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Mishnah - Four Guardians

There are four types of guardians: A guardian who watches for free, a borrower, a paid guardian and a renter. A guardian who watches for free swears about everything (*and is exempt from liability*); a borrower pays for everything; and a paid guardian and 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. (49a2 – 49a3)

Unpaid Guardian

If the animal owner said to an unpaid guardian, “Where is my ox?” and he replied, “It died,” whereas it was broken or captured, or stolen or lost; or if he replied, “It was broken,” whereas it had died, or was captured, or stolen or lost; or if he replied, “It was captured,” whereas it died or was broken, or stolen or lost; or if he replied, “It was stolen,” whereas it had died, or was broken, or captured or lost; or if he replied, “It was lost,” whereas it had died, or was broken, or captured or stolen; and in all these cases, the animal owner said to the guardian, “I adjure you,” and he said “Amen” (*and afterwards, he admitted that he swore falsely*), he is exempt (*from bringing the korban (plus the “one – fifth” surcharge) for a false oath of deposit, for he is only liable if he attempted to exempt himself from a monetary obligation; and since an unpaid guardian would have been exempt no matter what happened, he is not liable to bring the korban asham*).

If he said, “Where is my ox?” and he replied, “I do not know what you are talking about,” and the ox died, was broken, captured, stolen or lost, and the animal owner said to the

guardian, “I adjure you,” and he said “Amen,” he is exempt (*for the same reason as above*).

If a man says to an unpaid guardian, “Where is my ox?” and he replies, “It was lost,” whereupon the depositor says, “I adjure you to swear (*that indeed it was lost*),” and the custodian says, “Amen,” but afterwards witnesses testify against him that he himself had consumed it, he is required to pay only the principal (*but not the keifel, for he did not claim that it was stolen*). If he admits to this himself, he has to pay the principal together with an additional fifth and an *asham* offering.

If a man says to an unpaid guardian, “Where is my ox?” and he replies, “It was stolen,” whereupon the depositor says, “I adjure you to swear (*that indeed it was stolen*),” and the custodian says, “Amen,” but afterwards witnesses testify against him that he himself had consumed it, he is required to pay the double payment. If he admits to this himself, he has to pay the principal together with an additional fifth and an *asham* offering.

If a person accuses someone from the street and says, “Where is my ox that you stole?” The person responds, “I did not steal it.” After taking an oath to this effect, witnesses testify that he indeed stole it. He has to pay *keifel*. If he slaughtered it or sold it, he is obligated to pay the fourfold or fivefold payment.

If a thief saw that witnesses are preparing themselves to testify against him and he confesses and says, “I have



stolen, but I did not slaughter it nor did I sell it," he would only be required to pay the principal. (49a3 – 49a4)

Borrower

If the animal owner said to a borrower, "Where is my ox?" and he replied, "It died," whereas it was broken or captured, or stolen or lost; or if he replied, "It was broken," whereas it had died, or was captured, or stolen or lost; or if he replied, "It was captured," whereas it died or was broken, or stolen or lost; or if he replied, "It was stolen," whereas it had died, or was broken, or captured or lost; or if he replied, "It was lost," whereas it had died, or was broken, or captured or stolen; and in all these cases, the animal owner said to the guardian, "I adjure you," and he said "Amen" (and afterwards, he admitted that he swore falsely), he is exempt (from bringing the korban for a false oath of deposit, for he is only liable if he attempted to exempt himself from a monetary obligation; and since a borrower would have been liable no matter what happened, he is not liable to bring the korban asham).

If he said, "Where is my ox?" and he replied, "I do not know what you are talking about," and the ox died, was broken, captured, stolen or lost, and the animal owner said to the guardian, "I adjure you," and he said "Amen," he is liable (to bring the korban, for he is attempting to exempt himself when in truth, he was liable to pay). (49a4 – 49b1)

Paid Guardian or Renter

If the animal owner said to a paid guardian or a renter, "Where is my ox?" and he replied, "It died," whereas it was broken or captured; or if he replied, "It was broken," whereas it had died, or was captured; or if he replied, "It was captured," whereas it died or was broken; or if he replied, "It was stolen," whereas it was lost; or if he replied, "It was lost," whereas it was stolen; and in all these cases, the animal owner said to him, "I adjure you," and he said "Amen" (and afterwards, he admitted that he swore falsely), he is exempt (from bringing the korban for a false oath of deposit, for he is only liable if he attempted to

exempt himself from a monetary obligation; and since a paid guardian or a renter is exempt if it died, or was broken or captured, and he is liable to pay if it was lost or stolen, he is not liable to bring the korban asham, for he was never trying to gain with his false oath).

If he said to him, "Where is my ox?" and he replied, "It died," or, "It was broken," or, "It was captured," whereas it was stolen or lost, and in all these cases, the animal owner said to him, "I adjure you," and he said "Amen" (and afterwards, he admitted that he swore falsely), he is liable (to bring the korban, for he is attempting to exempt himself when in truth, he was liable to pay).

If he said to him, "Where is my ox?" and he replied, "It was lost," or, "It was stolen," whereas it died, or was broken, or was captured, and in all these cases, the animal owner said to him, "I adjure you," and he said "Amen" (and afterwards, he admitted that he swore falsely), he is exempt (from bringing the korban, for he was not trying to gain anything with his false oath). (49b1)

General Rule

This is the rule (to explain the above cases): Whoever changes from liability to liability (in truth he was liable to pay, and he swore falsely that something else happened – something that would make him liable anyway), or from exemption to exemption (in truth he was exempt from paying, and he swore falsely that something else happened – something that would have exempted him anyway), or from exemption to liability (in truth he was exempt from paying, and he swore falsely that something else happened – something that would have made him liable), he is exempt from bringing the korban (for he was attempting to gain monetarily). If, however, he changes from liability to exemption (in truth he was liable to pay, and he swore falsely that something else happened – something that would have exempted him), he is liable to bring the korban. This is the rule: If he swore falsely in order to make it more lenient for himself, he is liable to bring the korban; if he



swore falsely in order to make it more stringent on himself, he is exempt from bringing the *korban*. (49b2)

Renter

The *Gemara* asks: Who is the *Tanna* who holds that there are four guardians?

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

Rava asked Rav Nachman: Is there then a *Tanna* who does not hold that there are four guardians?

Rav Nachman explained himself: Who is the *Tanna* who holds that a renter is like a paid guardian (*that they are both liable if it was lost or stolen*)? Rabbah bar Avuha: It is Rabbi Meir.

The *Gemara* asks: But surely, we have heard that Rabbi Meir holds the reverse opinion!? For it was taught in a *braisa*: How does a renter pay (*for the Torah does not specify his status as a custodian*)? Rabbi Meir says that the renter has the same *halachos* as an unpaid custodian (*for he is not getting paid*) Rabbi Yehudah says that a renter has the same *halachos* as a paid custodian (*for he is deriving benefit from it by the fact that he is permitted to use it*).

The *Gemara* answers: Rabbah bar Avuha reversed the opinions of Rabbi Meir and Rabbi Yehudah.

The *Gemara* asks: Why does the *Mishnah* say that there are four guardians, when in essence, there are only three (*for a renter has the same halachos as one of the other guardians*)?

Rav Nachman bar Yitzchak answers: The *Mishnah* means that there are four types of guardians, but their *halachos* are three. (49b2)

Oath of Utterance

The *Mishnah* had stated: If the animal owner said to an unpaid guardian, etc. Where is my ox? etc.

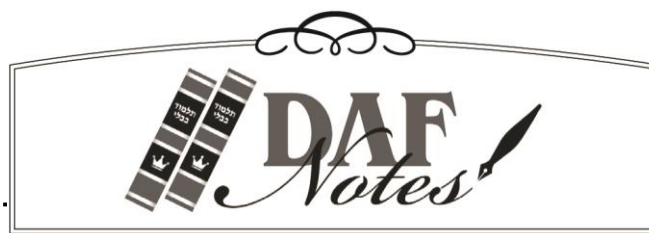
If a person accuses someone from the street and says, etc. If he said to a guardian, etc. Where is my ox? He replied to him, "I do not know what you are talking about," etc.

Rav said: They are all exempt from the oath of guardians, but are liable in respect of the oath of utterance; and Shmuel said: They are exempt also in respect of the oath of utterance.

In what do they disagree? Shmuel holds that the application (*of this oath*) is not possible in the future (*for it is not in his control if the animal will get stolen or lost or die; therefore, he cannot be liable for an oath of utterance*); and Rav holds that the application (*of this oath*) is possible both negatively and positively (*for he can swear that it was stolen, or that it was not stolen*).

The *Gemara* asks: But they have already expressed their disagreement on this issue previously, for it was stated: A person swore someone threw a rock into the sea, or did not throw a rock into the sea. Rav says he is liable (*if he is lying*), and Shmuel says he is exempt. Rav says he is liable as it is something that is possible both negatively and positively. Shmuel says he is exempt, as it is not in his power whether or not someone will throw something in the sea.

The *Gemara* answers that both disagreements are necessary, for if they had told us their disagreement only in that case, we might have thought that only in that case Rav says he is liable, because he swears of his own accord, but in this case, where *Beis Din* administered the oath to him, we might have thought that he agrees with Samuel that he is exempt, as Rabbi Ammi said, for Rabbi Ammi said: In any oath which *Beis Din* administers, there is no liability in respect of the oath of utterance. And if their disagreement had been stated only in this case we might have thought



that only in this case Shmuel says he is exempt (*because of Rabbi Ammi*), but in the other case we might have thought that he agrees with Rav; therefore it is necessary for their disagreement to be stated in both cases.

It was stated: Rabbi Ammi said: In any oath which which *Beis Din* administers, there is no liability in respect of the oath of utterance, for it is written: *Or (ki) if a person will swear, expressing with the lips*. The verse indicates that he swore of his own accord; as Rish Lakish said, for Rish Lakish said: The word “*ki*” can mean four things. It can mean: if, perhaps, but, or because. [*Here, it means “if,” which implies that he swore on his own accord.*]

Rabbi Elazar says: All the oaths mentioned in the *Mishnah* are exempt from the oath of guardians (*for they were not denying money with their oaths*), but are liable in respect of the oath of utterance, except in the case where the borrower said, “I do not know what you are talking about,” and the case of theft and loss by the paid guardian or the renter (*where they swore that an accident happened*), where they are liable (*to bring the korban*), for they denied money. (49b2 – 49b4)

WE SHALL RETURN TO YOU, ARBAAH SHOMERIN

AND TRACTATE SHEVUOS IS CONCLUDED

DAILY MASHAL

Rav Pappa's Ten Sons

Upon ending each tractate we count the names of Rav Pappa's ten sons. The Remo writes two explanations and emphasizes that his commentary is a “fine interpretation with profound insight” (Responsa Remo at the end of Kuntres Acharon, cited also in Yam shel Shlomo, end of Perek Merubeh in the He'aras HaMagiah).

In his first commentary, the Remo explains that Rav Pappa was rich and supported *talmidei chachamim*. Whenever his sons would finish a tractate, he would arrange a feast. We therefore mention their names, which indicate the Ten Commandments which were given to Moshe “from mouth to mouth” (peh el peh, the initials of Pappa):

1. Chanina: corresponding to “I am Hashem”, who is merciful (chanun).
2. Nachman: corresponding to “You shall not have idols”, as someone who makes an idol eventually changes his mind (nicham) about it once he realizes it is only wood or stone.
3. Rami: corresponding to “You shall not mention Hashem’s Name”, to remind us that someone who swears by Hashem’s name believe that he thus exalts (meromem) His name, but that is not so.
4. Ada: corresponding to “Remember the day of Shabos”. The numerical value of Ada is six, like the number of working days.
5. Aba Mari: corresponding to “Honor your father”, for a son who honors his father calls him “my father, my teacher” (avi mori).
6. Achai: corresponding to “Do not murder”. Anyone who regards every Jew as a brother (ach) will not murder.
7. Rafram: corresponding to “Do not commit adultery”, for sins start when one’s eyes wander (rifruf).
8. Rachish: corresponding to “Do not steal”. Property is *rechush*.
9. Surchav: corresponding to “Do not give false testimony”. This son was named after Serach, Asher’s daughter, who gave true testimony: “Yosef is still alive.”
10. Daru: corresponding to “You shall not covet”, in which we are commanded not to covet another’s house or wife. A house is called a *dirah* and a person’s wife is the main feature of his home.