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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

Mishnah

A person can make an agreement not to eat from the fruit and instead get paid more for himself, his adult son and daughter, his adult servants and maidservants, and his wife. However, he cannot make this condition for his son and daughter who are minors, his servants and maidservants who are minors, or his animals, as they have no knowledge. If someone hires a worker to help him with his *neta revai* (fruits of the fourth year that must either be eaten in Yerushalayim or redeemed, and the money used to buy food eaten in Yerushalayim), the fruit cannot be eaten by the worker. [They are not compensated for their inability to eat the fruit, as they knew beforehand they were dealing with *neta revai*.] If he did not inform them (of the fruit’s *neta revai* status), he must redeem the *neta revai* and let them eat.

If his fig cakes became separated or his barrels opened, the workers may not eat from them (because they already are subject to the obligation of *ma’aser*). [The workers are not compensated for their inability to eat the fruit, as they knew beforehand that they were dealing with a product that was obligated in *ma’aser*.] If the owner did not tell them (in a way that they would know they were going to work with a product that was obligated in *ma’aser*), he must take *ma’aser* from them and feed them. People who watch over the fruit can eat because that is the custom, but not because of the Torah’s law (that workers can eat from the fruit). (93a2)

The Status of a Guard

Rav says: This law regarding watchmen is only regarding watchmen who are guarding gardens and orchards (since it

is before the work is completed). However, if they are watching piles of produce or stalks (that are detached from the ground), they are entitled to eat from the Biblical law. This is because Rav holds that guarding the fruit is like working with it.

Shmuel argues: The *Mishnah* is discussing watching piles of produce or stalks. However, if the watchman was guarding gardens or orchards, he cannot eat according to Torah law, nor according to the custom. This is because Shmuel holds that watching is not considered working with the fruit.

Rav Acha bar Rav Huna asked a question from a *Baraisa*. The *Baraisa* states: If someone guards the red heifer (from when it was slaughtered until its ashes were gathered), his clothes that he was wearing at that time become impure. If someone who watches is not considered like he is working with the item itself, why should this be? [The rule in general is that anyone dealing with the red heifer becomes impure. This is therefore a question on Shmuel.]

Rabbah bar Ulla answered: This is a special Rabbinic decree by the red heifer, lest he might move one of its limbs (and contract *tumah* that way).

Rav Kahana asked a question from a *Baraisa*. If someone was guarding four or five places gourd fields (each owned by a different person), he should not eat from only one of them; but rather, he should eat proportionately - a little from each field. According to Shmuel that guarding is not like working with the item, why should he be allowed to eat at all?

Rav Shimi bar Ashi answers: The case is where the gourds are not attached.



The *Gemara* asks: If they are uprooted, then he must take *ma'aser* from them!? The *Gemara* answers: The case is where the flower on top of the gourds have not yet been detached (*so they are not yet obligated in ma'aser, as it is not yet a finished product, see 88b*).

Rav Ashi says: Shmuel's opinion is reasonable, for we learned in a *Mishnah*: And these eat by Biblical law: The one who works on what is attached to the ground when the work is being completed (*i.e. the harvesting*), and on what is detached from the ground before its work is completed (*before it is fully processed, and not obligated in ma'aser or challah yet*) etc. This implies that there are some workers who eat not because of Torah law, but because of the custom. However, the end of the *Mishnah* states: And these people do not eat etc. What does this mean? If it means that they do not eat according to Torah law, but do eat due to the custom, this was already implied by the first part of the *Mishnah*. It must mean that the following do not eat even according to the custom! It lists people who work with the produce when it is attached to the ground but not when it is finished. Certainly the same law applies to watchmen of gardens and orchards (*as they are no better than workers who work when the produce is still attached*). (93a3 – 93a4)

Mishnah

There are four types of guardians: A guardian who watches for free, a borrower, a guardian who watches for pay and a renter. A guardian who watches for free swears about everything (*and is exempt from liability*); a borrower pays for everything; and a guardian who watches for pay and a renter swear regarding an animal that broke a limb, or was captured or died (*naturally*), but they would pay for an animal that was lost or stolen. (93a4)

Tanna of our Mishnah

The *Gemara* asks: Who is the author of this *Mishnah*?

Rav Nachman says in the name of Rabbah bar Avuha: It is Rabbi Meir.

Rava asked Rav Nachman: Is there anyone who argues on this *Mishnah*?

Rav Nachman said: I meant that the *Tanna* who holds that a guardian who gets paid has the same law as a renter is Rabbi Meir.

The *Gemara* asks: Doesn't Rabbi Meir say otherwise? The *Baraisa* states: How does a renter pay? Rabbi Meir says: He pays like a guardian who watches for free. Rabbi Yehudah says: He pays like a guardian who receives pay.

The *Gemara* answers: Rabbah bar Avuha understood that the opinions in the *Baraisa* were switched around.

The *Gemara* asks: If so, there are actually three types of guardians, not four!?

Rav Nachman bar Yitzchak answered: There are four types of guardians, and they have three sets of laws. (93a4 – 93a5)

A Guardian's Liability

There was a shepherd that was tending to his flock on the bank of the Pappa River. One animal fell into the water (*and died*). He came before Rabbah, who said he did not have to pay. Rabbah said: What should he have done? He was watching the animals in a normal fashion (*and this is therefore deemed forced circumstances, not a lost object*).

Abaye asked him: If the shepherd went into the city when most people do so (*and an animal died*), is he also exempt?

Rabbah answered: Yes, he is.

Abaye asked him: If the shepherd went to sleep when most people do so (*and an animal died*), is he also exempt?

Rabbah answered: Yes, he is.

Abaye asked a question from a *Baraisa*. The *Baraisa* states: These are the types of forced circumstances that a paid guardian is not liable. “*And Sheba fell on them and took them, and the lads they smote with a sword.*” [This implies that only a calamity that happened to *lyov* creates forced circumstances; going to sleep at a regular hour would not fit that criterion.]

Rabbah answered: The *Baraisa* is referring to the guards of the town. [They are paid to guard them from all danger, and are only called the victims of forced circumstances if they are attacked with tremendous force.]

Abaye asked a question from another *Baraisa*. The *Baraisa* says: Until when must a paid guardian watch the item? Until, “*I was eaten during the day by intense heat, and ice at night.*” [This also implies that forced circumstances are only under intense conditions.]

Rabbah answered: This is also referring to the guards of the town.

Abaye asked: Was Yaakov Avinu (the one who made this statement) a town guard? [He was Lavan’s shepherd!]

Rabbah answered: Yaakov told Lavan, “*I will be obligated to you more than a regular guardian for pay. I will be obligated like a town guard.*”

Abaye asked a question from a *Baraisa*. The *Baraisa* states: A shepherd left his flock and went into the city, and a wolf came and seized a sheep, or a lion came and savaged it. We do not assume that if he was there he would have saved the animal. Rather, we estimate whether or not he would have been able to save the animal if he was there (to determine whether or not this is forced circumstances). If he could have saved the animal, he must pay. If not, he does not have to pay. This must be at a time when people go into the city (and he is still liable, unlike Rabbah’s answer)!?

Rabbah answered: No, it is talking about a case where he went into the city at an abnormal time.

Abaye asked: If so, why is he exempt? We say that if someone started off by being negligent and ended up being the victim of forced circumstances, he is liable!?

Rabbah answered: The case is where he ran into the city because he heard a lion roaring nearby, so he entered the city in order to save himself.

Abaye asked: If so, why does the *Baraisa* say, “We estimate etc.?” What was he supposed to do?

Rabbah answers: He should have banded together with other shepherds and used sticks (to drive away the lion).

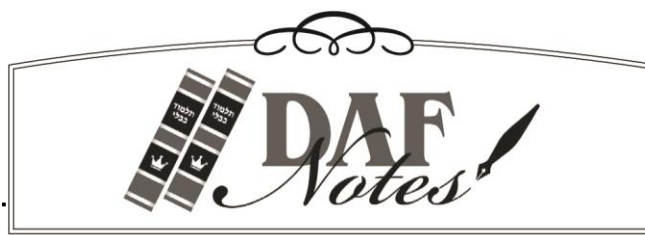
Abaye asked: If so, why say the case is referring to a paid guardian? This would even be the law regarding someone guarding for free!?! Aren’t you the one who says that a guardian for free, who does not organize shepherds and sticks to drive away predators when he should have, is liable?

Rabbah answered: An unpaid guardian only has to round up shepherds if they will do so for free, whereas a paid guardian must summon other shepherds even if it will cost him money.

The *Gemara* asks: How much must he spend?

The *Gemara* answers: He must spend as much as the animals are worth.

The *Gemara* asks: Where do we see that the paid guardian is liable for forced circumstances (for in essence, by using his own money for this, we are holding him accountable for this occurrence)?



The *Gemara* answers: The owner reimburses him (*for these expenses*).

Rav Pappa asked Abaye: If so, what does the owner get out of the fact that the guardian hired shepherds, when he has to pay up to the full value of his animals? [*If he ends up paying the value of the animal anyway, why bother making the guardian hire them for so much money in the first place?*]

Abaye answered: The difference is that the owner has his trained animal (*which to him is worth more, even though its value on the market is equivalent to the amount spent to protect it*). Alternatively, it spares him the bother of having to go buy another animal.

Rav Chisda and Rabbah bar Rav Huna did not agree with Rabbah (*who said that the paid guardian is only obligated to watch in a normal fashion*). They maintain that the owner can say, "I paid you money in order that you will guard this very carefully." (93a5 – 93b3)

Bar Adda the porter would have his animals (*the one's he was watching*) cross over the Narash Bridge. One of the animals pushed another when they were crossing and the animal fell into the water. He went before Rav Pappa, who said he was obligated to pay for the animal. He asked Rav Pappa: What should I have done? Rav Pappa answered: You should have made them cross the bridge one at a time. He replied: Do you know of any of your brothers who indeed make the animals cross one by one? Rav Pappa answered: Others before you have already screamed (*i.e. complained*) about this, but they were not listened to. [*Many Rishonim explain that Rav Pappa held like Rav Chisda and Rabbah bar Rav Huna. He therefore held that the paid guardian is expected to go above and beyond what is commonly done in order for him not to be liable for what happens to the animal. While this is not considered a case of negligence, it is considered in the category of "stolen" or "lost," in which a guardian for pay is liable.*]

Aivu deposited some flax by the house of Runya. Shabu, an armed bandit, stole it from the house. Eventually, it became known that Shabu was the thief. Runya went before Rav Nachman, who ordered him to pay.

The *Gemara* asks: Let us say that Rav Nachman argues on Rav Huna bar Avin. Rav Huna bar Avin sent a ruling that where the deposit was stolen by armed bandits and the thief was identified, if the custodian was unpaid, he had the option of paying the owner and taking the thief to court, or he can take an oath (*so that the owner himself will have to deal with the thief*), whereas if he was a paid custodian, he would be required to take the thief to court and he cannot take an oath to discharge his liability. [*Runya was an unpaid guardian, and Rav Nachman made him pay the owner etc.*]

Rava answers: When the flax was being stolen from Runya, there were government officials there. If he would have raised his voice about the theft, they would have stopped it. [*This is why Rav Nachman made him pay etc.*] (93b3 – 93b4)

Mishnah

If one wolf comes, it is not forced circumstances. If two wolves come, it is. Rabbi Yehudah says: If it is a time when wolves are sent to attack, even one wolf is forced circumstances. Two dogs are not considered forced circumstances. Yaddua ha'Bavli says in the name of Rabbi Meir: If they are coming from one direction, it is not forced circumstances. If they are coming from two directions, it is. Armed bandits are considered forced circumstances. A lion, bear, leopard, panther, and snake are forced circumstances. When is this true? It is true when they come themselves to the shepherd and his flock. However, if the shepherd brought his flock to a place where there are many dangerous animals and bandits, it is not called forced circumstances. If an animal died naturally, it is called forced circumstances. If he caused it pain (*he did not feed it or caused it to be exposed to harsh weather*) and it died, it is not called forced circumstances. If the animal on its own went up to a cliff and fell off, it is forced circumstances. If he brought it up to the

cliff and it fell off, this is not forced circumstances. (93b4 – 93b5)

Animals and Bandits

The *Gemara* asks: Don't we have a *Baraisa* that states that even one wolf is considered forced circumstances?

Rav Nachman bar Yitzchak answers: This is when the wolf is sent out to attack, and is according to Rabbi Yehudah.

The *Gemara* asks: Why is a bandit considered forced circumstances? Let him stand up to the bandit, one against one!?

Rav says: The case is when it is an armed bandit.

The students of the *Yeshiva* inquired: What if the guard is also armed? Do we say that this should be a case of one against one, or do we say that the thief comes to steal and is willing to fight to the death to this end, while the guardian was not hired to very possibly sacrifice his life?

The *Gemara* concludes: It is logical that the guardian does not have to possibly sacrifice his life to fight the armed bandit, who is clearly putting his life on the line.

Abaye inquired of Rava: If a shepherd said to the bandit, "Rotten thief! We are encamped in such-and-such a place. We have this amount of people with us. We have this amount of dogs with us. We have this amount of slingmen with us." The bandit went and stole the animals. [*Do we say that the shepherd is liable for inciting the bandit?*]

Rava said: The shepherd has, for all practical purpose, led his animals to a place where wild animals and bandits frequent (*and he is therefore liable*). (93b5 – 94a1)

INSIGHTS TO THE DAF

Unavoidable

There was a shepherd that was tending to his flock on the bank of the Pappa River. One animal fell into the water (*and died*). He came before Rabbah, who said he did not have to pay. Rabbah said: What should he have done? He was watching the animals in a normal fashion (*and this is therefore deemed forced circumstances, not a lost object*).

Abaye asked him: If the shepherd went into the city when most people do so (*and an animal died*), is he also exempt?

Rabbah answered: Yes, he is.

Abaye asked him: If the shepherd went to sleep when most people do so (*and an animal died*), is he also exempt?

Rabbah answered: Yes, he is.

Rashi explains that Rabbah is of the opinion that the drowned animal is not regarded as if it was lost, but rather, it is considered as if it died on account of an unavoidable circumstance. This is why the paid guardian is exempt. Abaye disagrees and holds that the paid guardian should have been more careful. Although it is not regarded as a negligence, he will still be liable.

The Rashba disagrees with Rashi's explanation, and holds that a paid guardian is not exempt from liability by claiming that it was unavoidable, for he watched in a normal manner. He proves this from the fact that Abaye holds that the custodian is liable if something happened while he was sleeping, although there can be no greater claim to being unavoidable than sleeping. The only way he will be exempt from liability is if something unavoidable happened to the deposit he was watching. Rabbah maintains that he is exempt from liability in this case, for the guardian only accepted to watch it in those times that it is normal to watch it.



QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF to refresh your memory

Q: What do the *Chachamim* advise a worker before eating from the produce?

A: Do not be ravenous, thereby closing the door against himself (*for he will not find employment by others*).

Q: What were the "hidden scrolls"?

A: During the time that it was forbidden to write the Oral Law, some would write it privately in order that they wouldn't forget it.

Q: What is the inquiry of the *Gemara* regarding the worker's right to eat the produce?

A: Does the worker eat from his own food (*his wage*), or is he eating from Heaven's food (*similar to the gifts given to the poor*)?

DAILY MASHAL

The Vilna Gaon explains that the story of Yaakov and Lavan is the precursor for yetzias Mitzrayim. Yaakov's stay at Lavan's house mirrored the Jewish nation's enslavement in Mitzrayim. Furthermore, Yaakov's escape from Lavan mirrored the Jewish People's escape from Mitzrayim.

Yaakov worked tirelessly day and night tending to Lavan's sheep, as Yaakov said regarding his working conditions, "I was consumed by the heat during the day, and frost by night, and my sleep drifted from my eyes." In Mitzrayim, too, the Jewish People worked day and night under ruthless conditions for Pharaoh.

Lavan changed Yaakov's wages time and time again, as Yaakov said to his wives, "Your father [Lavan] mocked me and changed my wage ten times, but Gd did not let him harm

me. In Mitzrayim, Pharaoh also tricked the Jews to work for him by promising wages, but then ordered them to work without compensation.

Just as Yaakov left Lavan's house with great wealth, the Jewish People left Mitzrayim with great wealth.

When Yaakov left Lavan's home, Lavan chased him. Similarly, when the Jewish People left Mitzrayim, Pharaoh and his army chased after them. Furthermore, just like Pharaoh began his chase on the third day (because the Jewish people were supposed to go for just three days) and caught up with them on the seventh, Lavan also chased Yaakov on the third day of his absence and caught up with him on the seventh.

The Vilna Gaon explains that this is the reason why the Pesach Haggadah tells us to "go out and study what Lavan wanted to do to Yaakov". In order to understand the story of yetzias Mitzrayim we need to study the ma'asei avos siman lebanim that preceded it; this was the story of Yaakov in Lavan's home.