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Bava Metzia Daf 81

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The *Mishna* had stated: If the craftsmen say, “Take what is yours and bring the money” (*and they will not be holding the finished project as security for the payment*), they are regarded as unpaid custodians (*and therefore they would not be liable if it gets lost or stolen*).

The *Gemora* cites a *Mishna*: If a borrower said to the lender, “Send me the animal,” and he does and the animal dies, the borrower is liable. The same applies when it is being returned.

Rafam bar Pappa said in the name of Rav Chisda: This *halachah* is true only if it was returned during the time of the borrowing; however, after the term of the borrowing, the borrower is exempt from liability (*even if the animal dies while it is in the borrower’s possession*).

Rav Nachman bar Pappa asks from our *Mishna*: If the craftsmen say, “Take what is yours and bring the money,” they are regarded as unpaid custodians. However, we may infer that if he just said, “I have finished it,” he is still regarded as a paid custodian. [*Seemingly, a borrower should still be responsible even after the term of his borrowing has ended!?*]

The *Gemora* answers that we should not infer like that. The inference should be as follows: If he says, “Bring

the money and then I will give you what is yours,” he will still be regarded as a paid custodian.

The *Gemora* asks: But if the *halachah* would be that if he said, “I have finished it,” he is regarded as an unpaid custodian, the *Mishna* should have taught it, and we would have certainly known that if he said, “Take what is yours and bring the money,” he is regarded as an unpaid custodian!?

The *Gemora* answers that the case of “Take what is yours and bring the money” is a novel *halachah*, for I might have thought that he would not even be regarded as an unpaid custodian; the *Mishna* therefore has to teach us otherwise.

The *Gemora* cites a different version of the above discussion: Rav Nachman bar Pappa said: We also learned like this in our *Mishna*: If the craftsmen say, “Take what is yours and bring the money,” they are regarded as unpaid custodians. Would the same *halachah* not apply if they would have said, “We have finished it”?

The *Gemora* rejects the proof by saying that the two cases are different.

The *Gemora* relates: Huna bar Mereimar was in front of Ravina, and he asked the following contradiction and he answered it. The *Mishna* stated: If the craftsmen

say, "Take what is yours and bring the money," they are regarded as unpaid custodians. Seemingly, the same *halachah* would not apply if they would have said, "We have finished it." This contradicts that which we have learned in a different *Mishna*: If a borrower said to the lender, "Send me the animal," and he does and the animal dies, the borrower is liable. The same applies when it is being returned.

He answered that Rafram bar Pappa said in the name of Rav Chisda: This *halachah* is true only if the animal was returned during the time of the borrowing; however, after the term of the borrowing, the borrower is exempt from liability (*even if the animal dies while it is in the borrower's possession*).

The *Gemora* inquires: Is he (*the borrower after the term of borrowing has concluded*) merely exempt from liability as a borrower, but he will be liable like a paid custodian? Or, is he not even regarded as a paid custodian?

Ameimar said: It is logical to assume that he is regarded as a paid custodian, for since he derived benefit from the borrowed object, he, in return, should provide benefit to the owner.

The *Gemora* cites a *braisa* in support of Ameimar: If one takes a utensil from a tradesman to approve it (*by inspecting it*) to send them as a gift to his father-in-law's house, and he stipulates the following with the seller: "If they are accepted (*by the woman who is betrothed to him*), I will pay you their value, but if not, I will pay you for the amount that I benefited from them (*that he is appreciated for sending the gift*), the following is the *halachah*: If they were accidentally damaged on the way there, he is liable. If it gets damaged on the way back, he is not liable, because he

is regarded as a paid custodian. [*Since he received some benefit from it, he is regarded as a paid custodian! The Ra"n in Nedarim explains as follows: On the way back, he is free from responsibility because he is like a paid watchman, and a paid watchman is free from responsibility for accidents. However, he is responsible if they are stolen or lost, because the Gemora in Bava Metzia concludes that a borrower, after the term of his borrowing is over, becomes a paid watchman, because he both benefits and provides benefit. And there it is proven from this braisa that since on the way there he is a borrower, on the way back, even though he is not a borrower, he is regarded as a paid watchman.*]

The *Gemora* records the following incident: A person sold a donkey to his friend. The buyer said to the seller, "I will take it to a certain place to sell it. If it is sold, I will pay you the money. If not, I will return it to you and I will not pay you." The seller agreed to this deal. He proceeded to that place to take the donkey to sell, but could not sell it. On his way back, it was accidentally injured. Rav Nachman ruled that he is liable to pay.

Rava challenged this ruling from the *braisa*: If it gets damaged on the way back, he is not liable, because he is regarded as a paid trustee.

Rav Nachman replied: The return journey of a middleman is regarded as if he is still on the way there, for if he would find a purchaser, even at his doorstep, will he not sell it to him? (80b – 81a)

The *Mishna* had stated: If one says, "Watch this for me, and I will watch for you," he is regarded as a paid custodian.

The *Gemora* asks: Why is he liable? It should be a case where he is watching something while the owner is

working for him (*and the Torah states that if “b’e’olov imo” – the owner is with him – he is exempt from liability!*)?!

Rav Pappa answers: The *Mishna* is referring to a case where he said, “Watch for me today and I will watch for you tomorrow.”

Rav Pappa uses this interpretation to explain a different *braisa* as well.

The *Gemora* relates the following incident: There was a group of perfume dealers of whom each day a different one baked for them all. One day they said to one of them, “Go and bake for us.” “Then watch my cloak,” he rejoined. Before his return, it was stolen through their negligence; so they went before Rav Pappa, who held them responsible. The Rabbis said to Rav Pappa: But why? Is it not a case wherein the owner is pledged to the service of the custodian (*and the Torah states that if “b’e’olov imo” – the owner is with him – he is exempt from liability!*)? Thereupon he was embarrassed. Subsequently it was discovered that just then the owner had been drinking beer.

The *Gemora* asks: Now, on the view that the custodian is not liable for negligence when the owner is pledged to the service of the custodian, it is well - on that account, he was ashamed. But on the view that he is, why was he ashamed?

The *Gemora* revises the incident: It happened like so: That day was not his for baking, yet they asked him, “Go bake for us,” to which he rejoined, “In return for my baking for you, watch my cloak.” Before he returned, it was stolen, and they went before Rav Pappa, who held them responsible. The Rabbis protested to Rav Pappa: Why so? Is it not a case wherein the owner is pledged

to the service of the custodian? So he was ashamed. But subsequently it was discovered that just then he had been drinking beer.

The *Gemora* cites a related incident: Two men were travelling together on a road, one of whom was tall, and the other short. The tall one was riding a donkey and had a linen sheet, while the short one was wearing a woolen cloak, and walked on foot. On coming to a river, the short one took his cloak, placed it upon the donkey, and took the other man's linen and covered himself with it. Then the water swept the sheet away. So they came before Rava, who ruled that the short man is liable. But the Rabbis protested to Rava: Why so? Is it not a case wherein the owner is pledged to the service of the custodian? So he was ashamed. Subsequently it was learned that he had taken the linen sheet and put his own on the donkey without his knowledge (*so it was the correct ruling*).

The *Gemora* records another incident: Once someone hired out a donkey to a person, and he said to him, “Do not go the way of Nehar Pekod, where there is water, but rather, go the way of Naresh, where there is no water.” But he went the way of Nehar Pekod and the donkey died. The one who hired the donkey came before Rava and said to him, “Indeed, I went the way of Nehar Pekod, but there was no water.” Rava said: Why should he lie? If he wished, he could have said that he went the way of Naresh. Abaye said to him: We do not say ‘Why should he lie?’ when there are witnesses against him (*it is common knowledge that there is water on the way to Nehar Pekod; here too, it is common knowledge that if she was not in hiding, she cohabited with an idolater*).

The *Gemora* objects to the comparison: Now is this so? There, there were witnesses that there certainly was

water on the way of Nehar Pekod, but here, has she certainly been defiled (*it is merely a suspicion, but we are not definite about it*)? It is only a concern, and in the case where we are concerned, we say 'Why should he lie?'

The *Mishna* had stated: If one says, "Watch this for me," and the other replied, "Set it down before me," he is regarded as an unpaid custodian.

Rav Huna said: If he replies, "Put it down before you," he is neither an unpaid nor a paid custodian.

The scholars inquired: What if he simply said, "Put it down"?

The *Gemora* attempts to prove this from our *Mishna*: Come and hear: If one says, "Watch this for me," and the other replied, "Set it down before me," he is regarded as an unpaid custodian. From which it follows that if he does not say that, there is no obligation at all.

The *Gemora* asks: On the contrary, since Rav Huna said: If he replied, "Put it down before you," it is only then that he is neither an unpaid nor a paid custodian; it follows that if he does not say that at all, he is a paid custodian. But no conclusions are to be drawn from this.

The *Gemora* asks: Shall we say that this is disputed by *Tannaim*? For we learned: If he brought them in with the owner's permission, the courtyard owner is liable. Rebbe said: In all these cases, he is not liable unless he explicitly undertook to watch it.

The *Gemora* notes a distinction between the two cases. Perhaps the Rabbis rule that he becomes a custodian only there, in the case of a courtyard, which is a

guarded place. so that when the owner said to him, "Bring it in," he meant, "Bring it in, and I will take care of it for you"; but here, in a market place, which is unguarded, he may have meant, "Put it down, take a seat, and guard it."

Alternatively, perhaps Rebbe rules that he does not become a custodian only there, in the case of a private courtyard, for to enter inside, permission is necessary, so that when he gave him permission to enter, he meant, "Come in, sit down, and guard it." But here, he must have meant, "Put it down and I will guard it"; for should you think that he meant, "Put it down, take a seat, and guard it," does he require his permission to put it down?

#### DAILY MASHAL

We have before us two incidents where Rav Pappa and Rava were both mistaken in their legal judgment, and yet, Heaven orchestrated the situations in a manner that they did not issue an erroneous ruling.

The Chasam Sofer explains with this the tefillah of Rabbi Nechunya ben Hakaneh, where he said: that I should not stumble in a matter of law and cause my colleagues to rejoice over me. Rashi explains this to mean "I should not stumble" - and cause my colleagues to rejoice over my stumbling. He was praying that he should not be the cause of the punishment that will befall his colleagues if he would stumble in a matter of law. However, explains the Chasam Sofer, in general, there was no suspicion that this should occur to these great *Tannaim* and *Amoraim*, but rather, his tefillah was regarding an incident similar to Rav Pappa and Rava, where they were saved from stumbling - Rabbi Nechunya ben Hakaneh was asking that even such a type of occurrence should not happen to him.