

## OVERVIEW of the Daf

### 1) Clarifying the Mishnah (cont.)

Rava offers an explanation how the owner is able to convey to the watchman the right to the penalty before the watchman becomes the owner of the animal.

R' Zeira rejects this explanation and offers his own explanation.

R' Zeira's explanation is unsuccessfully challenged.

A second version of Rava's statement is presented and the Gemara explains the practical difference between them.

### 2) An agreement to pay

R' Chiya bar Abba in the name of R' Yochanan teaches that the watchman does not have to pay and agreeing to pay is sufficient to acquire the penalty.

This statement is unsuccessfully challenged.

A Baraisa is cited that supports R' Yochanan's ruling.

### 3) A watchman's acquisition of כפל

R' Pappa explains how the different watchmen acquire the rights to כפל.

The reason a borrower does not acquire כפל is explained.

According to a second version of R' Pappa's ruling a borrower does acquire the כפל.

R' Zevid told R' Pappa that according to Abaye a borrower does not acquire כפל until he pays the owner for the stolen item.

A Baraisa is cited in support of R' Zevid's explanation.

It is noted that the Baraisa not only does not refute the first version of R' Pappa but it is also possible to explain how it does not even refute the second version of R' Pappa.

This explanation is unsuccessfully challenged.

### 4) A watchman's agreement to pay for the stolen object

A series of unresolved questions related to a watchman's agreement to pay for the stolen object are presented.

The Gemara presents another series of unresolved questions related to the owner's sons conveying כפל to the watchman's sons.

### 5) The oath taken by the watchman who pays for the stolen object

R' Huna asserts that Beis Din has the watchman who agrees to pay take an oath that the object given to him is no longer in his possession.

The Gemara cites at length from a Mishnah in Sh'vuos to challenge R' Huna's assertion. ■

## Distinctive INSIGHT

*When a שומר promises to pay, even though he did not yet pay*

כיון שאמר הריני משלם אף על פי שלא שילם

The Gemara established earlier in the daf that as soon as a שומר commits himself verbally and promises to pay for the פקדון, at that moment he is in line to receive the כפל when the thief is found. Rosh (סימן א') writes that this שומר (watchman) who makes a verbal commitment to pay will only be granted the future כפל after he takes the oath of R' Huna, an oath that a שומר reassures the court that the object in question is not in his possession. The oath of R' Huna is given to a שומר even if he is willing to pay, and it is given because we suspect that the שומר might have set his eyes upon the object and now be trying to take it for himself. Therefore, explains Rosh, if the watchman promises to pay, he will only get the כפל after he takes the oath of R' Huna. If he actually pays, though, he is in line to get the כפל even if he has not yet taken the oath of R' Huna.

Pnei Yehoshua notes that according to Rosh, the Gemara's initial question against R' Yochanan from the Mishnah is no longer difficult. The question was that the Mishnah says that the שומר gets the כפל only if he actually pays (שילם). How can R' Yochanan say that the כפל is earned by simply promising to pay? According to Rosh, even R' Yochanan understands that the Mishnah is correct that כפל is earned once a שומר actually pays. According to R' Yochanan, a promise to pay must be accompanied by the oath of R' Huna, whereas the clear-cut statement of the Mishnah that "the שומר actually pays" immediately results in the שומר meriting the כפל payment if and when it comes.

According to the conclusion of the Gemara, a שומר can earn the future payment of כפל whether he voluntarily pays, even though he could have exempted himself with an oath, as well as where he pays because he is obligated to do so, in cases where he would have been liable. בית חדש (to C. M. 295:3) determines from our Gemara that when a שומר states his willingness to pay in a case where he is obligated to do so, in order to earn the כפל it is not sufficient for him to say "פשעתי" or "גנב." Rather, he must clearly proclaim "הריני משלם—I am willing to pay." This are the words that must be spoken in order to calm the mind of the owner and to thereby placate him to agree to release the כפל to the watchman. K'tzos HaChoshen (ibid., #1) disagrees with ב"ח and proves that this is not so, as we find in the words of Rav Pappa who says that once an unpaid watchman says "פשעתי," he earns the כפל. We see, therefore, that declaring, "I will pay," is not critical. ■

## HALACHAH Highlight

*Can one collect a loan that he waived the right to collect*

אמר איני משלם וכו'

*If he said I will not pay etc.*

A person, Reuven, lent money to his friend, Shimon. Some time later Reuven became aware of the fact that Shimon was drowning in debt and would not be able to repay his loan so Reuven mentally decided to forgo the loan and not make any attempts to collect his money. Some time later, Shimon's fortune changed and he regained the capacity to repay the loan but Reuven was uncertain whether he could collect the money since he had previously waived the right to collect the money of the loan.

Rav Moshe Sternbuch<sup>1</sup> suggested that this issue is subject to a dispute between authorities recorded in Ketzos Hachoshen<sup>2</sup>. Maharshal maintains that a lender who mentally waived the right to collect a loan and then decides to pursue the borrower to punish him, for whatever reason is not permitted to seek collection of the loan. Ketzos Hachoshen disagrees and asserts that there is no source that indicates that a person's thought by itself should affect the status of a loan. Therefore he follows the conclusion of Maharit who cites conflicting sources on the matter and writes that if a person's thoughts to forgo collection of a loan are well known the lender should not collect the loan but if not he maintains the right to collect his money. Imrei Binah<sup>3</sup> follows the position of Ketzos Hachoshen and cites the commentary of Ritva to our

## REVIEW and Remember

1. Is a watchman required to pay for the stolen animal to obtain the rights to collect כפל?
2. What is the significance of two Baraisos that are taught together?
3. According to R' Huna, what oath did Chazal institute a watchman should take even if he compensates the owner?
4. Why does the lender take an oath regarding the value of the collateral?

Gemara who takes as a given that a mere thought to forgo a loan has no halachic validity whatsoever. Therefore, concludes Rav Moshe Sternbuch, Reuven retains the right to collect his money since he merely thought about forgiving the loan but he never expressed it to anyone. The only possible exception could be if the borrower is poor and deserving of tzedaka. Since Rema<sup>4</sup> rules that one could obligate himself to give tzedaka with a mere thought it could be that if the lender forgives the loan because the borrower is poor and thus unable to repay the loan that commitment is binding and the lender would not be able to subsequently collect the loan. ■

1. שו"ת תשובות והנהגות ח"ב סי' תרצ"ה.
2. קצות החושן סי' י"ב סק"א.
3. אמרי בינה חו"מ סעי' כ' סק"א.
4. רמ"א יו"ד סי' רנ"ח סעי' י"ג. ■

## STORIES Off the Daf

*The likely thief*

”אמר רב הונא משביעין אותו שבועה שאינה ברשותו...”

A certain woman obtained the staggering sum of three hundred rubles for her dowry. After a little deliberation she decided to leave the money with Rav Henech of Alexander, זת"ל. When she came to give it to him, however, he was unable to put it in a safe place, so he placed it in the pocket of his jacket and continued learning. After his seder, he found to his chagrin that the money was missing. A number of young men had seen the exchange; who could say which

of them might have taken it?

When the gabbai noticed that the rebbe was upset he asked him what was bothering him. When the rebbe told him the problem, the gabbai was stunned. “Who puts such a large sum of money in his outer jacket where it could be easily stolen? Why didn't you place it in the pocket of your pants?”

“I have never put my hands in my pants pocket and I was not going to start now. But you'll see, I will surely find the money.”

He then asked that a certain young man be brought in. When the young man arrived, the rebbe demanded that he return the money immediately. Although the young man initially denied it, the Rebbe's unshakable conviction

spooked him into confessing. As he went to fetch the money, the rebbe said to his astonished gabbai, “Don't think this was ruach hakodesh. It was not.

“From when he was a child I knew he would likely become a thief. I once tested him on the sugya of watchmen in Bava Metzia. At the conclusion he asked me a question: ‘I don't understand the point of Rav Huna's statement on daf 34. He says that we make the watchman swear that the object entrusted to him is not in his domain. But what is to stop him from giving the object to another for safekeeping and swearing with a clear conscience?’ Now you know how I knew!”<sup>1</sup> ■

1. שיח שרפי קדש, קדושה וטהרה, אות י'