



Lending out and Rented Animal

The *Mishnah* (3:2) deals with a case where one hires a cow from his friend, lends it to another and then the cow dies naturally. The *sho'el* (borrower) is responsible to pay for the loss. This is because, of the four types of *shomrim* (guardians) the *shoel* has the highest level of responsibility and must pay even in cases of *ones* (loss that is beyond his control). The *socher* (the one that rented the cow) however is not responsible to pay in such cases provided he swears that the animal died under no exceptional circumstances.

The question is who does the *shoel* pay? According to the first opinion, the *shoel* is answerable to the *socher* and must pay him. The *socher* however, as explained above, need not pay the owner. *R' Yossi* finds the outcome strange, in that the *socher* profited, while the owner is at a loss. Consequently, he argues that the *shoel* would pay the original owner.

The *Gemara* (35b) also questions the first opinion. The *Gemara* posits that the *socher* acquires the cow when he takes the oath. In other words, once the *socher* is exempted from compensating the owner by taking the oath, only then has he the right to the *shoel's* payment. Consequently, the *Gemara* asks that the owner should be able to tell the *socher* he does not want the *socher* to swear and instead is happy to deal with the *shoel* directly. The *Gemara* responds that in truth, as soon as the cow died in the hands of the *shoel*, the *socher* acquired the cow. The subsequent oath is only to set the owner's mind at ease that the death was not a result of negligence.

The *Ritva* (along with other *Rishonim*) understands that while the above *Gemara* opens focused on the first opinion, the conclusion that the *socher* acquires the cow prior to the oath, is accepted by everyone. How then do we understand the debate in our *Mishnah*? According to the first opinion, the *shoel* ultimately acts as the *shomer* (guardian) for the *socher*. Who the *shoel* is acting as *shomer* for is important. This is because if the *shoel* is guarding in the presence of the subject he is acting for, then he would be exempt in the case

of *ones*. Consequently, in this case, if the *socher* was present, the *shoel* would be exempt. *R' Yossi* however disagrees because he understands that when the *socher* lent the animal to the *shoel* he was acting as the agent for the owner. Consequently, the *shoel* acts as the *shomer* for the owner. This means that it is only if the owner was present with the *shoel* when the animal died, that the *shoel* would be exempt.

The *Tosfot* however understand the position of *R' Yossi* differently. The *Tosfot* understand the *R' Yossi* agrees with the *Gemara's* question but not its answer. In other words, *R' Yossi* argues that the *shoel* is answerable to owner, since the owner can reject the *shevua*¹. The *Ritva* cites a *Tosfot* who add that even though the *shoel* is not acting as the *shomer* for the owner (but rather the *socher*), the owner can argue that since the *shoel* was using his cow, it should be considered as if it was borrowed without permission and the *shoel* is obligated to pay in cases of *ones* (like this one). This explanation cited by the *Ritva* is critical to understand the *Tosfot* as will be explained.

The *Rashba* finds the *Tosfot* difficult since *Abaye's* rhetorical question – "Who holds that the *socher* acquires with a *shevua*?" – suggest the position is universally held. The *Chatam Sofer* also probes why the *Tosfot* did not explain the position of *R' Yossi* like the other *Rishonim* who understand that the *shoel* acts as the *shomer* for the owner. The *Chatam Sofer* explains that the *Tosfot* resisted this explanation because it only works according to the opinion of *Abaye* (36a) who explains that our *Mishnah* is understood only if the owner gave the *shoel* permission to lend the animal out. According to the *Abaye*, the *socher* would indeed be acting as the agent of the owner, and the *shoel* would be considered the *shomer* of the owner. The *Tosfot* however rules like *Rava* who did not need to explain that permission was granted and the *socher* therefore does not act as an agent of the owner. They consequently explained *R' Yossi's* position accordingly.²

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¹ The *Tosfot* continue that even if there were witnesses that the animal died naturally, meaning that a *shevua* was not required, *R' Yossi* would still maintain his position. This is because just as the owner can deflect the demand for a *shevua* in order to engage the *shoel* directly, he can do the same regarding the witnesses. If however the owner was present when the animal died, since nothing

is required of the *socher*, *R' Yossi* must agree with the *Chachamim* that he acquired the cow in this case.

² See the *Gemara* to understand the debate between *Abaye* and *Rava* regarding why (and when) a *shomer* that entrusts an item with another *shomer* is liable.

Revision Questions

בבא מציעא ב' י' – ג י"ב

- If a *Kohen* sees a lost object in a cemetery, is he obligated to enter the cemetery to retrieve the object and return it to its owner? (ב' י')
- Is someone obligated to help his friend unburden his animal if the friend is sitting back and not getting involved? (ב' י')
- What are the exceptions to that rule? (Include all three opinions) (ב' י')
- What is the law if someone finds his own lost object and his father's, but can only retrieve one? (ב' י"א)
- What is the law if someone finds his father's lost object and his rebbe's, but can only retrieve one? (ב' י"א)
- If someone is entrusted with a collateral and it was stolen, is he responsible to pay the owner back? (א' י')
- If the *ganav* was found, to whom is the *kefel* paid? (Include both scenarios.) (א' ג')
- If *Reuven* rented an animal, then lends it to *Shimon* and the animal naturally died, who pays who? (ב' י')
- What is the law regarding a *gazlan* that said to two people "I stole \$100 from one of you, but I'm not sure who"? (ג' י')
- What is the law if two people entrusted money with a third party, one \$100 and the other \$200, and each claim they were the one that entrusted \$200? (Include both opinions.) (ד' י')
- Regarding the previous question, what if it was not money, but two utensils, one worth \$100 and the other worth \$200? (ה' י')
- Explain the debate regarding what one should do if they were entrusted with fruit and the fruit began to spoil. (ו' י')
- What should one do if they were entrusted with fruit and it got mixed with he own personal store? (ז' י')
- Regarding the previous question, what if he was entrusted with wine? (ח' י')
- If someone entrusted with an object moved it and while moving it, it broke, when is he obligated to pay back the owner? (ט' י')
- Regarding the previous question, in what situation is he always obligated to pay the owner irrespective of his intentions? (י' י')
- What are the three examples the *Mishnah* gives where the custodian of a collateral did not provide enough protection for the collateral and is therefore responsible if the item was stolen? (י"א י')
- When can a money changer entrusted with money, use the money? (י"א י')
- What is a ramification of the previous law? (י"א י')
- Regarding the previous questions, what if the money was entrusted with a *ba'al ha'bayit*? (י"א י')
- Which person is debated whether he has the status of a money-changer or a *ba'al ha'bayit*? (י"א י')
- If someone entrusted with a collateral, uses it for his own purposes, what are the three opinions regarding how much he must pay back the owner? (י"א י')
- What are the two opinions regarding the point in time after which a person entrusted with an item is considered a *gazlan*? (י"א י')

Melbourne, Australia

Sunday -Thursday
10 minutes before *Mincha Mizrachi Shul*
Melbourne, Australia

Friday & Shabbat
10 minutes before *Mincha Mizrachi Shul*
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Shiur in English

Sunday -Thursday
Rabbi Mordechai Scharf
9:00am
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Reemon Neighbourhood

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
6 January כ"ט טבת	7 January א' שבט	8 January ב' שבט	9 January ג' שבט	10 January ד' שבט	11 January ה' שבט	12 January ו' שבט
Bava Metzia 4:1-2	Bava Metzia 4:3-4	Bava Metzia 4:5-6	Bava Metzia 4:7-8	Bava Metzia 4:9-10	Bava Metzia 4:11-12	Bava Metzia 5:1-2

