

Dr. Jesse Hefter – Brookline, MA – Shabbat Chukat

The final Mishna of the final Perek of Masechet Shavuot describes four types of custodians or agents – the Shomer Chinam (an unpaid custodian), the Shoel (a borrower), the Nosay Sachar (a paid custodian), and the Socher (a renter). The Halakhot of these four categories of agents, the first three of which are described in the Torah and the fourth the subject of a Machloket Tannaim as to whether they are categorized as a Shomer Sachar or Shomer Chinam have been discussed previously in Bava Metzia. Our Mishna here concludes that the Socher/renter is treated Halachically as a paid custodian.

This final short Perek discusses the case when a custodian can be administered a Shevuah/oath called a Shevuat Shomrim to support his claim that he or she is not responsible for damage or loss of the item that was in their care. Further, if, G-d forbid, the custodian, not wanting to have to take responsibility for their action or inaction, takes a Shevuat Sheker/a false oath, we need to know when they are Chayav (liable) for this action and what they must do to get a Kapara (atonement) for their action.

What happens when the owner of an animal demands that the Shomer return the property, and the custodian explains why he cannot return it (perhaps it was lost or stolen)? The owner can then administer a Shevuat Shomrim, and the defendant (the Shomer) may either testify truthfully or lie under oath. If he lies, there are situations in which the Shomer may still not be obligated to bring a Korban Asham (a guilt offering) for falsely taking a Shevuat Shomrim. Meanwhile, the shomer may have to pay a fine or restitution and take steps to atone for the false oath.

The final line of the Mishna summarizes that “Kol HaNishba LeHakel al Atzmo – Chayav; l’hachmir al atzmo, patur”. Anyone who takes a Shevuat Shomrim to be lenient with himself – meaning that the false oath would exempt him from payment, he is obligated to bring a korban asham if he was found to be lying. However, if he takes the oath to be machmir/stringent on himself – meaning he would be obligated to pay for the lost object and was lying, he is exempt from bringing the korban.

The Gemara questions why we have this discussion about lying Shomrim when earlier, on Daf 25, we had the same question: What do you do in a case when someone says: “Shevua Shezarak ploni tzror layam” or the opposite “Shevua shehLo zarak”, Rav determines that you are obligated/Chayav if it was determined later that you lied, and Shmuel disagrees and considers you patur/innocent. **Rav says you are Chayav because the oath can be stated in a positive or negative manner.** Shmuel disagrees and suggests that you cannot be held accountable for something in the future, i.e., what a person will do in the future.

The Gemara explains that both cases were necessary since we might have said that in the pebble case that Rav would hold that you could be exempt since the person is taking the oath on their own volition but in the Shomer case where the court administers the oath, he might agree with Shmuel that he would be patur. Conversely, in the shomer case where the court administers the oath, you could say that Shmuel agrees that anytime the court administers the oath (and you lie), you are exempt, but in the case where someone takes an oath that someone threw a pebble, Shmuel might agree with Rav that the shomer is liable. So, we need both cases.

The Masechet concludes with the general statement of Rabbi Elazar:

רַבִּי אֶלְעָזָר אוֹמֵר: כּוֹלֵן פְּטוּרִין מִשְׁבוּעַת שׁוֹמְרִין וְחַיִּיבִין מִשׁוּם שְׁבוּעַת בִּיטוּי; חוּץ מִ"אֵינִי יוֹדֵעַ מָה אַתָּה סֹחַ" דְּשׁוֹאֵל, וְגִיבָה וְאִבִּידָה דְּנוֹשָׂא שְׂכָר וְשִׁבְשׁוּכָר – שֶׁהוּא חַיִּיב, שֶׁהֵרִי כָּפָרוּ מִמּוֹן.

Rabbi Elazar says: All of them, i.e., all those listed in the Mishna as exempt, **are exempt** from bringing a guilt-offering **for taking an oath of the custodians, but they are liable** to bring a sin-offering **for taking an oath on an utterance, except for a borrower** who says: **I do not know what you are talking about, and a paid custodian or a renter** who claims that the deposit was **stolen or lost**. In these cases, the custodian is **liable** for taking an oath of the custodians, **as he denied a monetary claim**, meaning that he wanted to render himself exempt from liability to pay. This *halakha* is in accordance with the opinion of Rav.

The subject matter of the Masechet of Shavuot primarily deals with oral commitments and the use of one's word to establish facts. Such topics underscore their importance in Jewish life. We are often asked to take care of something for ourselves or for others. We carry within ourselves the responsibility of bringing what we commit to do to fruition, to its logical endpoint. Thus, in our day-to-day lives, we don't really ever have to take an oath about anything. Very few of us are in walks of life where we have to "take the stand".

Nevertheless, the realization that words and commitments matter runs deep in life. The Masechet may be reminding us that how we handle ourselves in what seem mundane matters in life, returning a lost or misplaced item to someone, or in our speech, or in upholding the truth, really matters in life. In fact, it's the little words that comprise a lot of our daily lives that can make the most impact. Ilana loved to discuss a wide range of subjects. We can all remember being in a conversation with her on one of a million topics and watching her face light up when she was in the conversation, when she was relating. She used her words to comfort and parent her kids, and she used her words to support and encourage her patients. But most of all, she used her words to share with all of us, her family.

Brenda and I got to see her when she spoke her first words, her first sentences, and her first paragraphs. Over the years, we watched her grow in so many ways, and we appreciated each of those paths. Now, without her, we feel the missing pieces, the missing words. Nevertheless, a piece of our relationship with Ilana remains within us. That is how we carry our memories of her with us as we move forward.

יהי זכרה לברכה

May her memory be for a blessing

Hadran Alach Masechet Shavuot