Talmud Bavili

Oren Cohen

*Thinking Hazal*

The Essence of the Talmud

Mutuality

Bava Metzia 34a

Gemara, Rashi and Tosafot

Our discussion deals with the statuses of the four types of custodians (people entrusted with watching over an object or animal given to them by another) when their charges are stolen from them. These four custodians are the unpaid custodian, the paid custodian, the renter, and the borrower. In our section, we see that one’s relationship to a borrower is different than that with other custodians: in the case of a borrower, we don’t rely on his verbal guarantee of innocence when his charge is stolen from him.

When an object which being watched or used is stolen from one of the previously mentioned custodians, the custodian has the option to take responsibility for the stolen object, by paying its value to the owner. If the stolen object is subsequently recovered, the thief will have to pay double the value of the object to the custodian who chose to pay for it.

The transference of responsibility begins from the moment that the custodian undertakes to pay the owner at some future point.

The ability to verbally commit to pay for the object at some future point is not given to the borrower.

The borrower’s offer to pay only comes into legal force, when he has actually made the payment.

This is the topic under discussion in the current *sugya* of the Gemara:

1. We learn:

Gemara

Description of the case: the custodian, from whom the object is stolen, chooses to pay for it.

This payment exempts the custodian from taking an oath, swearing that he was not negligent in watching the object.

1. Clarification:

Gemara

The Gemara emphasizes that a commitment to pay, and not the actual payment, is all that is required.

1. Challenge:

Gemara

From a close reading of the Mishna, the Gemara proves that the benefits obtained by paying for the object take effect only when the actual payment is made.

1. Objection:

Gemara

From a different close reading of the Mishna, the Gemara establishes that a custodian obtains benefits the moment he declares his intention to pay for the theft of the object.

1. Assertion:

Gemara

The Gemara concludes that one cannot determine the answer to this question from a close reading of the Mishna; in other words, it is impossible to determine from the words of the Mishna itself whether the deciding factor is the declaration to pay for the object which was stolen, or the actual payment.

1. Proof-text for assertion:

Gemara

The Gemara produces a source from a *beraita* which conclusively demonstrates that the custodian’s declaration, as opposed to the actual payment for the object, brings with it the benefits of a custodian.

Rashi:

Rashi-text

1. Proposal:

Gemara

**The Gemara specifies the various possibilities**

*Unpaid custodian*:

The admission of the unpaid custodian that the theft resulted from his negligence, and that he is therefore prepared to pay for the object, leads to his acquiring all benefits, even before he pays for the object. **He is trusted because he could have made another type of claim (that the object was stolen despite his being careful with it), through which he would have excused himself from needing to pay for the object all together. Nonetheless, the custodian chose to make a statement incurring more responsibility.**

*Paid Custodian:*

A paid custodian’s admission that his charge was stolen from him acquires for him all benefits, even before he pays for the object. The reason he is trusted is the fact that he could have made a different claim—that an object broke or an animal died as the result of circumstances beyond his control. Were he to make these claims, he would not be held responsible to pay for his charge.

*Borrower:*

The borrower who states that he is prepared to pay for the object which was stolen, does not accrue the benefits which come from making the payment until the payment has actually been made.

The reason he does not receive these benefits after making the declaration is that there is no alternative claim which he could have made about the object; therefore, the conditions for receiving benefits by virtue of his admission are stricter.

Rashi:

Rashi-text

1. An alternative reading:

Gemara

The Gemara suggests another possibility: The borrower does in fact acquire the benefits by merely saying “I will pay” and not at the time when he pays.

The alternative claim which he could have made is “*Meitah machamat Melacha”*.

In other words, he could have claimed that the object broke or the animal died due to normal use and not his own irresponsibility.

It should be noted that the claim of *“Meitah Machamat Melacha”* is not a common claim as can be seen in section 7.

1. Alternative Idea:

Gemara

The Gemara maintains:

The reasons a borrower does not receive benefits immediately upon declaring his willingness to pay for a stolen object, is due to the relationship between an owner and a borrower**: a borrower only benefits from his use of the object; the benefit is not mutual. The borrower pays nothing in exchange for the object from which he benefits.**

If so, the one-sided benefit of the borrower and his exclusive benefit of the charge, does not logically lead to his being able to obtain the benefits which come from a verbal declaration about his intent to pay. Only an actual payment is enough for the borrower to acquire this benefit.

Rashi:

Rashi-text

1. Proof-text for this alternative idea:

Gemara

The Gemara brings a source from a beraita which strengthens the claim that the borrower must make the actual payment in order to obtain the benefits which come with such payment.

1. Question:

Gemara

The Gemara deliberates over the contradiction between section 10 and section 8 above; in section 8 we considered it a possibility that the borrower might receive the benefit just from declaring his willingness to pay; in section 10, however, we see that the borrower acquires the benefits only after the actual payment is made.

Rashi:

Rashi-text

1. Answer:

The Gemara resolves the contradiction between section 8 and 10 and suggests that understanding of the beraita (in section 10) is based on the verbs *“qideim”* and *“shileim”*: from these words we learn of the need for the borrower to actually make the payment. Similarly, we can relate the actual teaching in this Mishna (section 1) as coming from the verb *“amar”*, as in “I will pay” (section 2) and to reach the conclusion that the borrower acquires the benefits which come from paying, just by saying he will pay.

1. The answer is rejected:

Gemara

The Gemara rejects the claim made in section 12, and establishes that the mishnah which was brought at the beginning of our discussion (section 1) only uses one verb *“shileim”*. This word encompasses two possibilites, either ‘saying he will pay’ or ‘actual payment.’ The beraita, however, (section 10) uses two verbs *“qideim”* and *“shileim,”* implyingthat an actual payment is required.

1. . Possible defense

Gemara

The Gemara entertains the possibility that the verb *“qideim”* refers to speech, and not to making the actualpayment.

1. Explanation:

Gemara

The Gemara emphasizes this close-reading by showing that the verb *“amar”* (I will pay) is specifically used for the renter, whereas the verbs *“qideim”* and *“shileim”* are specifically used in reference to the borrower (as seen in section 10). Therefore, it makes sense to use the verbs *“qideim”* and *“shileim”* specifically for the borrower.

1. Doubts about the answer:

Gemara

The Gemara asks whether the two beraitot (mentioned in section 6 and 10) were taught concurrently. In other words, can we make any inferences from the specific language used in each beraita?

1. Answer:

Gemara

Yes, the two beraitot were in fact taught concurrently, and therefore one can in fact make linguistic inferences from them.

If so, the borrower only the benefits by actually paying, and not merely by declaring that he will pay.

Rashi:

Rashi-text

**Conclusion:**

The main topic discussed is the distinction between the borrower and the other three custodians (unpaid, paid, and renter) in cases of theft. We see that the verbal declaration of the borrower to pay for an object which was stolen or damaged while in his possession, does not acquire for him the right to receive the double payment in the event that the object is recovered. This is not the case for the other three custodians for whom a mere verbal commitment to pay acquires the right to double payment if the stolen object has been found.

In our discussion, we have chosen to emphasize section nine, from which we can see that the main reason why the borrower loses the right to acquire the double payment is *“kol hanaah shelo”*. In other words, there is no mutuality when it comes to the benefits which go to the owner and borrower. The owner gives away that which is his, and the borrower benefits without giving anything in return. The borrower loses out in the lack of balance between the giver and the taker. This can also be seen from the language used in our Gemara, where the words “*qideim”* and *“shileim”* were used specifically for the borrower (as seen in section 10), from which the Gemara learns that the borrower must actually make the payment for the object after it is stolen, in order to acquire the right to the double payment.

Vocabulary

Page 2

תנן-we learned

אין-yes

Page 3

אימא-say

סיפא-end

טעמא-reason

הא-but

מהא-from this

ליכא-there is not

משמע-to understand/prove

מינה-from it

תניא-it was taught

כותיה-like him

הלה-that

מקנה-causes another to acquire

ליה-to him

דאי-that if

בעי-wants

נפשיה-himself

כפילא-double payment

Page 4:

במאי-with what

הוה-was

מחמת-because of

שכיח-common

איכא-there is

דאמרי-that says

נמי-also

מקני-acquires

Page 5:

הכי-this

מאי-what

דיבורא-words

קידם-precede

Page 6:

לישנא קמא-first version

הויא-was

תיובתא-refutation

לישנא בתרא-second version

לימא-say

תהוי-it will be

אלימא-strong

מתניתין-our mishna

קתני-he taught

אוקימנא-we established

הכא-here

מי דמי-is it similar

התם-there

Page 7

גבי-by

שמע מינה-we learn from it

מידי-does it?

הדדי-together

שיילינהו-we asked them

דבי-of the house of

תניין-they were taught

*Thinking Hazal* are a series of spiritual treasure-troves offering a fundamental learning experience in talmudic *sugyot*. This pamphlet points out the main lessons appearing tin the talmudic sugya. The pamphlet contains literal explanations and illustrations which emphasize the principles of the *sugya* and the varied and exciting views of the *Tannaim* and *Amoraim*. The relationship between mutuality and necessity, is, among other things one of the main insight of our sugya. People enjoying a mutual and cooperative relationship are contrasted to people in a one-sided relationship. The discussion of our sugya is based on this point.

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