



Daf 34: הַקְנָזָן שִׁיחוּל לְאַחֵר זְמַן – An Acquisition that Takes Effect Following a Predetermined Delay

An individual who wants to acquire a particular item must take action to do so. One may acquire a chair by **lifting it**. As a result of lifting the chair, its ownership is transferred from the seller to the buyer. One of the methods of acquiring cattle is by **pulling it**, e.g., tugging on its harness and causing the animal to move from the place it was standing.

It is insufficient for the buyer and seller to verbally agree that they both want the acquisition to occur. **As long as no act of acquisition has taken place, no change of ownership has occurred.**

Once, an individual sought to arrange an acquisition in an unusual manner: He owned a chess set that he wanted to sell. When a potential buyer came to acquire the set, the seller said: "Although I want to sell this chess set, I want to do so **one week from today**, since I would still like to use it this week."

What do we do in such a case? Do we delay the act of acquisition until the week has passed? On this *daf* we learn that the act of acquisition need not wait. **The act of acquisition may be done today, along with a statement: "We stipulate the acquisition will take place one week from today."**

Daf 35: "הַמַּפְקִיד" ו"שׁוֹמֵר פִּקְדוֹן" – The Depositor and The Guardian of a Deposited Possession

The chapter we are learning is called "*HaMafkid*." A *mafkid* is a person who deposits an item with someone in order for it to be safeguarded. The owner of the object is known in the Talmud as "*HaMafkid*," and the person who received the object to watch over, is called "*Shomer*" or "*Shomer Pikadon*," the watchperson or guardian of a deposited item.

An individual who takes responsibility for watching over an object is required to guard it. If one neglects to do so, and the object becomes damaged or stolen, that person is liable to repay the value of the object to the owner.

One of the different types of guardians is a "*Shomer Chinam*," an unpaid guardian. A *shomer chinam* is a person who has agreed to watch over an object without receiving payment. A *shomer chinam* is not obligated to repay the person who deposited their possession with them if that item is stolen, or lost, or damaged in any way—unless that *shomer chinam* was negligent in their supervision.

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FROM THE TALMUD SEDER NEZIKIN MASECHET BAVA METZIA daf 38

מִן הַתְּלִמּוּד:

סדר נזיקין, מסכת בבא מציעא, (דף ל"ח)
"אתמר, שבוי שנשבה - רב אמר: אין
מורדין קרוב לנכסיו, שמואל אמר:
מורדין קרוב לנכסיו."

Translation

Shaymeenan ... We assess
... (appraise) them
Ovda ... Occurrence, tale
M'ay'lin ... Insert, introduce

Explanation

If a Jew was taken into captivity by non-Jews, Rav and Shmuel disagree as to whether a relative of that captive may be permitted to take the captive's property and treat it as their own until that relative returns; or are they to leave the property alone, lest it suffer damage.

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Daf 36: "שְׁבוּעַת הַפְּקָדוֹן" – Oath of the Deposited Item

If a *shomer* of a deposited object says to the *mafkid*: "I took good care of the object. However, thieves came in the middle of the night and stole it. I apologize. I was sound asleep and did not hear them. I am exempt from repaying you for the object, **since a shomer chinam is only liable to repay if s/he was negligent.**" That *shomer*

is in fact exempt from payment. However, the Torah stipulates that the *shomer* must take an oath in a *beit din* that their claim is truthful.

This oath is called "Shvu'at HaPikadon," oath of the deposited item.

If a *shomer* transgressed and stole guarded items, and also took a false oath, when s/he asks for *teshuvah*, the items must be immediately returned to the *mafkid*. In addition, the Torah requires the *shomer* perform a specific order of atonement:

- Repay the *mafkid* an additional 1/5 of the value of the object.
- Bring a *Korban Asham* (guilt offering) to repent for making a false oath.



Daf 37: מַחֲלָקֶת עַל גְּבוּהַּ הַפְּקָדוֹן – Dispute Over Collection of a Deposit

Reuven lived in a village near the border. One day, gunshots were heard throughout the village. Reuven immediately hid in the safe room of his house. Peering through a narrow slit in the window, Reuven saw two people running, each one holding a sack. To his complete surprise, the two people entered Reuven's house and said: "We beg you, please watch over these sacks for us. They contain gold and thieves are chasing after us." Reuven agreed, and the pair immediately ran off into the forest. The thieves soon lost track of the owners of the sacks. Peace and tranquility prevailed in the village once again.

Just a few days later, the owners of the two sacks reappeared at Reuven's house. They thanked Reuven from the bottom of their hearts for his help. When Reuven brought out the sacks and laid them in front of the gentlemen, an intense dispute erupted. It seems that one sack contained one pound of gold, while the other sack held 2 pounds of gold. Each of the men insisted: **The heavier bag is mine!**

What should Reuven do? Reuven should only give one pound of gold to each of the two men—since both men agree, without question, that they each certainly deserve one pound of gold. The third pound, the one still in dispute, remains in Reuven's possession until Elijah the Prophet arrives to determine which one of the men is correct.

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Bamba is one of the most popular snack foods in Israel. It is a baked peanut butter puff snack beloved by Israelis of all ages – from babies to adults. Bamba is not only delicious, it is relatively healthy too. It contains no cholesterol, no preservatives and no food coloring and is also vitamin-enriched. In 2008, scientists investigated why Jews in Great Britain have ten times more peanut allergies than Jews in Israel. After researching the situation – it was determined that Bamba was the answer. Infants and children in Israel eat copious amounts of Bamba and thus, peanut allergy is rare.

Thank you, Israeli food manufacturers for making a snack that is not only delicious, but may protect against allergies as well!



Bamba snacks.
Photo Source: Wikipedia
Photos/ Nsaum75



Daf 38: אַחֲרֵיכֵן הַשּׁוֹמֵר עַל פְּרוֹת חֵבְרוֹ - **Liability of a Guardian over the Neighbor's Fruit**

These few pages in the Talmud teach about different actions a guardian must take in order to prevent a decrease in value of the deposit under their care. There was a case of a person who took responsibility for watching over a neighbor's fruit. After some time passed, the *shomer* noticed the quality of the produce was unsatisfactory. The fruit was becoming too ripe. If the *shomer* **left the fruit untouched, it would start to decay and the *mafkid* would forfeit any benefit from the produce.**

The *shomer* attempted to locate the *mafkid* in order to ask what to do, but did not succeed. It became clear the *mafkid* was traveling abroad.

What should the *shomer* do with the fruit?

Our Sages say that the *shomer* must approach the *beit din* and tell them exactly what had happened. Then, under the *beit din*'s supervision, the *shomer* is directed to sell the produce and safeguard the proceeds for the *mafkid*.

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Daf 39: "הַמוֹצִיא מִחֵבְרוֹ - עָלָיו הָרְאִיָּה" - **One Who Seeks to Seize Property from a Peer Bears the Burden of Proof**

Two people argue over a financial debt. Reuven claims Shimon owes him money, while Shimon insists he does not owe Reuven anything. They must approach the *beit din* to determine who is correct.

How do the judges determine whose claim is correct?

If one of the two parties has proof that he is correct, then the *beit din* accepts his evidence to be true. If Reuven provides witnesses to testify on his behalf that Shimon does indeed owe him money, the *beit din* examines the witnesses to verify their testimony is truthful and then determines that Shimon owes money to Reuven.

What is done if neither party can prove their claim?

In such a case, the court employs a basic principle that states: **one who seeks to seize property from a peer bears the burden of proof.** Meaning, if someone claims they are owed money by another person, s/he is obligated to provide proof of the claim. In the absence of proof, the *beit din* has no basis to obligate the accused to pay.

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★ | This Week in Jewish History

On the 30th of Tishrei in 1958, the foundation stone was placed for the new building of the Israeli Parliament, the Knesset. The Knesset has 120 members, the same number at the *Knesset Ha'gedola* of the Second Temple Era. Each Knesset session is known by its election number, i.e., the Knesset elected in Israel's first election in 1949 is known as the First Knesset. The Twentieth Knesset is now in session. The Knesset plenum meets on Mondays, Tuesdays and Wednesdays. There are 14 standing Knesset Committees that meet regularly and are made up of Knesset Members from different parties. Today, there are 10 parties in the Knesset. The largest parties are Likud, lead by Prime Minister Benjamin Netanyahu, and the Zionist Union, lead by Isaac Herzog.



Israeli Knesset Building in Jerusalem.
TOP: Photo Source: Israel Government Press Office
BOTTOM: Photo Source: Wikipedia/ Leif Knutsen



Daf 40: רב הונא – Rav Huna

The *Amora* Rav Huna lived in Babylonia for most of his life and achieved the distinction of being the *Gadol Hador*, the greatest Torah scholar of his generation. Rav Huna's primary teacher and mentor was Rav, who conferred rabbinic ordination upon Rav Huna.

During the same period, Rav served as *Rosh Yeshiva* of Sura and his colleague Shmuel served as *Rosh Yeshiva* of Nehardea. After Rav's death, a new *Rosh Yeshiva* was not immediately appointed in Sura. As a result, students migrated to the yeshiva of Nehardea to learn Torah from Shmuel.

Years later, Shmuel passed on. The city of Nehardea was ravaged by war, making it too difficult to sustain a Yeshiva there. It was at that time, **the Sages of Babylonia decided to appoint Rav Huna as Rosh Yeshiva of Sura. He was a very successful Rosh Yeshiva. Students flocked from all over to learn from Rav Huna. With the passage of time, Rav Huna had 13 people with powerful voices transmitting his teachings to the public.**

The Talmud teaches in *Masechet Ketubot*, that at the end of a *shiur*, when Rav Huna's students shook off their garments as they rose to leave, they raised such a massive cloud of dust that the sky became overcast.



QUESTIONS OF THE WEEK

All answers can be found in this Daf Yomi booklet

1. What is the meaning of "Hamotzi michavero, alav ha're'ayah," and when is this principle employed?
2. What should a guardian who is entrusted with supervision over fruit that is beginning to decay do if the owner is unable to retrieve their deposit?
3. What must a person who regrets having stolen an item and giving false testimony do in order to repay the owner for the theft?

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| Dvar Torah for the Shabbat Table

It says in *Pirkei Avot* that 10 generations separated between Noah and Abraham. Torah commentators drew extensive comparisons between Noah and Abraham.

In this week's *parasha*, Rashi states: In our *parasha* it is says: "God walked with Noah" and our Patriarch Avraham ascribes almost exactly the same quality to himself, i.e., "God, whom I walked before."

What is the difference between these two verses and the description regarding walking with God? Rashi employs a close reading of the text: **"Noah needed God's aid."** Therefore, the Torah says that "God walked with Noah" to support him. However, our **Patriarch Avraham was empowered and righteously walked on his own.** Therefore, the verse states that Avraham walked before God.

| Person of the Week

Israeli combat navigator Ron Arad fell captive in Lebanon and is considered Missing In Action (MIA). He was born in Magdiel, completed flight school and served as a Phantom fighter plane combat navigator. In 1986, Arad set out on a mission to hit terrorist targets in southern Lebanon. A technical malfunction triggered an explosion near the plane, causing its two crew members to abandon the aircraft. Pilot Yishai Aviram was rescued via helicopter. Arad fell captive to the Shiite "AMAL" organization. His captors handed over three letters he wrote, along with one photo. Arad was not allowed any visitors; even representatives of the International Red Cross were not permitted to see him. All attempts to broker a deal to gain Arad's release failed. In 1988, all traces of Arad disappeared. It is suspected Arad was transferred over to another organization, moved to Iran, or killed by his captors. Ron Arad's true fate remains unknown.

