

## OVERVIEW of the Daf

### 1) Devolving other oaths from a Rabbinical oath (cont.)

R' Huna and R' Chisda offer different exceptions to the halacha that we can devolve other oaths from a Rabbinical oath.

The practical difference between their explanations is identified.

### 2) The effect of shemittah on an oath

R' Gidal in the name of Rav gives the source for the Mishnah's ruling that shemittah cancels the obligation to take an oath.

### הדרן עלך כל הנשבעין

3) **MISHNAH:** The Mishnah begins with a presentation of the four categories of custodians and then elaborates on the liability of the unpaid custodian. After discussing the case of a thief the Mishnah presents cases relates to a borrower who swears falsely. The parameters of the paid custodian and renter are presented and the Mishnah concludes with a general statement regarding the laws recorded in the Mishnah.

### 4) Four custodians

R' Nachman in the name of Rabba bar Avuha asserts that the Mishnah that enumerates four custodians follows the opinion of R' Meir.

R' Nachman further explains that the novelty is that the renter is comparable to the paid custodian.

A different version of R' Meir's position is presented and the Gemara confirms that there are two versions regarding R' Meir's position regarding the liability of a renter.

The reason the Mishnah refers to four custodians rather than three is explained.

### 5) Swearing falsely

Rav and Shmuel disagree whether the custodian in the Mishnah who swears falsely is liable for a false oath of utterance.

The point of dispute is identified.

It is noted that Rav and Shmuel have already debated this point.

The need for the dispute to be presented in two contexts is explained.

R' Ami asserts that oaths administered by Beis Din are not subject to liability for a false oath of utterance.

The source for this ruling is identified.

R' Elazar follows Rav's earlier-cited position with one qualification. ■

### הדרן עלך ארבעה שומרין

### וסליקא לה מסכת שבועות



## Distinctive INSIGHT

### The four watchmen, and the order in which they appear

ארבעה שומרין הן שומר חנם והשואל נושא שכר והשוכר

**T**osafos (ד"ה ארבעה) notes that the order in which the watchmen are presented in the Mishnah is not according to the order in which they appear in the Torah. In the Torah, an unpaid watchman (שומר חנם) is listed first, followed by a paid watchman (שומר שכר), and a borrower is last (שואל). Yet, in the Mishnah the borrower is listed second, after the unpaid watchman. Why is this?

Tosafos explains that the author of the Mishnah wanted to list the various cases of the watchmen in extremes. First, we have the most lenient case, that of the unpaid watchman. He is exempt from anything that might happen to the item in his charge, except for his negligence. On the other extreme, we have the category of the borrower, who is liable for anything that might happen to the deposited item.

Tosafos here does not deal with the issue of the renter (שוכר) and why it is listed after the paid watchman. We should note that the halacha of the renter is not directly mentioned in the Torah, and the specific laws which apply to him are the subject of debate among the Tannaim (see Bava Kamma 45b). R' Meir holds that the laws of a renter are the same as those of an unpaid watchman, and he is exempt if the item is stolen or lost. R' Yehuda holds that a renter has the laws of a paid watchman. Tosafos in Bava Metzia (5b) explains that the Mishnah lists the renter with the unpaid watchman because their laws are similar in that they are liable in some areas (theft and loss) and exempt in others (unforeseen circumstances—אונס). This is why these two categories are listed together, after the borrower.

Tosafos HaRosh remarks that this explanation of Tosafos can be understood in light of the opinion of R' Meir, who says that a renter shares the halacha of a paid watchman. However, according to R' Yehuda, it might have made more sense to list the renter together with the unpaid watchman. Nevertheless, we can say that the author of the Mishnah first listed the two extremes of an unpaid watchman and a borrower, and the Mishnah then reverts back to list the categories as they appear in the Torah, with the paid watchman being next. Finally, the Mishnah lists the renter at the end, as this category is not written explicitly in the Torah at all.

Tosafos Yom Tov (to Bava Kamma 8:1) explains that the Mishnah first lists the two watchmen who share in common an element of something done for free. The unpaid watchman guards the item for free, and the borrower uses it for free. Then, the Mishnah lists the two cases which have an element of payment. A paid watchman gets paid for his services, and a renter pays in order to use the object. ■

# HALACHAH Highlight

## Causing damage while studying from a borrowed sefer

והשואל משלם את הכל

The borrower pays in all circumstances

**S**efer Toldos Adam<sup>1</sup> relates that R' Ber told him of an incident in which R' Zalman of Vilna approached him to borrow the sefer Tanna D'Vei Eliyahu. R' Ber was very hesitant since the sefer was rare and he was concerned that something would happen to the sefer. Despite his hesitancy he couldn't say no and he gave R' Zalman the sefer to use. R' Ber's fears came true because R' Zalman studied the sefer with great diligence and in a few days the pages were worn-out due to his constant handling of the pages. When R' Ber saw his worn out sefer he asked R' Zalman to reimburse him for the damaged sefer. R' Zalman responded that he is not liable to pay for the damages since the damage occurred in the course of normal use of the sefer and it is considered **מתה מחמת מלאכה** – literally, it (the ox) died in the course of working, for which a borrower is not responsible. Divrei Gaonim<sup>2</sup> finds support for R' Zalman's position from a ruling in Shulchan Aruch. Shulchan Aruch<sup>3</sup> writes that one who borrows a Sefer Torah may not lend that Sefer Torah to others. If one did lend the Sefer Torah to others and it became ruined as a result of normal usage the first borrower is liable since he should not have given it to the second borrower. This ruling indicates that had the Sefer Torah become worn out by the usage of the first borrower he would be exempt.

Machaneh Ephraim<sup>4</sup> disagreed with this ruling basing his

# REVIEW and Remember

1. What are the four categories of watchmen?

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2. Under what conditions does a thief pay **כפל**?

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3. Are there three or four categories of watchmen?

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4. What is the point of dispute between Rav and Shmuel?

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dissent upon the explanation of **מתה מחמת מלאכה** offered by Ramban and Ritva to Bava Metzia (96b). They write that the reason the borrower is exempt in a case of **מתה מחמת מלאכה** is that the lender was negligent since he should have examined the animal to assure that it is capable of doing the job for which it is being borrowed. This rationale does not apply in the case of the sefer since the lender was not negligent in any way being that the sefer was intact when it was loaned. Minchas Elazar<sup>5</sup> also writes that if a sefer becomes worn out in the possession of the borrower he is responsible to pay for the damages and expresses surprise that R' Zalman would exempt himself from liability and as a result, questions the reliability of the sefer Toldos Adam. ■

1. ספר תולדות אדם (תולדות הגר"ז מווילנא).
2. דברי גאונים כלל צ"ו סי' י"ד.
3. שו"ע חו"מ סי' שמ"ב סעי' א'.
4. מחנה אפרים הלכות שאילה סי' ד'.
5. שו"ת מנחת אלעזר ח"ד סי' ע"י. ■

# STORIES Off the Daf

## The Four Caretakers

"ארבע שומרים הן..."

**T**oday's daf discusses the four watchmen.

The Shelah Hakadosh explains that the categories of the four watchmen are concepts that not only apply to relations between man and his fellow man, they also allude to various levels in avodas Hashem. "An unpaid watchman is one who serves Hashem li'shmah. He is discharged of anything but negligence. As the verse states, 'אין אדם בארץ אשר יעשה' — טוב ולא רע

who does only good and never evil.' He must repent these sins and Hashem forgives him.

"The second type of watchman is a paid watchman. This is one who keeps Torah but focuses on reward in the next world. One who serves Hashem in this way is obligated for theft and loss. The midrash recounts that the yetzer hara accuses us with the cry, 'They are thieves!' He accuses us of trying to fool Hashem, stealing His perception of the truth, acting properly while inside we are filled with ulterior motives. At least a paid watchman should not try to fool Hashem, but also serve Hashem with his thoughts and intentions. And of course aveidah, loss, alludes to time which one

has shamefully squandered, which once wasted never returns.

"Finally there is the sho'el, the borrower. He feels as though he came into the world for pleasure alone. This person lacks emunah in reward and punishment so why should he exert himself to repay what is given to him? What difference do his actions make? Such a person is obligated even for **אונס**. Like we find with Pharaoh and Sancheriv, Hashem can sometimes harden a person's heart, yet he is still responsible for what he is compelled to do."<sup>1</sup> ■

1. של"ה הקדוש, מסכת פסחים, מצה עשירה ■