

Bava Metzia – Simanim

Daf 94 – דף צד

פרק ז – השוכר את הפועלין

1. A **שומר** can stipulate to reduce his liability

The next Mishnah states: מתנה שומר חנם להיות פטור משבועה – *A שומר חנם can stipulate to be exempt from making a shevuah that he was not negligent.* Similarly, a שואל can stipulate to be exempt from paying, and a שומר שכר and שוכר can stipulate to be exempt from paying and swearing. The Mishnah adds: – תנאו *anyone who stipulates against what is written in the Torah, his stipulation is void.* The Gemara asks that a שומר stipulating to exempt himself is itself a condition against the Torah, and should be void!? It initially answers that the Mishnah is Rebbe Yehudah, who holds בדבר שבממון תנאו קיים – *regarding a monetary matter, his stipulation is effective,* as the Gemara quotes. However, the Gemara proves that the latter part of this Mishnah is Rebbe Meir, and concludes that the entire Mishnah is Rebbe Meir. Although he holds even monetary stipulations against the Torah are void, the שומר's stipulation is valid, *because he did not initially obligate himself to more than his terms.*

2. A condition which is impossible to fulfill

The Mishnah concluded: וכל שאפשר לו לקיימו בסופו – *any condition which is possible for one to fulfill is a valid condition, implying that a condition which is impossible to fulfill is void (and the act takes effect without the condition's fulfillment).* Rav says this is the opinion of Rebbe Yehudah ben Teima, but the Chochomim hold such a condition is effective, as a Baraisa teaches that if a husband says: הרי זה גיטר על – *Here is your get, on condition that you go up to the sky,* or “on condition that you descend to the depths,” or “on condition that you swallow a reed a hundred amos long,” or “on condition that you cross the הגדול ים by foot,” the Tanna Kamma says the *get* does not take effect without fulfilling the condition. Rebbe Yehudah ben Teima says the *get* is valid, and taught a rule: כל שאי אפשר לו לקיימו בסופו – *any condition which is impossible for one to eventually fulfill, and he stipulated it in the beginning, he is merely pushing her off (i.e., teasing her), and [the get] is valid.* Rav rules like Rebbe Yehudah ben Teima.

פרק ח – השואל את הפרה

3. The exemption of בעליו עמו, which must begin before or together with the borrowing

The eighth Perek begins: השואל את הפרה ושאל בעליה עמה – *If one borrowed a cow, and borrowed the services of the owner together with it, or hired the owner together with it, or he first obtained the owner's services and then borrowed the cow, and the cow later died, he is exempt, because the Torah says: "אם בעליו עמו לא ישלם" – if its owner was with him, he shall not pay.* However, if he first borrowed the cow, and afterward obtained the owner's services, he remains responsible for any mishap, because the *passuk* says: "בעליו אין עמו שלם ישלם" – *if its owner is not with him, he shall pay.*

The first case of the Mishnah implies that he obtained the owner's services and the borrowed cow at the same moment. The Gemara wonders how this is possible, since the cow is acquired with משיכה, and the owner's services are acquired earlier, with his mere verbal agreement!? Two answers are given: (1) the cow was located in the borrower's *chatzeir*, and is acquired (for borrowing) as soon as the owner verbally allows it. (2) the borrower told the owner that he would not be “borrowed” until the משיכה of his cow.

Siman – Hunter (צד)

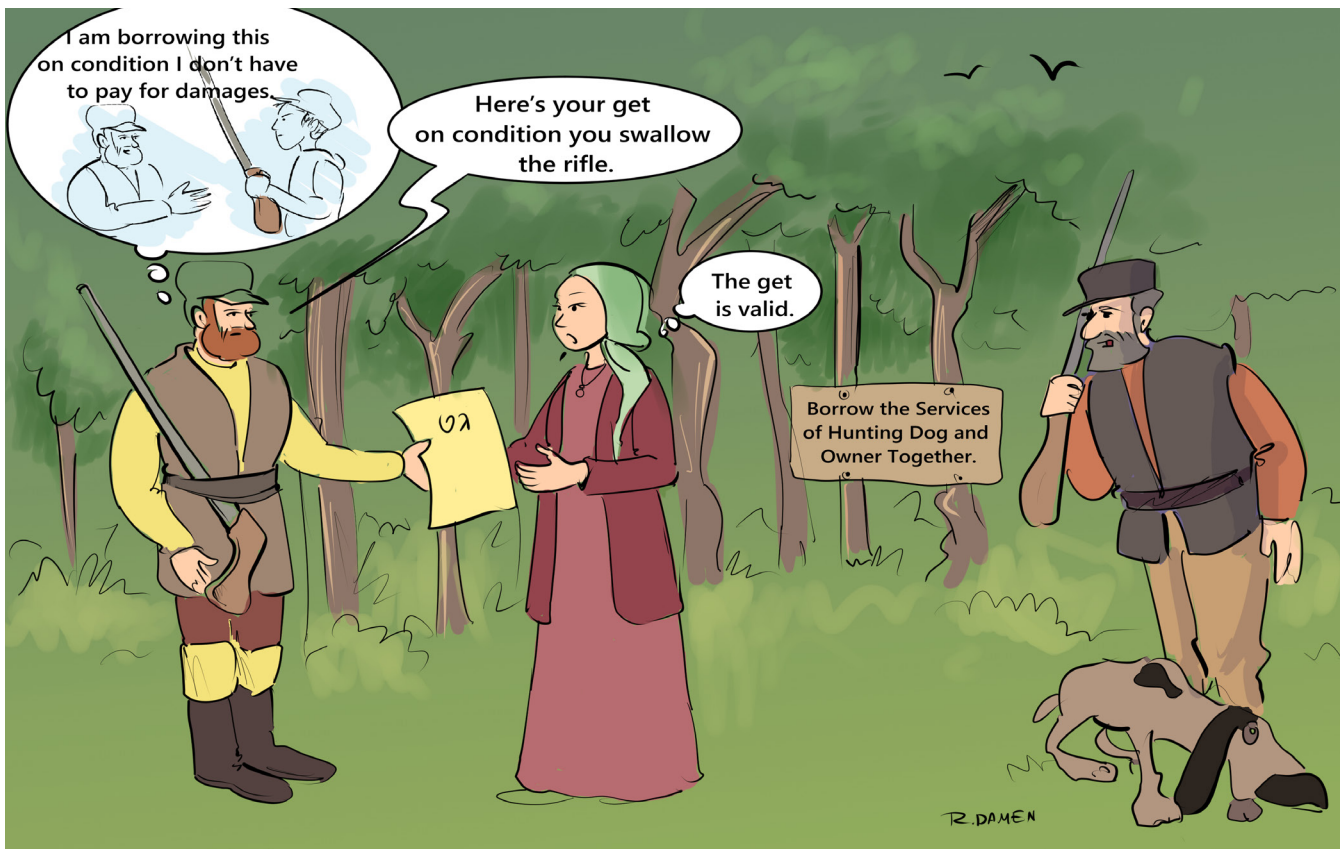
The hunter who borrowed a rifle on condition that if it got damaged he would not have to pay, and then gave his wife a *get* on condition she swallowed the rifle, not realizing that since that was impossible to do the *get* was still valid, was exempt when the hunting dog he borrowed died, since he had hired the dog's owner together with it.

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Hunter (צד)



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3 things to remember

1. A שומר can stipulate to reduce his liability
2. A condition which is impossible to fulfill
3. The exemption of בעליו עמו, which must begin before or together with the borrowing

