



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**  
**Tzvi Gershon ben Yoel (Harvey Felsen) o”h**

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

**Where to Pay**

The Mishnah states that if one stole from his fellow, or borrowed from him, or whose fellow deposited an article with him – if it was in a settled area, he may not pay the obligation back in the wilderness. [If he does so, the payment is not considered complete, and if the payment is lost, he must pay again.] However, if he incurred the obligation on condition that he goes to the wilderness, he may pay it back in the wilderness. (118a1)

**Loans**

The Gemora notes a contradiction from the following Baraisa: A loan can be paid in all places, whereas a lost article [which was found], or a deposit cannot be returned except in its place.

Abaye explains that the Baraisa is not discussing where the loan may be paid, but where the one claiming the money may demand payment. Since a loan is an obligation to pay money, but not a specific item, it can be claimed anywhere by the creditor. A lost item, or a guarded item, are specific items, where the one paying typically will only keep in their original location, and therefore cannot be claimed anywhere else. (118a1 – 118a2)

**Conditions**

The Mishnah had stated: However, if he incurred the obligation on condition that he goes to the wilderness, he may pay it back in the wilderness. – Is this not obvious? Instead, the case of the Mishnah is where the owner of the item told the guard that he would like him to watch this item, since he will be going to the wilderness. In response, the guard told him that he’s also going to the wilderness, but if the owner would like, he can return it to him in the

wilderness. [The Mishnah is teaching us that such a conversation is tantamount to a condition, even though nothing was explicitly stipulated.] (118a2)

**Maybe or Maybe Not**

The Mishnah describes two cases where a person is unsure of a monetary obligation he incurred. If the person tells someone that he knows that he owed him money, by stealing, borrowing, or watching an item, but he doesn’t remember if he paid it, he must pay him. If he is unsure if the initial obligation was incurred at all – i.e., he’s unsure if he stole, borrowed, or agreed to watch – he is not obligated. (118a2)

**Certainty vs. Possession**

It was stated: If one person says to another person: *A maneh* of mine is in your hand, and the latter responds by saying: I do not know. Rav Yehudah and Rav Huna say: He is obligated to pay. Rav Nachman and Rabbi Yochanan say: He is exempt from paying.

The *Gemora* explains the dispute: Rav Huna and Rav Yehudah say: He is obligated to pay because they hold that in the case of “a certainty and a doubt” (*one person has a certain claim and the other is uncertain*), the judgment is given to the litigant who is certain. Rav Nachman and Rabbi Yochanan say: He is exempt from paying because they by the following principle: Leave the money in the possession of its present owner (*since he is presumed to be the rightful owner*).

We have learned in our Mishnah: But if he says, “I do not know whether I have borrowed money from you,” he is not liable to make restitution. Now, how are we to understand

this? If we say that there was no demand on the part of the plaintiff, then the first clause must surely refer to a case where he did not demand it, [and if so] why is there liability? It must therefore refer to a case where a demand was presented and it nevertheless says in the concluding clause: He is not liable to pay! — No, we may still say that no demand was presented [on the part of the plaintiff], and the first clause is concerned with one who comes to fulfill his duty towards Heaven. It was indeed so stated: Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: If a man says to another, “You owe me a maneh,” and the other says, “I am not certain about it,” he would be liable to pay if he desires to fulfill his duty towards Heaven. (118a2 – 118a3)

**Here it is**

The Mishnah discusses whether a theft victim must know his item was returned in order for the thief to discharge his obligation. The Mishnah seems to make two statements:

1. If one steals a sheep from a flock, and then returns it, if the sheep dies or is stolen, the thief is liable.
2. If the owner did not know about the theft or the return, then counted the flock and found none missing, the thief is not liable. (118a3 – 118a4)

The Gemora discusses two types of knowledge the victim can have of the theft – explicit knowledge of the theft and the return, or implicit knowledge of the return, due to counting and not finding any missing sheep.

The Gemora brings four opinions on what type of knowledge the victim must have for the thief to not be liable:

	Victim Aware of Theft	Victim Unaware of Theft
Rav	Explicit	Implicit
Shmuel	Implicit	Implicit
Rabbi Yochanan	Implicit	None
Rav Chisda	Implicit	Explicit

The Gemora explains the reading of the Mishnah according to each opinion, focusing especially on the scope of the statement about counting.

Rav: The counting statement is referring to the latter part of the Mishnah only, and the Mishnah reads:

When the victim was aware of the theft, the thief must notify the victim of the return, and until that is done, the thief is liable for any loss of the item.

If the victim was unaware, as long as he counted the flock after the return, the thief is not liable.

Shmuel: The counting statement refers to the whole Mishnah, and the Mishnah reads:

Whether the victim is aware or unaware of the theft, if the thief returned the item without the victim realizing, he is still liable for the item.

In all cases, if the victim counted his flock after the return, and found none missing, this is full knowledge, and the thief is not liable.

Rabbi Yochanan: The counting statement is referring to the first part of the Mishnah only, and the Mishnah reads:

When the victim was aware of the theft, but didn't know of the return, the thief is liable.

If the victim was unaware, once the thief returns it, he is not liable.

If the victim counted the flock and found none missing, this is the same as knowledge.

Rav Chisda: The counting statement is referring to the first part of the Mishnah only, and the Mishnah reads:

If one steals a sheep, the thief is liable until he notifies the victim of the returned item. This is the requirement if the victim did not know of the theft.

If the victim was aware of the theft, and then counted it after the return, and found none missing, the thief is not liable

Rav Chisda is the only opinion that holds that an unaware victim requires more knowledge than an aware victim. Rava explains that this is because the unaware victim must be

notified that his flock is wont to stray, so that he may watch them better.

This statement of Rava implies that Rava agrees with Rav Chisda. – But did Rava really say this? But Rava has said: If one saw a thief grabbing a sheep from his flock, and he yelled at him, and he (the thief) threw it down, but was unsure if the thief returned the sheep, or if he did not return it, and it died or was stolen (subsequently), the thief is still liable. Is this not even if the flock owner counted his sheep (which contradicts Rav Chisda's position in the case of an aware victim)? The Gemora deflects this contradiction by saying that in Rava's case, the owner did not count the flock.

The Gemora raises a seeming contradiction in Rav's statements. Rav said that if one returned a sheep to a flock in the wilderness, he fulfilled his obligation. The Gemora assumes that in the wilderness, the owner is not aware of the return, and has not even counted his flock.

Rav Chanan bar Abba answers that Rav said this only in the case of a sheep with a distinctive appearance, which the owner readily identifies. Therefore, as soon as the sheep is returned, the owner is aware. (118a4 – 118b1)

#### **Tannaic Opinions**

The Gemora suggests that the dispute among these Amoraim is actually a dispute of Tannaim. The Baraisa states that if one stole a sheep from a flock or a coin from one's pocket, Rabbi Yishmael says that the thief must return the object to the place from where he stole it, while Rabbi Akiva says that the thief must notify the owner of the return. The Gemora explains that we assume that both opinions in the Baraisa hold like Rabbi Yitzchak, as Rabbi Yitzchak said that one constantly checks his pockets. [Therefore, stealing a coin is a case of an aware victim, and returning a coin to a pocket is tantamount to the victim counting his flock.]

The Gemora suggests that the Baraisa encompasses two cases:

A stolen coin, which is an aware victim. In this case, Rabbi Yishmael holds like Shmuel, that counting is sufficient, while Rabbi Akiva holds like Rav, that the owner must be notified. A stolen sheep, which is an unaware victim. In this case, Rabbi Yishmael holds like Rabbi Yochanan, who says an unaware victim needs no knowledge (including counting), while Rabbi Akiva holds like Rav Chisda, that the owner must be notified.

Rav Zevid in the name of Rava offers an alternate reading of the Baraisa. Both agree that if one stole a sheep directly from the owner, he must notify the unaware owner, like Rav Chisda. Rabbi Yishmael and Rabbi Akiva debate only a case where the guard stole it once it was in his domain. Rabbi Yishmael says that this theft has not ended his term of guarding, and once he returns it to the proper care of guarding, he has reversed his theft. Rabbi Akiva holds that the theft ends his guarding position, and he must now return it directly to the owner. (118b1 – 118b2)

The Gemora suggests that the statement of the Mishnah that counting is sufficient is a dispute of Tannaim. Two braisos discuss one who steals from his friend, and then disguises his return payment in the form of extra payment in a later sale. One Baraisa says that this fulfills the obligation to pay, and one says it does not. The Gemora suggests that both Baraisos agree with Rabbi Yitzchak's statement that one constantly checks his pockets, and therefore when the thief paid extra, the victim will count it.

The Gemora offers three alternate explanations of this dispute of Baraisos, all of which agree that counting is sufficient.

The Baraisos are in dispute about Rav Yitzchak's statement, and therefore the argument is whether the extra payment is considered counting.

The Baraisos both agree with Rav Yitzchak's statement, but the Baraisa that obligates the thief is a case where the thief placed the extra payment in the victim's hand. Since he may not put it in his pocket, he won't even count it.

The Baraisos agree with Rav Yitchak's statement, but the Baraisa that obligates the thief is a case where the victim had other money in his pocket, and won't realize that he's received extra from the thief. (118b2 – 118b3)

### Buyer Beware

The Mishnah lists situations where a buyer may suspect that the seller is selling stolen merchandise. If the merchandise is stolen, the buyer may not purchase it.

Item	Seller	Purchase?	Why?
Wool, milk, kids	Shepherd	Forbidden	Suspected of stealing from the flock owner
Fruit, wood	Orchard guard	Forbidden	Suspected of stealing from the orchard owner
Woolen items in Yehudah; Linen items in Galil	Women	Permitted	Husbands allow wives to make and sell these
Calves in Sharon (has many calves)	Shepherd	Permitted	Likely they were raised by the shepherd
Anything	Tells the buyer to hide it	Forbidden	The seller wants to hide the theft
Eggs, chickens		Permitted	No reason to think they're stolen

The Gemora begins with a Baraisa that discusses in more detail the rules of buying from shepherds. The Baraisa states that one may not buy goats, kids, or sheared or torn wool. He may buy sewn wool, since, even if the wool was stolen, the shepherd has acquired ownership through a change. One may buy milk and cheese from a shepherd only in the wilderness, since the sheep's owner does not expect to take his flock's milk in the wilderness. In a settled area, however,

the sheep's owner does want the milk, and therefore one may not buy milk products from a shepherd there. The Baraisa says that one may buy four or five sheep or shearings of wool, but not two of these. Since large quantities are noticeable in their absence, a shepherd who is stealing will steal only small amounts, and the buyer must avoid buying those amounts. Rabbi Yehudah says that one may only buy sheep that return to their owner's at night, since the owner will notice if they've been stolen. The Baraisa summarizes that one may only buy things that an owner will notice when missing, since the shepherd would not steal such items. (118b3 – 118b4)

### How much is a lot?

The Baraisa had stated that one may buy four or five sheep or wool shearings, but not two. The Gemora first questions why the Baraisa said four or five – if four are allowed, then of course five will be? Rav Chisda explains that the Baraisa means that out of a flock of five, one may buy four, but any less is forbidden. Another version of Rav Chisda is that from a large flock, one may buy five or more, and from a small flock, one may buy four or more.

The Gemora then points out a contradiction of implications. The statement that one may buy four or five implies that buying three is not allowed, but the statement that buying two is forbidden implies that buying three is allowed. The Gemora explains that from a healthy flock, one may only buy three, since the owner meticulously checks his flock, and will notice three missing. From a sickly flock, one may not buy three, since the owner is not as careful with this flock and will not notice the missing sheep. (118b4)

Rabbi Yehudah had stated: Domesticated animals may be bought from them but range sheep may not be bought from them.

They inquired: Did Rabbi Yehudah refer to the opening clause in which case his ruling would be the stricter, or perhaps to the concluding clause, in which case it would be

the more lenient? Did he refer to the opening clause and mean to be more stringent, so that when it says: it is allowed to buy from them four or five sheep, the ruling is to be confined to domesticated animals, whereas in the case of range sheep even four or five should not be bought? Or did he perhaps refer to the concluding clause and mean to be more lenient, so that when it says: but neither two sheep nor two shearings, this ruling would apply only to range sheep, whereas in the case of domesticated animals even two may be bought?

Come and hear: Rabbi Yehudah says: Domesticated animals may be bought from them whereas range sheep may not be bought from them, but in all places four or five sheep may be bought from them. Now since he says 'in all places' we may conclude that he referred to the concluding clause and took the lenient view. This proves it. (118b4 – 119a1)

#### **INSIGHTS TO THE DAF**

##### **Where to Return?**

The Mishnah stated that one who incurred an obligation to pay in a settled area may not pay in a wilderness. The Shitah quotes the Rema that explains that the rule is that if the obligation was incurred in a secure area, one must pay back in a secure area. If the original place of the obligation is now not secure, the payment may not be made there, even though it was incurred there. The Meiri states that if the receiver of the payment agrees to accept the payment in the wilderness, it is then a valid payment, and releases the debtor from his obligation.

##### **Where to Claim?**

The Gemora explained that in all cases but a loan, the creditor may not claim the object from the debtor anywhere besides the original place. The Meiri explains that this is because generally items that are not fungible as a loan is will only be in their original place, and we do not force the debtor to return to that place. However, if the debtor has the item with him, he must return it wherever the creditor demands it. Furthermore, if the debtor is a thief, but he acquired the

object through a change, the obligation now has the rule of a loan, since it is purely a monetary obligation, and may be demanded anywhere. The Ramban adds that even in the case of a loan, the creditor must leave the debtor with enough money for him to support himself until he leaves the wilderness.

##### **How Obligated?**

When discussing the Mishnah about one who is unsure of his obligation, the Gemora introduces the concept of *ba latzais yedei shamayim* – one who cannot be forced to pay in court, but wants to fulfill his religious obligation. Rav Shimon Shkop in *Shaarei Yosher* (5:16) discusses the nature of this obligation. One has no obligation to fulfill his religious obligation, but if he does want to, he is opting to not invoke his power of ownership (*muchzak*), and then is obligated based on the standard rules of *bari* and *shema*. It is a good character trait to want to fulfill such an obligation, but we do not try to persuade him to do so. This is different than the concept of *chayav b'dinei shamayim* – one who is obligated at a religious level, but not in a court context. That situation is one where a clear obligation exists, but cannot be directly enforced by a court. We do, however, provide inducements to persuade him to do so.

##### **The Need to Know**

The Gemora discusses different levels of knowledge that a theft victim must have when the thief returns an item. The Rashba states that once the victim saw someone steal his item, the thief must notify the victim so that he does not consider him a thief anymore. The Rashba therefore holds that if the victim just realized that an item was stolen by noticing that one was missing, this is not considered knowledge of the theft. The Sma states that once the item is stolen, the victim despairs of having to guard it, and therefore must be aware of its return. According to the Sma, once the victim notices the item missing, this would be considered knowledge of the theft.

The Rif and Shulchan Aruch rule like Rav Chisda and Rabbi Yochanan. The Rif explains that Rava explains Rav Chisda,

and agrees with him, indicating that the halachah follows his opinion. When dealing with an inanimate item, Rav Chisda would agree to Rabbi Yochanan. In any case, we would rule like Rabbi Yochanan, since he is favored over both Rav and Shmuel in general. The Baal Hamaor, however, rules like Rav. One of his reasons for this ruling is the fact that the Gemora established the opinion of Rabbi Akiva to follow Rav in the case of a coin. See Biur Hagra (HM 365:1) for a discussion of why the Rif ruled like Rabbi Yochanan against the majority of Rav and Shmuel. See Responsa Rabbi Akiva Eiger (1:155) for a detailed discussion of the Baal Hamaor's opinion.

### Guardian's Theft

The Gemora said that Rabbi Akiva and Rabbi Yishmael argue about a case of a guardian who stole the item he should be guarding. Rabbi Akiva says that the theft ended the term of the guardian, and he must now return it to the owner's possession, while Rabbi Yishmael says that the guardian's term is not ended, and he must just return it to its original place. The Rishonim explain that Rabbi Akiva holds that once the guardian stole the item, the owner would not trust the guardian anymore. The Rashba discuss why Rabbi Yishmael requires him to return it at all – if the guardian's term is not over, it is safe in his possession, and should not have to be returned. The Rashba offers three answers:

1. Rabbi Yishmael is not being precise.
2. Rabbi Yishmael is referring to a case of a coin, which must be kept in its designated place.
3. Even an animal should be in its flock, to ensure it doesn't run off.

The Rashba states that once the Gemora establishes the dispute in the case of a guardian, it does not depend on any specific opinion about the level of knowledge necessary. Rashi, however, states that even this reading of the Baraisa assumes that both Rabbi Akiva and Rabbi Yishmael agree with Rav Chisda's position.

### What's in the Pocket?

The Gemora offers an explanation of the Baraisos dealing with returning stolen money at a later sale that distinguishes between putting money in an empty pocket or by putting it in a pocket that has money. Rashi explains that in an empty pocket, the owner will count the money and realize it was returned, while in a pocket with money, he won't realize how much was added. The Rif, however, explains that in an empty pocket, he will not count the money, and not realize it was returned, while in a pocket with money, he will count it and realize the extra money. The Shulchan Aruch (H"M 365:1) states that if the pocket was empty, the thief has not fulfilled his obligation, but if the pocket had money, and the owners knew how much, the thief has fulfilled his obligation. The Gra explains that the Shulchan Aruch is ruling like the Rif, but adding in Rashi's qualification. The Rif only stated that generally one knows how much money is in their pocket, when it's not empty, since they check it periodically. Once they know how much is there, they will realize the extra, since they will again check. However, the Rif would agree with Rashi that if the owner did not know how much money was there, putting the money there is not notification.

### Shepherds

The Baraisa stated that one may purchase wool shearings that are tfurim. Rashi explains that this means when the wool was made into clothing, in which case the shepherd acquired the wool by its change. The Raavad says it means shearings that are connected and put into large groups. The reason one may buy is that such large items are probably not stolen, because a thief would not draw attention to himself. The Rashba explains, based on the tosefta, that it means pieces of wool that are stuck on bushes. Since they are so insignificant, the flock owner does not mind if the shepherd takes them.



## DAILY MASHAL

Hashem for His help, without which you cannot be successful.”

### ***Why do snakes guard graves?***

When the sages came to Rav Kahana's grave, they saw a snake entwined over the entrance of the cave containing the tomb. Mahara Galanti (cited by Chida in Pesach 'Einayim on our sugya) remarks that the Gemara mentions in several places that snakes have been appointed to guard the sages' graves. He explains that people can use their attributes for good or bad. One's appetite, for example, can be used to honor the Sabbath with tasty food and the inclination to win an argument can be used to plunge the depths of a sugya. Tzadikim toil all their lives to control inclinations for holy aims and therefore a snake, which is compared to the yetzer hara, is the best creature to guard the grave of one who has harnessed his inclinations for the service of his Creator.

### **We can never be Certain**

Our Gemora discusses cases where one of the litigants, or one of the claimants is 'definite,' or 'certain' regarding his particular claim. One needs to be reminded how 'certain' we, as humans, can truly be.

The Baal Shem Tov once sent two of his disciples abroad to procure wine for the upcoming Pesach. The disciples found an appropriate vineyard, arranged with the owner to be present during the harvesting and pressing of the grapes, and zealously guarded the wine as it was produced from both chametz and from the eyes of the gentiles. They were extremely protective and careful on the return trip home, never leaving their precious cargo out of their sight – even for a moment. Finally, after depositing the wine into the cellar, they were dismayed to discover that a gentile cleaning lady entered, and rendered all the wine into 'yayin nesech' – wine that is prohibited from being used. When, with a heavy heart, they informed the Baal Shem Tov of that which transpired, he told them, "You have taken such great care of the wine; you were 'certain' that under your protection, nothing can possibly happen – that you had forgotten to ask