is best watched in a person's hand.

Q: What is good advice to do with one's money?

A: One should split his assets into three portions – one third in land (*i.e., long term investments*), one third in short term investments (*trade*), and one third liquid, to be able to take advantage of good investment opportunities.

Q: What is the *halachah* in a case where a *shomer* was negligent, but in the end, an unavoidable accident occurred?

A: It is a *machlokes* in the *Gemora*, but the *Gemora* rules that he is liable.

#### DAILY MASHAL

##### Importance of the melaveh malkah meal

Setting the table decoratively for melaveh malkah: HaGaon Rabbi M. Sternbuch (Teshuvos VeHanhagos, II, 166) remarks that even those who observe the melaveh malkah tradition by only having cake should eat on a pretty tablecloth, showing that if they could, they would extend the Shabos and bask in the queen's glory.

The Vilna Gaon's strict observance of the melaveh malkah: Many of the greatest Torah luminaries were known for their strict adherence to the melaveh malkah tradition. Once after Shabos the Vilna Gaon was attacked by an illness that prevented him from eating. He slept for a while to recover somewhat and, on waking, asked his family to spoonfeed him a kezayis of breadcrumbs to observe this important meal (Teshuvos VeHanhagos, *ibid*).