

A ט"ד

Intro

Today we will learn בע"ה on Amud Bais begin the third Perek, המפקיד.

Some of the topics we will learn about include.

The Mishnah's Halachos of אבדתו ואבדת אביו

If a person's item and also his father's item were lost;
OR

אבדתו ואבדת רבו

His item and also his Rebbe's item were lost;

אבדתו קודמת

His own item takes precedence over his father's and Rebbe's, because the Pasuk states

אפס כי לא יהיה בך אביון

A person may not bring himself to poverty. Therefore,

שלך קודם לשל כל אדם

His financial stability takes precedence over all others, even his father and Rebbe

אבדת אביו ואבדת רבו

של רבו קודמת

If both his father's item and his Rebbe's item were lost, his Rebbe's item takes precedence over his father's, because

שאביו הביאו לעולם הזה

ורבו שלמדו חכמה

מביאו לחיי העולם הבא

His father brought him only into this world, while his

Rebbe who taught him Torah, brings him into the eternal

world to come.

B The three opinions as to who is considered a Rebbe regarding these Halachos;

1.

רבו שלמדו חכמה

ולא רבו שלמדו מקרא ומשנה

His Rebbe is one who taught him Gemara, but not if he taught him only Chumash or Mishnayos;

2.

כל שרוב חכמתו הימנו

The one who taught him the majority of his Torah

3.

אפילו לא האיר עיניו אלא במשנה אחת

Even if he taught him any portion of Torah, such as a

Mishnah;

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The first Mishnah of the third Perek:

המפקיד אצל חבירו בהמה או כלים

ונגנבו או שאבדו

If a person gave someone his animal or utensil for safekeeping and the פקדון was stolen or lost;

A

אבדתו
ואבדת אביו

אבדתו
ואבדת רבו

אבדת אביו ואבדת רבו
של רבו קודמת

B

רבו שלמדו חכמה
ולא רבו שלמדו
מקרא ומשנה

כל שרוב חכמתו הימנו
אפילו לא האיר עיניו
אלא במשנה אחת

המפקיד אצל חבירו
בהמה או כלים
ונגנבו או שאבדו

C it depends as follows:
שילם ולא רצה לישבע
If the שומר voluntarily paid for the פקדון rather than swear to be exempt, and afterward the גנב was discovered;
משלם תשלומי וכי למי שהפקדון אצלו
The שומר gets back the קרן that he paid, and he also gets the קנס, the penalty of כפל and 'ד' יה, because as the Gemara explains;
בעלים מקני ליה כפילא
The owner grants the כפל and 'ד' יה to the שומר for his generosity in paying for the פקדון.

The Gemara's discussion as to how the שומר acquires the כפל, even though
אין אדם מקנה דבר שלא בא לעולם
One cannot make a transaction now, to take effect later, for something that it cannot take effect now - for example, because it is as of yet non-existent, such as to give away the כפל for a stolen פקדון before the גנב was obligated to pay it.

C

שילם
ולא רצה לישבע

משלם תשלומי
למי שהפקדון אצלו

אין אדם מקנה
דבר שלא בא לעולם

1 So let's review ...

Zugt Di Mishnah

אבדתו ואבדת אביו
אבדתו קודמת

If a person's item and also his father's item were lost, his own item takes precedence over his father's despite the Mitzvah of אב כיבוד.

And

אבדתו ואבדת רבו
שלו קודם

If a person's item and also his Rebbe's item were lost, his own item takes precedence over his Rebbe's despite the Mitzvah of רבו כבוד;

Because the Pasuk states

אפס כי לא יהיה בך אביון

A person may not bring himself to poverty. Therefore,

שלך קודם לשל כל אדם

His financial stability takes precedence over all others, even his father and Rebbe.

However, רב יהודה אמר רב, says

כל המקיים בעצמו כן

סוף בא לידי כן

If a person always conducts himself this way, and refuses

to do Chesed to others out of concern that he might

become poor, this person will eventually become poor,

because as Rashi explains

יש לאדם ליכנס לפניו משורת הדין

ולא לדקדק שלי קודם אם לא בהפסד מוכיח

A person is obligated to go beyond the letter of the law,

and he should not claim שלי קודם unless he is certain to

suffer a loss as in the case of אבידתו.

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1

מלאך

אבדתו

ואבדת רבו

שלו קודם

His own item takes precedence over his Rebbe's despite the Mitzvah of רבו כבוד.

אבדתו

ואבדת אביו

אבדתו קודמת

His own item takes precedence over his father's despite the Mitzvah of אב כיבוד.

אפס כי לא יהיה בך אביון

A person may not bring himself to poverty. Therefore,

אלך קודם לכל אדם

His financial stability takes precedence over all others, even his father and Rebbe.

רב ירודף אתו רב

כל המקיים בעצמו כן
סוף בא לידי כן

If a person always conducts himself this way, and refuses to do Chesed to others out of concern that he might become poor, this person will eventually become poor,

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ולא לדקדק שלי קודם אם לא בהפסד מוכיח

A person is obligated to go beyond the letter of the law, and he should not claim שלי קודם unless he is certain to suffer a loss as in the case of אבידתו.

2 The Mishnah continues

אבדת אביו ואבדת רבו
של רבו קודמת
If both his father's item and his Rebbe's item were lost, his
Rebbe's item takes precedence over his father's, because
שאביו הביאו לעולם הזה
ורבו שלמדו חכמה
מביאו לחיי העולם הבא
His father brought him only into this physical world,
while his Rebbe who taught him Torah, brings him into
the eternal world to come.
However,
ואם אביו חכם
של אביו קודמת
If his father is also a scholar and taught him Torah, his
father's item takes precedence over his Rebbe's, because
his father brought him into both עולם הזה and עולם הבא
while his Rebbe brings him only to עולם הבא.

Similarly,
היה אביו ורבו נושאים משאוי
מניח את של רבו ואחר כך מניח את של אביו
If his father and his Rebbe were each carrying a package,
he first helps his Rebbe and then his father, because
שאביו הביאו לעולם הזה
ורבו מביאו לחיי העולם הבא

Similarly,
היה אביו ורבו בבית השבי
פודה את רבו ואחר כך פודה את אביו
If both his father and his Rebbe were in captivity, he first
redeems his Rebbe and then his father. However
ואם אביו חכם
פודה את אביו ואח"כ פודה את רבו
If his father is also a scholar and taught him Torah, he first
redeems his father and then his Rebbe.

2



אבדת אביו ואבדת רבו
של רבו קודמת

*If both his father's item and his Rebbe's item were lost,
his Rebbe's item takes precedence over his father's,
because*

שאביו הביאו לעולם הזה
ורבו שלמדו חכמה
מביאו לחיי העולם הבא

*His father brought him only into this physical world,
while his Rebbe who taught him Torah,
brings him into the eternal world to come.*

ואם אביו חכם
של אביו קודמת

*If his father is also a scholar and taught him Torah,
his father's item takes precedence over his Rebbe's,
because his father brought him into
both עולם הזה and עולם הבא
while his Rebbe brings him only to עולם הבא.*

היה אביו ורבו נושאים משאוי
מניח את של רבו
ואחר כך מניח את של אביו

*If his father and his Rebbe were each carrying a package,
he first helps his Rebbe and then his father.*

Similarly,

היה אביו ורבו בבית השבי
פודה את רבו

*If both his father and his Rebbe were in captivity,
he first redeems his Rebbe and then his father.*

However

ואם אביו חכם
פודה את אביו

*If his father is also a scholar and taught him Torah,
he first redeems his father and then his Rebbe.*

3 The Gemara cites a Machlokes in a Braisa as to who is considered a Rebbe regarding these Halachos.
 רבי מאיר says
 רבו שאמרו
 רבו שלמדו חכמה ולא רבו שלמדו מקרא ומשנה
 His Rebbe is the one who taught him Gemara, but not the one who taught him only Chumash or Mishnayos.

רבי יהודה says
 כל שרוב חכמתו הימנו
 His Rebbe is one who taught him the majority of his Torah.

רבי יוסי says
 אפילו לא האיר עיניו אלא במשנה אחת
 זה הוא רבו
 His Rebbe is one who taught him any portion of Torah, even only one Mishnah.
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3

<p>רבי יפודה</p> <p>כל שרוב חכמתו הימנו</p> <p><i>His Rebbe is one who taught him the majority of his Torah.</i></p>	<p>רבי מאיר</p> <p>רבו שאמרו רבו שלמדו חכמה ולא רבו שלמדו מקרא ומשנה</p> <p><i>His Rebbe is the one who taught him Gemara, but not the one who taught him only Chumash or Mishnayos.</i></p>
<p>רבי יוסי</p> <p>אפילו לא האיר עיניו אלא במשנה אחת זה הוא רבו</p> <p><i>His Rebbe is one who taught him any amount of Torah, even only one Mishnah.</i></p>	



4 The Gemara proceeds with a Braisa

העוסקין במקרא
מדה ואינה מדה

Those who study only the written law have a small significance, because

אינם תלויים בגירסא

Their studies are effortless as they do not need to remember this information as it was recorded.

במשנה

מדה ונוטלין עליה שכר

Those who study the Mishnah, the oral law, have a greater significance and they receive a greater reward, because as Rashi explains

תלויים בגירסא ומשתכחים

Their studies are diligent, as they must remember this information as it was not recorded.

גמרא

אין לך מדה גדולה מזו

Those who study Gemara, the interpretation of the oral law, have the greatest significance, because as Rashi explains

נתנו לב לברר טעמי המחלוקת

They analyze the reasoning's of the various opinions, and decide on the final rulings.

The Braisa concludes

ולעולם הוי רץ למשנה יותר מן גמרא

A person should hasten to learn Mishnah over Gemara.

As the Gemara explains, this Braisa refers to the times of רבינו הקדוש who first emphasized the study of גמרא, but then

שבקו כולא עלמא מתניתין ואזלו בתר גמרא

People began to study only גמרא but not משנה, and רבינו הקדוש was concerned for

פן ישתכחו המשניות

ובמקום חיוב ואסור יאמרו פטור ומוותר

People would forget the wording of the Mishnah and issue erroneous rulings.

Therefore, he told them

ולעולם הוי רץ למשנה יותר מן גמרא

הדרך עלך פרק אלו מציאות

We have B"ה completed the second Perek of בבא מציעא, and will now begin the third Perek, המפקיד, B'e'zras Hashem.

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4

העוסקין...

גמרא

אין לך מדה גדולה מזו

The interpretation of the oral law, has the greatest significance, because

נתנו לב לברר

טעמי המחלוקת
They analyze the reasoning's of the various opinions, and decide on the final rulings.

במשנה

מדה ונוטלין עליה שכר

The oral law, has a greater significance, and they receive a greater reward, because

תלויים בגירסא

ומשתכחים
Their studies are diligent, as they must remember the information as it was not recorded.

במקרא

מדה ואינה מדה

Those who study only the written law have a small significance, because

אינם תלויים

בגירסא
Their studies are effortless as they do not need to remember the information as it was recorded.

ולעולם הוי רץ למשנה יותר מן גמרא

A person should hasten to learn Mishnah over Gemara.

As the Gemara explains,

this Braisa refers to the times of רבינו הקדוש who first emphasized the study of גמרא, but then

שבקו כולא עלמא מתניתין ואזלו בתר גמרא

People began to study only גמרא but not משנה, and רבינו הקדוש was concerned people would forget the wording of the Mishnah and issue erroneous rulings.

הדרן עלך אלו מציאות



5 Zugt Di Mishnah

המפקיד אצל חבירו בהמה או כלים ונגנבו או שאבדו

If a person gave someone his animal or utensil for safekeeping and the פקדון was stolen or lost; it depends as follows:

שילם ולא רצה לישבע

שהרי אמרו שומר חנם נשבע ויוצא

If the שומר voluntarily paid for the פקדון rather than swear to be exempt; and then

נמצא הגנב

The גנב was later discovered;

משלם תשלומי כפל

טבח ומכר משלם תשלומי ארבעה וחמשה

למי משלם

למי שהפקדון אצלו

The שומר gets back the קרן that he paid, and he also gets the קנס, the penalty of כפל and ד' וה' because as the

Gemara explains

בעלים מקני ליה כפילא

The owner grants the כפל and ד' וה' to the שומר for his generosity in paying for the פקדון.

However

נשבע ולא רצה לשלם

ונמצא הגנב

If the שומר swore to be exempt rather than pay, and then the גנב was discovered;

משלם תשלומי כפל

טבח ומכר משלם תשלומי ארבעה וחמשה

למי משלם

לבעל הפקדון

The owner gets all, the קרן and the קנס of כפל and ד' וה' and not the שומר, because

לא מקני ליה כפילא

The owner did not grant the כפל to the שומר, since he did not pay for the פקדון.

5

המפקיד

המפקיד אצל חבירו בהמה או כלים ונגנבו או שאבדו

If a person gave someone his animal or utensil for safekeeping and the פקדון was stolen or lost; it depends as follows:

שילם - ולא רצה לישבע

שהרי אמרו שומר חנם נשבע ויוצא

If the שומר voluntarily paid for the פקדון rather than swear to be exempt

נמצא הגנב

משלם תשלומי כפל

טבח ומכר משלם תשלומי ד' וה'

למי משלם

למי שהפקדון אצלו

The שומר gets back the קרן that he paid, and he also gets the קנס, the penalty of כפל and ד' וה'

As the Gemara explains

בעלים מקני ליה כפילא

The owner grants the כפל and ד' וה' to the שומר for his generosity in paying for the פקדון.

However

נשבע - ולא רצה לשלם

ונמצא הגנב

If the שומר swore to be exempt rather than pay, and then the גנב was discovered;

משלם תשלומי כפל

טבח ומכר משלם תשלומי ארבעה וחמשה

למי משלם

לבעל הפקדון

The owner gets all, the קרן and the קנס of כפל and ד' וה' and not the שומר, because

לא מקני ליה כפילא

The owner did not grant the כפל to the שומר, since he did not pay for the פקדון.

6 Regarding the רישא of שילם ולא רצה לישבע
 The Gemara initially assumes that the owner grants the שומר only the כפל but not the actual פקדון, and the Gemara therefore asks how does the שומר acquire the כפל.
 והא אין אדם מקנה דבר שלא בא לעולם
 A person cannot make a transaction now, that takes effect later, for something that cannot take effect now, because it is as of yet non-existent, as in the case of המוכר פירות דקל לחבירו
 A person who sells the fruits which his date tree will produce later;

And here too the owner grants the כפל to the שומר which he acquires only later after Bais Din rules and obligates the גנב to pay the כפל?

6

שילם ולא רצה לישבע
The Gemara initially assumes that the owner grants the שומר only the כפל but not the actual פקדון,

?
The Gemara therefore asks How does the שומר acquire the כפל.

והא אין אדם מקנה דבר שלא בא לעולם
A person cannot make a transaction now to take effect later, for something that cannot take effect now, because it is as of yet non-existent, as in the case of המוכר פירות דקל לחבירו
A person who sells the fruits which his date tree will produce later.

And here too the owner grants the כפל to the שומר which he acquires only later after Bais Din rules and obligates the גנב to pay the כפל?

7 נעשה כאומר לו לכשתגנב ותרצה ותשלמוני הרי פרתי קנויה לך מעכשיו

When the שומר pays for the פקדון we consider it that the owner granted to the שומר the actual פקדון retroactively from the time he accepted to guard the פקדון. Therefore, the שומר was considered the owner when the פקדון was stolen, for which he is entitled to the כפל. As Rashi explains

ניחא להו לבעלים שיהא בטוח בקרן ע"מ שיהא ספק כפל של שומר

The owner does this because he wants to be guaranteed the principal amount of the פקדון, and he is therefore willing to give away the possible כפל to the שומר for paying him the קרן.

However, the שומר does not retroactively acquire גיזותיה וולדותיה

The wool and calves of the פקדון animal, because שבחא דאתא מעלמא עביד איניש דמקני שבחא דמגופה לא עביד איניש דמקני

The owner gives away his animal to the שומר only regarding the external שבח such as כפל but not regarding the internal שבח such as גיזות ולדות.

7

**נעשה כאומר לו
לכשתגנב ותרצה ותשלמוני
הרי פרתי קנויה לך מעכשיו**

When the שומר pays for the פקדון we consider it that the owner granted to the שומר the actual פקדון retroactively from the time he accepted to guard the פקדון.

Therefore, the שומר was considered the owner when the פקדון was stolen, for which he is entitled to the כפל.

As Rashi explains

**ניחא להו לבעלים שיהא בטוח בקרן
ע"מ שיהא ספק כפל של שומר**

The owner wants to be guaranteed the principal amount of the פקדון, he is therefore willing to give away the possible כפל to the שומר for paying him the קרן.

However, the שומר does not retroactively acquire **גיזותיה וולדותיה**

The wool and calves of the פקדון animal, because

שבחא דמגופה לא עביד איניש דמקני	שבחא דאתא מעלמא עביד איניש דמקני
<i>But not regarding internal שבח such as גיזות ולדות.</i>	<i>The owner gives away his animal to the שומר only regarding external שבח such as כפל</i>

8 The Gemara mentions a second version of רבא:
 נעשה כאומר לו לכשתגנב ותרצה ותשלמני
 סמוך לגניבתה קנויה לך
 When the שומר pays for the פקדון we consider it that the
 owner granted to the שומר the actual פקדון retroactively
 from one moment before the גניבה. Therefore, the שומר was
 considered the owner when the פקדון was stolen, for which
 he is entitled to the כפל, and for this reason the שומר does
 not acquire גזוטיה וולדותיה because he did not own the
 animal before the גניבה occurred.

And as the Gemara explains, the distinction between the
 two versions lies where

דקיימא באגם

If the פקדון animal was situated in the marshland at the
 time of the גניבה;

According to the first version

קני כפילא

The שומר gets the כפל, because at the time of the initial
 שמירה, the פקדון was in his jurisdiction, and he acquires the
 פקדון through חצר קנין.

While according to the second version

לא קני כפילא

The שומר does not get the כפל, because before the גניבה, the
 פקדון was not in the שומר's jurisdiction, and he could not
 acquire the פקדון.

8

A second version

רבא

**נעשה כאומר לו
 לכשתגנב ותרצה ותשלמני
 סמוך לגניבתה קנויה לך**

When the שומר pays for the פקדון
 we consider it that the owner granted to the שומר
 the actual פקדון retroactively - one moment before גניבה.

Therefore,
 the שומר was considered the owner when the פקדון was stolen,
 for which he is entitled to the כפל.

And for this reason the שומר does not acquire גזוטיה וולדותיה
 because he did not own the animal
 before the גניבה occurred.

The distinction between the two versions...

דקיימא באגם

If the פקדון animal was situated in the marshland
 at the time of the גניבה

<p>According to the first version</p> <p>קני כפילא</p> <p>The שומר gets the כפל, because at the time of the initial שמירה, the פקדון was in his jurisdiction, and he acquires the פקדון through חצר קנין.</p>	<p>While according to the second version</p> <p>לא קני כפילא</p> <p>The שומר does not get the כפל, because before the גניבה, the פקדון was not in the שומר's jurisdiction, and he could not acquire the פקדון.</p>
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