

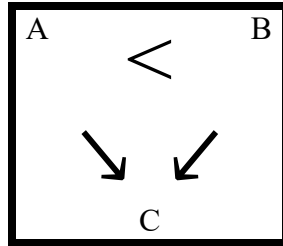
# Hamafkid In Charts

Noson S. Yanofsky

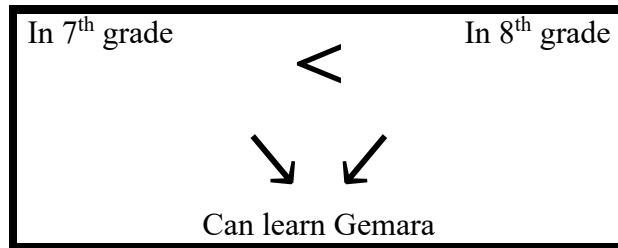
לזכר נשמת ר' חיים צבי בן ר' משה שמעון ז"ל

I am grateful to H. Yanofsky for critical comments and helpful editing.

A *kal ve'chomer* will be described as follows:



This is read as “A is less (<) than B. If A implies ( $\rightarrow$ ) C, then B definitely implies ( $\rightarrow$ ) C.”  
For example:



Should be read as: “Being in 7<sup>th</sup> grade is less than being in 8<sup>th</sup> grade. If one can learn Gemara in 7<sup>th</sup> grade, then one can definitely learn Gemara in 8<sup>th</sup> grade.”

(The only *kal ve'chomers* in Hamafkid is on *Daf* 41b which is on pages 81 and 82.)

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Other *perokim* of *shas* can be found on my web page. Search for “Gemara in Charts”.

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**33b) Introduction: The Four *Shomrim* and Their Responsibilities.**

Hamafkid is the third chapter in Bab Metzia and deals with many issues of a *shomer* who is watching an object. This chart shows the four types of *shomrim* and which responsibilities they each have. Large parts of Hamafkid can be seen from the perspective of this chart.

	Can he use it?	פשיעה <i>shomer's</i> negligence	אבידה גניבה Other types of negligence. e.g., lost or stolen.	אנס Mishaps beyond the <i>shomer's</i> control. e.g., natural death or stolen by bandits	מתה מחמת מלאכה Normal use in work related mishaps
שמר חנם <i>shomer Chinom</i> Unpaid Custodian	No	Liabile	Not Liabile	Not Liabile	NA
שמר שוחר <i>shomer Socher</i> Paid Custodian	No	Liabile	Liabile	Not Liabile	NA
שוכר <i>Socher</i> Renter	Yes	Liabile	Liabile	Not Liabile	Not Liabile
שואל <i>Shoal</i> Borrower	Yes	Liabile	Liabile	Liabile	Not Liabile

The chart is abbreviated as follows:

	Can he use it?	פשיעה	אבידה גניבה	אנס	מתה מחמת מלאכה
שמר חנם	No	חייב	פטור	פטור	NA
שמר שוחר	No	חייב	חייב	פטור	NA
שוכר	Yes	חייב	חייב	פטור	פטור
שואל	Yes	חייב	חייב	חייב	פטור

**33b) Mishna: The Payment From A Thief.**

The Mishna describes a case of a stolen deposited item. The owner gave a *shomer* an object to watch. The object was stolen from the *shomer*. The *shomer* has two possibilities: he can pay the owner, or he can swear to the owner that he was not responsible. Who receives the payment depends on these two possibilities.

Our Mishna		
The case:	One deposits an animal or utensil with a <i>shomer</i> , and the animal or utensil was stolen or lost.	
	The <i>shomer</i> wants to pay and does not want to swear. In this case, the <i>shomer</i> gets the right to the payments if the thief is caught.	The <i>shomer</i> wants to swear and not pay. In this case, the owner keeps the right to the payment if the thief is caught.
	If the thief is caught, he pays double. If the thief slaughtered or sold the animal, he pays four or five times the value of the animal.	
The payment from the thief goes to:	The <i>shomer</i>	The owner

**33b) The Law Is Stated For Both Animals And Utensils.**

The Gemara explains why the Mishna needed to say the rule about both stolen animals and stolen utensils.

Our Mishna:	One deposits an animal or utensil with a <i>shomer</i> , and the animal or utensil was stolen or lost. If the <i>shomer</i> pays, then he receives the right to the payment.	
	Animals	Utensils
If the Mishna only stated the rule for ... Animals:	One would think that if the stolen object was an animal, then the <i>shomer</i> gets the double payment for all the hard work the <i>shomer</i> must do to take care of the animal.	However, since there is less hardship taking care of utensils, one would think that the <i>shomer</i> does not get the double payment from the thief.
If the Mishna only stated the rule for ... Utensils:	However, for an animal, where the thief can pay four or five times the amount of the animal, the owner does not give the <i>shomer</i> the right to get all that money.	One would think that only for stolen utensils does the owner give the rights of the double payment to the <i>shomer</i> because double is not that much.

The Gemara concludes that the law must be stated for both cases.

**33b) The Rights To The Thief's Payments (part one).**

The Mishna says that when the *shomer* pays, the *shomer* gets the right to any future payment from the thief. The Gemara goes through several possibilities as to how and when the *shomer* gets those rights.

A problem from Rami bar Chama:	<p>When the <i>shomer</i> pays, he gets the right to any future payment. However, a person cannot get the rights to something that does not exist. Even according to Rav Meir who said one can get the rights to something that does not exist, like fruit from a palm tree, <b>34a)</b> here why should the <i>shomer</i> get the rights?</p> <ul style="list-style-type: none"> <li>• The item might not have been stolen.</li> <li>• The thief might not be caught.</li> <li>• The thief might not pay (the thief might confess).</li> </ul> <p>Nevertheless, the <i>shomer</i> gets the rights. How does the <i>shomer</i> get the rights?</p>
Rava's solution:	<p>The transfer of rights is given by the owner when the owner originally gives the animal to the <i>shomer</i>. It is as if the owner says to the <i>shomer</i>, "should the animal be stolen and you will pay me after, then you have the right to any future payment retroactively from now."</p>
R' Zeira's objection to Rava's solution:	<p>In that case, the <i>shomer</i> should retroactively get any shearing and offspring of the animal. However, we learnt in a Baraisa that the <i>shomer</i> does not retroactively get shearing and offspring. So, Rava's solution cannot work.</p>
R' Zeira's solution:	<p>The transfer of rights is given by the owner when he originally gives the animal to the <i>shomer</i>. It is as if the owner says to the <i>shomer</i>, "should the animal be stolen and you will pay me, then you have the rights retroactively from now <u>except for the shearing and offspring.</u>"</p>
A question and answer to R' Zeira's solution:	<p>Question: Why would an owner keep shearing and offspring but give up future rights to payments?</p> <p>Answer: An owner would give up things that he would get from the external sources (like a thief's payments). However, the owner will keep the products of his principle (like shearing and offspring.)</p>
Another version of Rava's solution:	<p>The transfer of rights to future payment is given by the owner when he originally gives the animal to the <i>shomer</i> and says "should the animal be stolen and you will pay me, then you have the rights retroactively <u>from right before the theft.</u>"</p>

**34a) The Rights To The Thief's Payments (part two).**

In the last Gemara, two versions of Rava's solution were given. Here the Gemara gives two practical differences of those two versions.

	Rava's First Version	Rava's Second Version
	The owner gives the rights retroactively from the beginning.	The owner gives the rights from right before the theft.
One difference is R' Zeira's question about shearing and offspring:	Here, there is the problem because the <i>shomer</i> gets rights to the shearing and offspring before it was stolen.	Here, the <i>shomer</i> does not have the right to the shearing and offspring because the <i>shomer</i> only gets the right to the animal just before the theft.
Another difference is when the animal is in the marsh when the animal was stolen:	Here, the <i>shomer</i> gets possession of the animal when the <i>shomer</i> takes the animal originally (and not when it was stolen).	Here, the animal was not on the <i>shomer's</i> property when it was stolen. Therefore, the owner never gets possession / <i>kinyan</i> of the animal.

**34a Pay Or Intend To Pay.**

The Mishna gives the *shomer* the option of paying the owner to get the future right to the double payment. Can the *shomer* just say he wants to pay and still get the rights?

Our Mishna:	If the <i>shomer</i> paid and did not desire to swear... he gets the rights to the future payments.	
A ruling of R' Yochanan:	R' Chiya bar Abba said in the name of R' Yochanan:  The <i>shomer</i> does not really need to pay. He just needs to say that he intends to pay.	
A seeming contradiction with R' Yochanan's ruling:		<p style="text-align: center;">The first part of our Mishna</p> <p>“If the <i>shomer</i> paid and did not desire to swear...”</p> <p>This implies that if the <i>shomer</i> did not pay --- but only said that he intends to pay --- then the <i>shomer</i> does not get the rights.</p>
A seeming agreement with R' Yochanan's ruling:		<p style="text-align: center;">The second part of our Mishna</p> <p>“If the <i>shomer</i> swore and he did not desire to pay...”</p> <p>This implies that if the <i>shomer</i> did not desire to pay, then he does not get the future rights. However, if he does desire to pay, he does get the future rights.</p>
A summary:	One cannot conclude that our Mishna agrees or disagrees with R' Yochanan's ruling.	
In support of R' Yochanan's ruling:		<p style="text-align: center;">A Baraisa</p> <p>One rents a cow from his friend, and it was stolen. If the renter says he will pay (but did not pay) so as not to swear, and they find the thief, then the thief pays the renter.</p>



**34a) How The Shomrem Get The Double Payment.**

Rav Pappa goes through the types of *shomrem* and shows (i) what they said and (ii) what they could have said. They get the rights to the payments by saying that they are חייב in what happened, and they could have said that they were פטור. This does not work in one version of the *shoal*.

	His own negligence	Other types of negligence e.g. lost or stolen.	Mishaps beyond his control broke or died	Normal use work related mishaps
<i>shomer Chinom</i> Unpaid Custodian	חייב He says this is what happened.	פטור He could have said this happened and not paid anything.	פטור	Not Applicable
<i>shomer Socher</i> Paid Custodian	חייב	חייב He says this is what happened.	פטור He could have said this happened and not paid anything.	Not Applicable
First Version <i>Shoal</i> Borrower	חייב	חייב	חייב Even if he says that this is what happens, he does not receive the future rights to the object.	פטור Because he cannot say this happened as it is unusual, and he would not be believed.
Second Version <i>Shoal</i> Borrower	חייב	חייב	חייב He says this is what happened and receives the future rights.	פטור Because he could have said this happened and not paid anything.

**34a) Pay Or Intend To Pay (part one).**

In the last two rows of last chart, there are two versions of Rav Pappa on a *Shoal*. The Gemara discusses a seeming refutation to the second version of Rav Pappa's ruling.

	First Version of Rav Pappa	Second Version of Rav Pappa	
	The <i>shoal</i> does not receive the future rights of the payments.	The <i>shoal</i> does receive the future rights of the payments.	
A ruling by Rav Zevid:			Rav Zevid said from Abaye A borrower does not get the rights to the double payments until the borrower pays (and not just intends to pay) because the owner will not give it to the borrower for free.
A Baraisa in support of Rav Zevid:			A Baraisa  One borrowed a cow from the owner, and it was stolen. If the borrower went ahead and paid, and they find the thief, then the thief pays the borrower.  This Baraisa supports Rav Zevid because we see that payment is needed and not just saying that they will pay.
Compare the Baraisa to the two versions of the Rav Pappa:	The Baraisa is not a refutation of this version of Rav Pappa because the Baraisa is about when the borrower pays. While this version is about when the borrower only said he would pay.	The Baraisa is a refutation of this version of Rav Pappa because the Baraisa says you need to pay to get the rights and this version says you only have to say that you intend to pay in order to get the rights.	

**34a) Pay Or Intend To Pay (part two).**

The Gemara continues to determine if the Baraisa was a criticism of the second version of Rav Pappa's ruling.

A defense of the second version of Rav Pappa:		Our Mishna "If he paid..." means if he says he will pay.	So, too this Baraisa states "If he paid..." means he says he will pay.
The defense is wrong:		Our Mishna "If he paid..." means if he says he will pay.	The Baraisa actually states, "If he <u>went ahead</u> and paid..." This means he actually paid.
A defense of the second version of Rav Pappa:		Our Mishna "If he paid..." means if he says he will pay.	The Baraisa actually states "If he <u>went ahead</u> and paid..." This means <u>he went ahead and said he will pay.</u>
Comparing the words of the Mishna and the Baraisa:		They inquired and they found that the Mishna and the Baraisa were taught together. Since they were taught together and they used different phrases, then the phrases have different meanings. The Mishna means the borrower says he will pay, and the Baraisa means the borrower paid.	
Conclusion:		Rav Pappa's defense does not work and the Baraisa is a refutation of the second version of Rav Pappa's ruling.	

**34a) Some Cases About The Shomer Saying And Paying (part one).**

The Gemara goes through several cases where the *shomer* might not get the rights to the double payment.

Case	Reason for the <i>shomer</i> to not receive the double payment.	Reason for the <i>shomer</i> to receive the double payment.
The <i>shomer</i> says "I will pay" <b>34b)</b> and then he says "I will not pay".	He changed his mind and does not want to pay and therefore does not get the double payment.	He wants to pay but is delaying the payment.
The <i>shomer</i> says he will pay, then the <i>shomer</i> dies, and his sons do not pay.	The sons did not pay and hence do not get the double payment.	The sons really will pay but they are delaying.
The <i>shomer</i> dies and then his children pay.	The owner only wanted to give the double payment to the <i>shomer</i> /father who pleased him. Not to the <i>shomer</i> 's children.	The children get it automatically because they paid.
The owner died, the object was stolen, and the <i>shomer</i> paid the children of the owner.	The owner's children say "Our father wanted to give you the rights to the double payment because you pleased our father. However, you don't please us, so we do not want to give it to you."	Since the <i>shomer</i> paid, it does not matter, and the <i>shomer</i> gets the rights.

**34b) Some Cases About The *Shomer* Saying And Paying (part one).**

More cases. The reasoning of some of the cases is self-explanatory.

Case	Reason for the <i>shomer</i> to not get the double payment.	Reason for the <i>shomer</i> to get the double payment.
The owner and the <i>shomer</i> died. The children of the <i>shomer</i> paid the children of the owner.		
The <i>shomer</i> paid half of what he was supposed to.	(Does he get half the rights?)	
The <i>shomer</i> received two cows and both were stolen, and he paid for one of them.		
The <i>shomer</i> borrowed a single cow owned by two partners. The cow was stolen and then the <i>shomer</i> paid only one of the partners.		(Does the <i>shomer</i> get the rights of the one he paid?)
If two partners borrowed an object that was stolen and one of them paid the owner.		(Does that paid partner get the rights to the double payment?)
One borrowed an object from a woman, the object was stolen, and the <i>shomer</i> paid the husband?	(The <i>shomer</i> never paid the owner. The <i>shomer</i> only paid the husband of the owner.)	(The <i>shomer</i> paid the husband who is a representative of the wife.)
A woman borrowed an object from an owner, the object was stolen, and her husband paid the owner.	(The owner did not receive any payment from the borrower.)	(The owner received payment from the husband-wife pair.)

The Gemara concludes with *Taihu* for all these cases.

**34b) An Oath Of Non-Possession.**

The following rule will be central in the next few pages.

A rule:	Rav Huna requires the <i>shomer</i> to take an oath that the object is not in his possession. We are fearful that the <i>shomer</i> wants to keep the object.
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**34b) Four Cases Of Disagreement Between Lender And Borrower (part one).**

The Gemara quotes a Mishna from *Shevuos* which discusses four cases of a lender and a borrower. These cases will be used in the following pages. In all cases the lender gives the borrower the principle which everyone agrees was worth a Sela. The borrower gives the lender collateral whose value is contested. The lender loses the collateral. The lender or the borrower must swear as to the value of the collateral if they partially admit to a difference in the value.

			Lender gave (the principle) to the Borrower	Borrower gave (the collateral) to the Lender	Money Owed	Halacha
Raisha	Case 1	Lender's Version	1 Sela	1 Shekel = 1/2 Sela	Borrower owes Lender 1 Shekel	Borrower does not admit anything and is exempt from swearing.
		Borrower's Version	1 Sela	1 Sela	Nothing owed	
	Case 2	Lender's Version	1 Sela	1 Shekel = 1/2 Sela	Borrower owes Lender 1 Shekel	Borrower admits to partial and is obligated to swear that the collateral was worth 3 Dinars
		Borrower's Version	1 Sela	3 Dinars = 3/4 Sela	Borrower owes Lender 1 Dinar	
Sayfa	Case 3	Borrower's Version	1 Sela	2 Sela	Lender owes Borrower 1 Sela	Lender does not admit to partial and is exempt from swearing
		Lender's Version	1 Sela	1 Sela	Nothing owed	
	Case 4	Borrower's Version	1 Sela	2 Sela	Lender owes Borrower 1 Sela	Lender admits to partial and is obligated to swear that collateral was worth 5 Dinars
		Lender's Version	1 Sela	5 Dinars = 5/4 Sela	Lender owes Borrower 1 Dinar	

The Mishna concludes that the one who possesses the principle at first must swear. Because the borrower should not swear and then the lender finds the collateral and show the borrower was lying.

**34b) Four Cases Of Disagreement Between Lender And Borrower (part two).**

The Gemara goes through a series of possibilities as to which case the last rule about swearing rule applies.

	Which Case?	Objection
First try:	The <i>sayfa</i> /conclusion	Say that the case the Mishna is talking about is the <i>sayfa</i> /conclusion because the lender is the one who is making the partial admittance. Why did the Mishna say that the reason is because we do not want the borrower to lie. It must not be the <i>sayfa</i> /conclusion.
Shmuel's try:	It's the <i>raisha</i> /beginning.	Which part of the beginning?
Conclusion	It's the end of the <i>raisha</i> /beginning. This means Case 2.  You might think that the borrower swears. The Rabonim came to tell you that this is wrong, and the lender should swear. If the borrower swears, the lender can find the collateral and show that the borrower swore false.	

**35a) The Shomer Swears That The Object Is Not In His Possession (part one).**

Rav Huna states a rule that the *shomer* must swear that the lost object is not in his possession. The Gemara challenges this rule from Case 2 of the Mishna in *Shevuos*. Four responses are given to this challenge. Here is Rava’s response.

	<p>The Rule of Rav Huna</p> <p>The <i>shomer</i> must swear that the lost object is not in his possession because we are afraid that the <i>shomer</i> wants to keep the object.</p>	
<p>A seeming contradiction to Rav Huna’s rule:</p>		<p>Consider Case 2 of the Mishna in <i>Shevuos</i>.</p> <p>We are worried that the borrower will swear about the value of the collateral and then the lender (who is a <i>shomer</i> of the collateral) would show the collateral to prove the borrower is telling a lie. However, if Rav Huna’s rule was followed, the lender could not swear that he does not have the collateral and then show the collateral. It must be that we do not follow Rav Huna’s rule.</p>
<p>Rava’s resolution to the seeming contradiction:</p>	<p>This is a case where there are witnesses that the collateral was destroyed by a fire. Therefore, the <i>shomer</i>/lender does not swear that it is not in his possession.</p>	<p>The lender still must swear about the value of the collateral.</p>
<p>A problem with Rava’s resolution:</p>		<p>If the collateral was burnt, then the lender can never show the collateral and demonstrate that the borrower lied. So, let the borrower swear and not the lender.</p>



**35a) The *Shomer* Swears That The Object Is Not In His Possession (part two).**

Rav Yosef and Abaye's resolutions.

Rav Yosef's resolution to the seeming contradiction	This is a case where there are witnesses that the collateral was stolen. Therefore, the <i>shomer</i> /lender does not swear that it is not in his possession.	The lender still must swear about the value of the collateral.
A problem with Rav Yosef's resolution:		If the collateral was stolen, then the lender can never show the collateral and demonstrate that the borrower lied. So, let the borrower swear and not the lender.
Why Rav Yosef's resolution is still good:		The borrower cannot swear because we are afraid that the lender will find the thief and the collateral. The lender will then show that the borrower was a liar.
Problem with that answer:		If the lender swears about the value of the stolen collateral, then the borrower can also go, find the thief with the collateral, and show that the lender is a liar.
Why Rav Yosef's resolution is still good:		Since the collateral was in the lender's house, he knows who comes and goes from his house. Therefore the lender can easily find the thief. The borrower cannot. So, the borrower cannot swear and the lender has to swear.
Abaye's resolution:	Rav Huna's rule is followed that the <i>shomer</i> must swear that he does not have the collateral in his possession.	We do not let the borrower swear because we are afraid that he is lying. Even though the lender honestly looked for the collateral, and could not find it, the lender might still come later and say "I found the collateral after I swore that it is not in my possession" and show that the borrower was a liar.

**35a) The Shomer Swears That The Object Is Not In His Possession (part three).**

Rav Ashi's resolution.

<p>Rav Ashi's resolution:</p> <p>Both the lender and the borrower must swear.</p>	<p>The lender must follow Rav Huna's rule and swear that the collateral is not in his possession.</p>	<p>The borrower must swear about the value of the collateral (which he owned and gave.)</p> <p>The Mishna is really telling us who should swear <u>first</u>. The lender swears first that the collateral is not in his possession. Only then does the borrower swear. If the borrower swore on the value first, then the lender would show the collateral and demonstrate that the borrower was a liar.</p>
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**35a) The Shomer Swears That The Object Is Not In His Possession (part four).**

Rav Huna states a rule that the *shomer* must swear that the lost object is not in his possession. The Gemara now challenges this rule from Case 3 of the Mishna in *Shevuos*.

	<p>The Rule of Rav Huna</p> <p>The <i>shomer</i> must swear that the lost object is not in his possession because we are afraid that the <i>shomer</i> might have just kept it.</p>	
<p>Rav Huna bar Tachlifa said in the name of Rava that there is a seeming contradiction to Rav Huna’s rule:</p>		<p>Consider Case 3 of the Mishna in <i>Shevuos</i>,</p> <p>Since the lender did not admit to anything, the lender does not need to swear about the value of the collateral.</p> <p>If the lender is already making Rav Huna’s oath, let him also make a “rolling” oath about the price of the collateral.</p> <p>Since the Mishna said there is no swearing, the Mishna must not agree with Rav Huna’s rule.</p>
<p>The resolution of Rav Ashi in the name of Rav Kahana:</p>	<p>This is a case where the borrower trusts the lender that the collateral is not in the lender’s possession and therefore the lender does not have to swear that it is not in his possession.</p>	
<p>A problem with Rav Kahana’s resolution:</p>		<p>Let the borrower trust the lender as to the value of the collateral. Then the lender would not have to swear at all.</p>
<p>Why Rav Kahana’s resolution is still good:</p>		<p>The borrower assumes that the lender does not know about the value of the collateral.</p>

**35a) The Shomer Swears That The Object Is Not In His Possession (part five).**

Rav Huna states a rule that the *shomer* must swear that the lost object is not in his possession. The Gemara now challenges this rule from Case 1 and 2 of the Mishna in *Shevuos*.

<p>Another problem with Rav Kahana's resolution:</p>		<p>Consider Case 1 and 2 of the Mishna in <i>Shevuos</i>,</p> <p>The borrower is the one who seems to owe money.</p> <p>We just said that the borrower trusts the lender. Say also that the lender trusts the borrower and therefore the borrower does not have to swear about the value of the collateral.</p> <p>Since the Mishna said there is no swearing in Case 1, the Mishna must not agree with Rav Huna's rule.</p>
<p>Why Rav Kahana's resolution is still good:</p>		<p>There is a difference between borrowers and lenders trusting each other.</p> <p>(Poor) borrowers trust (rich) lenders because of the words</p> <p style="text-align: center;">Mishley 11:3 תִּמְתּוּ יִשְׂרָיִם תִּנְחָמָם</p> <p>“The integrity of the upright guides them,”</p> <p>However, (rich) lenders do not trust (poor) borrowers because of the next words in the <i>posuk</i>:</p> <p style="text-align: center;">וְסִלְףּ בְּגֵדִים יִשְׂדָּם</p> <p>“but the crookedness of the treacherous destroys them.”</p>

**35a) Redeeming Seized Property (part one).**

The Gemara relates a rule about redeeming seized property, and various facts are discussed about the rule.

	<p style="text-align: center;">Rav Nachman's Rule</p> <ol style="list-style-type: none"> <li>1. There once was a <i>shomer</i> who was watching earrings.</li> <li>2. When asked to return them, the <i>shomer</i> said he did not know where they were.</li> <li>3. Rav Nachman said he is responsible and must pay.</li> <li>4. The <i>shomer</i> did not pay, and Rav Nachman seized his property.</li> <li>5. Later, the <i>shomer</i> found the earrings and they were worth more. The <i>shomer</i> wanted to keep the extra money that the earrings appreciated to.</li> <li>6. Rav Nachman did not let the <i>shomer</i> keep the extra money and said the earrings should go to the original owner and the seized property should go back to the <i>shomer</i>.</li> </ol>	
A seeming contradiction:		<p style="text-align: center;">Our Mishna</p> <p>If the <i>shomer</i> pays and does not wish to swear, then he gets all the rights to the future payments --- including the appreciated value.</p> <p>So, the <i>shomer</i> should get the appreciated value of the earrings.</p>
Rava's resolution (that Rav Nachman agreed with):	Here, the <i>shomer</i> bothered <i>bais din</i> . That is why he does not get the appreciated value.	Here, the <i>shomer</i> did not bother <i>bais din</i> . This is why he gets the appreciated value.
A question about Rav Nachman's rule:	Does this mean that seized property can always get reversed?	
A negative answer is given with a distinction:	Here, the seizure was reversed because the seizure was an error, as the earrings were always in the hands of the <i>shomer</i> .	Usually, a seizure is not done in error and therefore we do not reverse the seizure.

**35a) Redeeming Seized Property (part two).**

More rules about redeeming seized property.

<p>A disagreement about the time limit to redeem seized property:</p>	<p>Someone from Nehardea said  One can redeem seized property up to a year after it was taken.</p>	<p>Ameimar said:  “I am from Nehardea and I believe that seized property can be redeemed forever.”  The halacha follows this view because it says in  Devorim 6:18 וַעֲשִׂיתָ הַיָּשָׁר וְהַטּוֹב “And you should do that which is right and good.”</p>
<p>Two cases of redeeming seized property</p>	<ol style="list-style-type: none"> <li>1. Reuven owes Shimon money and cannot pay. The property of Reuven is seized and given to Shimon.</li> <li>2. Shimon owes money to Levy and gives Reuven’s seized property to Levy.</li> <li>3. Reuven finds money and wants to give the money to Levy and redeem his seized property.</li> </ol>	<ol style="list-style-type: none"> <li>1. Reuven owes Shimon money and cannot pay. The property of Reuven is siezed and given to Shimon.</li> <li>2. Shimon gave the seized property to Levy because:             <ul style="list-style-type: none"> <li>○ Levy bought it from Shimon.</li> <li>○ Levy inherited it from Shimon.</li> <li>○ Levy received it as a present from Shimon.</li> </ul> </li> <li>3. Reuven finds money and wants to give the money to Levy and redeem his seized property.</li> </ol>
<p>The halacha for these two cases:</p>	<p>Levy must return the seized property. Because we tell Levy, “You are no better than Shimon who would have to return the seized property.”</p>	<p>Levy does not need to return the seized property, because Levy wanted the property and not the money.</p>

**35a) Redeeming Seized Property (part three).**

More rules about redeeming seized property.

<p>Another two cases of seized property:</p>	<ol style="list-style-type: none"> <li>1. Reuven owes Rochel money and cannot pay. The property of Reuven is seized and given to Rochel.</li> <li>2. Rochel marries Shimon and she dies.</li> <li>3. Reuven finds money and wants to give the money to Shimon and redeem his seized property.</li> </ol>	<ol style="list-style-type: none"> <li>1. Rochel owes Reuven money and cannot pay. The property of Rochel is seized and given to Reuven.</li> <li>2. Rochel marries Shimon and she dies.</li> <li>3. Shimon finds money and wants to give the money to Reuven and redeem Rochel's seized property.</li> </ol>
<p>The halacha for these two cases:</p>	<p>Shimon does not have to give back the seized property because he inherited it.</p>	<p>Reuven does not need to give back the property because Shimon is not someone who owed him money.</p>
<p>A ruling in support of the halacha for the first case:</p>	<p>R' Yose bar Chanina said In Usha the following rule was enacted. Consider the case were a woman sells <i>melog</i> property (she gets the principal, and he gets the profits) in her husband's lifetime and then she dies. She did not have the right to sell the property. The husband is considered a first buyer and he has the rights to buy the property. So, we see that a husband has the rights to his dead wife's property.</p>	

**35a) Redeeming Seized Property (part four).**

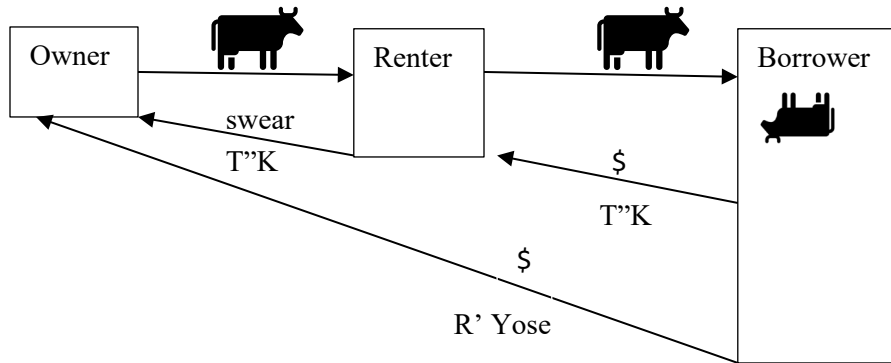
More rules about redeeming seized property.

<p>A case:</p>	<ol style="list-style-type: none"> <li>1. Reuven owes Shimon money and cannot pay. Reuven voluntarily gives Shimon property instead of the money.</li> <li>2. Reuven finds money and wants to redeem the property.</li> </ol>				
<p>The halacha for this case:</p>	<p style="text-align: center;">There is a dispute between Rav Acha and Ravina</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>Shimon does not have to return the property because it was like a sale.</p> </td> <td style="width: 50%; vertical-align: top;"> <p>Shimon does have to return the property because it was not a real sale. The reason why Reuven gave the property to Shimon was because Reuven was too embarrassed to go to court.</p> </td> </tr> </table>			<p>Shimon does not have to return the property because it was like a sale.</p>	<p>Shimon does have to return the property because it was not a real sale. The reason why Reuven gave the property to Shimon was because Reuven was too embarrassed to go to court.</p>
<p>Shimon does not have to return the property because it was like a sale.</p>	<p>Shimon does have to return the property because it was not a real sale. The reason why Reuven gave the property to Shimon was because Reuven was too embarrassed to go to court.</p>				
<p>The time that a person who gets the seized property can eat the produce:</p>	<p style="text-align: center;">Rabbah</p> <p>When he receives the document about the seized land.</p>	<p style="text-align: center;">Abaye</p> <p>When the witnesses sign the document about the seized land.</p>	<p style="text-align: center;">Rava</p> <p>There is a public sale of the property. The person can only eat from the property if he is the highest bidder for the land.</p>		



**35b) Mishna: When The Shomer Makes A Shomer.**

The Mishna discusses a case where a *shomer* lends the object to a third party.



Our Mishna		
A case:	<ol style="list-style-type: none"> <li>1. The owner of a cow rents to a renter.</li> <li>2. The renter lends the cow to a borrower.</li> <li>3. The cow dies of natural causes while in the borrower's possession.</li> </ol>	
The halacha:	<p>Tanna Kamma</p> <ol style="list-style-type: none"> <li>1. The renter must swear to the owner that the cow died naturally.</li> <li>2. The borrower then pays the renter.</li> </ol>	<p>R' Yose</p> <p>The renter had no right to do business with the owner's cow. Therefore, the borrower must pay the owner.</p>

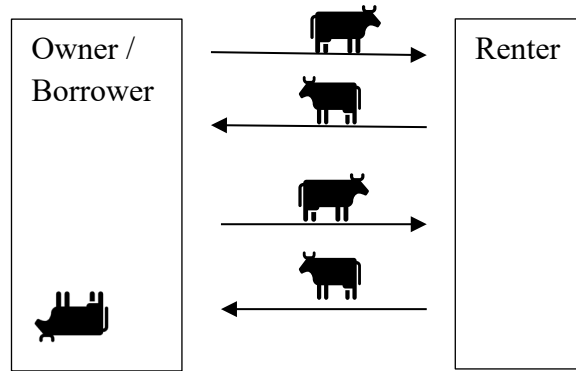
**35a) When The Renter Gets The Rights To The Money.**

According to the Tanna Kamma, after swearing the renter gets the rights to the money. The Gemara wonders when the renter gets this right.

<p>Our Mishna:</p>	<p style="text-align: center;">Tanna Kamma</p> <ol style="list-style-type: none"> <li>1. The renter must swear to the owner that the cow died naturally.</li> <li>2. The borrower then pays the renter.</li> </ol>	
<p>Two opinions on when the renter gets the rights to the cow:</p>	<p style="text-align: center;">Rav Idi bar Avin</p> <p>The renter gets the rights when the renter swears.</p>	<p style="text-align: center;">Abaye</p> <p>The renter gets the rights to the money from the time of the death of the cow.</p>
<p>A practical difference based on the two opinions:</p>	<p>In this case, the owner can eliminate the swearing and get the money from the borrower.</p>	<p>The swear is only to calm the owner. The owner cannot get the money from the borrower.</p>

**35b) A case where the renter can greatly profit from the cow.**

R' Zeira presents a case where the cow goes back and forth between its owner and a renter. At the end, the cow dies. According to the Tanna Kamma of the Mishna, the borrower owes one or more cows to the renter.



<p>The case:</p>	<ol style="list-style-type: none"> <li>1. The owner of the cow rents the cow to a renter for 100 days.</li> <li>2. The renter lends the cow to the owner/borrower for 90 days.</li> <li>3. The owner/borrower rents the cow to the renter for 80 days.</li> <li>4. The renter lends the cow to the owner/borrower for 70 days.</li> <li>5. The cow dies of natural causes while in the owner/borrower's possession.</li> </ol>		
<p>The halacha:</p>	<p style="text-align: center;"><b>R' Zeira</b></p> <p>The owner/borrower owes four cows to the renter. Two cows are permanently owed because of the halacha in the Mishna. Furthermore, two cows are temporarily owed to the renter to complete the two rentings.</p>	<p style="text-align: center;"><b>Rav Acha of Difti</b></p> <p>The owner/borrower owes one cow to the renter. We are only dealing with one cow that changes status from being rented to being borrowed and from being borrowed to being rented.</p> <p>Ravina: This is true if the cow was alive. In that case the single cow would have to be returned. However, since the cow is dead, four are owed.</p>	<p style="text-align: center;"><b>Mar bar Rav Ashi</b></p> <p>The owner/borrower owes two cows to the renter. Both borrowings are considered one and both rentings are considered one. So, he permanently owes the renter one because of the halacha in the Mishna. Furthermore, one cow is temporarily owed to complete the renting.</p>

**35b) Sacrifices For Swearing Falsely (part one).**

We saw that sometimes the *shomer* must swear. He might swear falsely. There are two types of sacrifices if one swears falsely:

- A *chatas* is brought if a person swore falsely but did not save money from swearing.
- An *asham* is brought if a person swore falsely and saved money from swearing.

Rav Yirmiaya describes four cases where the same circumstances happen to a *socher* and a *shoal*. Sometimes the *socher* and *shoal* will have to bring the same sacrifices and sometimes they will have to bring different sacrifices.

A *socher* and *shoal* have the following responsibilities:

	Other types of negligence. like lost or stolen.	Mishaps beyond his control. like natural death or stolen by bandits	Normal use work related mishaps
<i>Socher</i> Renter	חייב	פטור	פטור
<i>Shoal</i> Borrower	חייב	חייב	פטור

				Ruling
Case 1		It died naturally and they swore bandits.		<p><i>Socher</i> brings a <i>chatas</i> because he was פטור for what happened and what he swore happened.</p> <p><i>Shoal</i> brings a <i>chatas</i> because he was חייב for what happened and what he said.</p>
Case 2	It was stolen		They swore it died on account of its work.	<p><i>Socher</i> and <i>shoal</i> bring an <i>asham</i> because they were חייב for what happened and were פטור for what they swore happened.</p>

**35b) Sacrifices For Swearing Falsely (part two).**

Two more cases.

Case 3		It died naturally	They swore it died on account of its work.	<p><i>Socher</i> brings a <i>chatas</i> because he was פטור for what happened and what he swore happened.</p> <p><i>Shoal</i> brings an <i>asham</i> because he was חייב for what happened and פטור for what he swore happened.</p>
Case 4	It was stolen	They swore it died naturally.		<p><i>Socher</i> brings an <i>asham</i> because he was חייב for what happened and פטור for what he said.</p> <p><i>Shoal</i> brings a <i>chatas</i> because he was חייב for what happened and what he swore happened.</p>

The Gemara wonders why all these cases were stated.

Question:	Why did R' Yirmiyah need to say these cases. They seem obvious once we know the general rules about <i>chatas</i> and <i>asham</i> .					
Answer:	<p>There is the following <i>machlokis</i>:</p> <table border="1" style="width: 100%;"> <tr> <td style="text-align: center;">R' Ami</td> <td style="text-align: center;">R' Yirmeyah</td> </tr> <tr> <td> <p>There is no <i>chatas</i> when a swear was forced as it says:</p> <p style="text-align: center;">Vayikra 5:4</p> <p style="text-align: center;">או נִפְשׁ כִּי תִשָּׁבַע לְבַטָּא בְשִׁפְתָּיִם לְהַרְעֹ אוּ לְהִיטִיב, לְכָל אֲשֶׁר יִבְטֵא הָאָדָם בְּשִׁבְעָה--וְנִעְלָם מִמֶּנּוּ; וְהוּא יִדַּע וְאָשָׁם, לְאַחַת מֵאֵלֶּה.</p> <p>“Or if a soul swear, pronouncing with his lips to do evil, or to do good, ... then he shall be guilty in one of these.”</p> <p><u>כִּי תִשָּׁבַע</u> means voluntarily and not forced by <i>bais din</i>.</p> </td> <td> <p>There is a <i>chatas</i> even when a swear is forced.</p> </td> </tr> </table>		R' Ami	R' Yirmeyah	<p>There is no <i>chatas</i> when a swear was forced as it says:</p> <p style="text-align: center;">Vayikra 5:4</p> <p style="text-align: center;">או נִפְשׁ כִּי תִשָּׁבַע לְבַטָּא בְשִׁפְתָּיִם לְהַרְעֹ אוּ לְהִיטִיב, לְכָל אֲשֶׁר יִבְטֵא הָאָדָם בְּשִׁבְעָה--וְנִעְלָם מִמֶּנּוּ; וְהוּא יִדַּע וְאָשָׁם, לְאַחַת מֵאֵלֶּה.</p> <p>“Or if a soul swear, pronouncing with his lips to do evil, or to do good, ... then he shall be guilty in one of these.”</p> <p><u>כִּי תִשָּׁבַע</u> means voluntarily and not forced by <i>bais din</i>.</p>	<p>There is a <i>chatas</i> even when a swear is forced.</p>
R' Ami	R' Yirmeyah					
<p>There is no <i>chatas</i> when a swear was forced as it says:</p> <p style="text-align: center;">Vayikra 5:4</p> <p style="text-align: center;">או נִפְשׁ כִּי תִשָּׁבַע לְבַטָּא בְשִׁפְתָּיִם לְהַרְעֹ אוּ לְהִיטִיב, לְכָל אֲשֶׁר יִבְטֵא הָאָדָם בְּשִׁבְעָה--וְנִעְלָם מִמֶּנּוּ; וְהוּא יִדַּע וְאָשָׁם, לְאַחַת מֵאֵלֶּה.</p> <p>“Or if a soul swear, pronouncing with his lips to do evil, or to do good, ... then he shall be guilty in one of these.”</p> <p><u>כִּי תִשָּׁבַע</u> means voluntarily and not forced by <i>bais din</i>.</p>	<p>There is a <i>chatas</i> even when a swear is forced.</p>					
Conclusion:	R' Yirmeyah stated these four cases to show he does not agree with R' Ami.					

**36a) A Shomer Making Another Shomer (part one).**

The Gemara presents a *machlokis* about a *shomer* making another *shomer*. The Gemara then tries to understand the reasons for each opinion.

	A <i>shomer</i> gives the object to another <i>shomer</i> .	
The halacha:	<p>Rav</p> <p>פטור</p> <p>The first <i>shomer</i> does not have to pay for any loss that might have happened with the second <i>shomer</i>.</p>	<p>R' Yochanan</p> <p>חייב</p> <p>The first <i>shomer</i> is obligated to pay for any loss that happened while the object was with the second <i>shomer</i>.</p>
Abaye's explanation for their opinions:	<p>Whether the first <i>shomer</i> upgrades or downgrades to another <i>shomer</i>, he is still פטור.</p> <p>Why? Because the first <i>shomer</i> gave it to a mentally competent person.</p>	<p>Whether the first <i>shomer</i> downgrades or upgrades to another <i>shomer</i>, he is still חייב.</p> <p>Why? Because the owner could have said that it is not his wish for the object to be watched by anyone else.</p>
How Rav Chisda derives Rav's opinion:	<ol style="list-style-type: none"> <li>1. There were gardeners who used to store their tools with an old lady.</li> <li>2. One day they stored their tools with one of their own.</li> <li>3. He gave the tools to the old lady and the tools were stolen.</li> </ol> <p>Rav said that the gardener that was given the tools was פטור.</p>	
A problem with this derivation:	<p>This case might be different because the gardeners always used the old lady. Maybe in a case where the <i>shomer</i> gave it to someone new, Rav would say he is חייב.</p>	

**36a) A Shomer Making Another Shomer (part two).**

The Gemara goes through an argument against R' Yochanan's opinion.

R' Abba bar Mamal tells R' Ami of a seeming contradiction:	R' Yochanan  A <i>shomer</i> gives the object to another <i>shomer</i> .         The first <i>shomer</i> must pay the owner.	Our Mishna  The Tanna Kamma  1. The owner of a cow rents to a renter. 2. The renter lends the cow to a borrower. 3. The cow dies of natural causes while in the borrower's possession.  The renter must swear to the owner that the cow died naturally. The borrower then pays the renter.  The renter/ <i>shomer</i> does not pay the owner.
R' Ami's resolution of the seeming contradiction:	Here, the owner did not want the first <i>shomer</i> to give it to anyone else.	Here, the owner let the first <i>shomer</i> give it to the borrower.
A problem with the resolution:		If the owner gave permission to the first <i>shomer</i> that he may lend the cow to the borrower, then the borrower should pay the owner. The renter is just a middleman.
A better resolution:		The owner gave permission to the first <i>shomer</i> to lend the cow to someone if he wanted to.

**36a) A Shomer Making Another Shomer (part three).**

The Gemara goes through another arguments against R' Yochanan's opinion.

<p>Rami bar Chama points out a seeming contradiction:</p>	<p style="text-align: center;">R' Yochanan</p> <p>A <i>shomer</i> gives the object to another <i>shomer</i>.</p> <p>The first <i>shomer</i> must pay the owner because the owner could have said, "You had no right to give it to anyone else."</p>	<p style="text-align: center;">Mishna Baba Metzia 3:10</p> <p>If one deposits coins with a friend who</p> <ul style="list-style-type: none"> <li>○ Bound the coins and slung them over his back.</li> <li>○ <u>Gave the coins to his young son or daughter.</u></li> <li>○ Improperly locked the door to the room that had the money and his children got in.</li> </ul> <p>He is חייב.</p> <p>We infer from the underlined that if he gave the coins to an <u>adult child</u>, he would be exempt from paying the owner. The owner could have said, "You have no right to give it to anyone else."</p>
<p>Rava's resolution of the seeming contradiction:</p>	<p>Here, the owner did not want the <i>shomer</i> to give it to anyone else.</p>	<p>Here, the <i>shomer</i> is exempt because when an owner gives it to <i>shomer</i>, he intends <b>36b</b>) to let the <i>shomer</i> give it to his wife or his adult children.</p>
<p>A Nehardian's proof that Rava's resolution is correct:</p>		<p>The Mishna said the <i>shomer</i> "Gave them to his young son or daughter," then the <i>shomer</i> is חייב. We infer that if he gave it to an adult child he would be exempt. We also infer that if he gave it to anyone else (adult or child) he would be חייב (As R' Yochanan says). Otherwise, the Mishna would have said "Gave it to a young person."</p>



**36b) A Shomer Making Another Shomer (part four).**

The Gemara presents another explanation of R' Yochanan's rule that he is liable.

<p>The halacha:</p>	<p style="text-align: center;"><i>A shomer</i> gives the object to another <i>shomer</i>.</p> <p style="text-align: center;">R' Yochanan</p> <p style="text-align: center;">הייב</p> <p>The first <i>shomer</i> is obligated to pay for any loss that happened while the object was with the second <i>shomer</i>.</p>
<p>Rava's explanation:</p>	<p>Whether the first <i>shomer</i> downgrades or upgrades to another <i>shomer</i>, he is still obligated.</p> <p>Why? Because the owner could have said to the first <i>shomer</i> "You are believable to me. However, the second <i>shomer</i> is not believable to me."</p>

**36b) The Case of The Escaped Cow Who Died (part one).**

Abaye and Rava argue about the halacha in a certain case. The Gemara compares their opinion with a dispute about the halacha of the circumstance when a someone started with a negligence and ended with an unavoidable loss.

		A case	
		A person was negligent in watching a cow and it escaped. The cow went to the marsh and died naturally.	
		Abaye in the name of Rabbah  חייב	Rava in the name of Rabbah  פטור
Starting with negligence and end with unavoidable loss	חייב	Abaye obviously agrees with this.	Rava would say that this is a special case because the <i>Malach Hamovis</i> would kill here or even if he was in his barn.
	פטור	Abaye would say that this is a special case because here the foul air in the marsh killed it. The <i>shomer</i> should have been more careful to protect the animal from foul air in the marsh.	Rava obviously agrees with this.
Special circumstances of the case where Abaye and Rava would say otherwise:		Abaye would say פטור if the animal was returned from the marsh alive and then died in the barn. Because it was not the marsh air that killed the cow.	Rava would say חייב if a thief came to the marsh, stole the cow from the marsh, and it died in the thief's possession. Because even if the animal did not die, it would be with the thief and not the <i>shomer</i> . The owner no longer has the cow because the <i>shomer</i> was negligent.

**36b) The Case of The Escaped Cow Who Died (part two).**

Abaye challenges Rava about his opinion on the case of the escaped cow that died. The challenge is from a *machlokis* we saw on page 31.

Two rulings:	<p style="text-align: center;">R' Yochanan</p> <p>A <i>shomer</i> gives the object to another <i>shomer</i>.</p> <p>The first <i>shomer</i> is הייב.</p> <p>R' Ami: Here, the owner did not want the first <i>shomer</i> to give it to anyone else.</p>	<p style="text-align: center;">A case</p> <p>An escaped cow went to the marsh and died naturally.</p> <p style="text-align: center;">Rava in the name of Rabbah</p> <p style="text-align: center;">פטור</p> <p>Because the <i>Malach Hamoves</i> would kill the cow here or there.</p>
Abaya criticizes Rava's position:	<p>Rava's opinion does not agree with R' Yochanan. R' Ami explains R' Yochanan by saying that the owner did not give the first <i>shomer</i> permission to give it to anyone else. If Rava's opinion was true, the first <i>shomer</i> would not be הייב as the first <i>shomer</i> could say "The <i>Malach Hamoves</i> would kill the cow here (in my possession) or there (in the second <i>shomer</i>'s possession)."</p>	
Rava responds to Abaye's criticism:	<p>Abaye's criticism does not affect me. I do not talk about giving permission. I say הייב because the owner could have said to the first <i>shomer</i> "You are believable to me. However, the second <i>shomer</i> is not believable to me."</p>	

**36b) The Case of The Escaped Cow Who Died (part three).**

The Gemara now criticizes Abaye for his opinion on this case. The criticism comes from a later Mishna in Baba Metzia.

A case and the halacha according to Abaye:	A person was negligent in watching a cow and it escaped. The cow went to the marsh and died naturally. Abaye says הייב	
Rami bar Chama points out a Mishna that seemingly criticizes Abaye:		<p style="text-align: center;">Mishna Baba Metzia 7:10</p> <p>The <i>shomer</i> brought an animal up to the top of a cliff and it fell down and died. This is not considered a circumstance beyond one's control, and the <i>shomer</i> is הייב.</p> <p>However, if the animal would have died in the mountain, he would be פטור.</p> <p>Let the <i>shomer</i> say it died of the air or from tiredness at climbing the mountain. Abaye would say הייב.</p>
A defense of Abaye:	Here, the air in the marsh was bad and the <i>shomer</i> should not have taken him there.	Here, the air in the mountain was good and the <i>shomer</i> did nothing wrong by taking him there.
A question on the defense:		If the <i>shomer</i> is permitted to take the animal to the good air, why is he הייב if the animal fell?
An answer to the question:		He was permitted to take the animal to the top of the mountain, but he should have held on to the animal.
A further question:		<p style="text-align: center;">Beginning of Mishna Baba Metzia 7:10</p> <p>If the animal went to the top of a cliff and fell down and died, this is considered a circumstance beyond one's control. and is פטור. Why don't we say he should have held on to the animal.</p>
An answer:	Here, the <i>shomer</i> was stronger than the animal and the <i>shomer</i> is הייב	Here, the animal was strong and overpowered the <i>shomer</i> . So, the <i>shomer</i> is פטור.

**36b) Whose opinion in the Mishna do we follow.**

The Gemara lists various opinions as to who we follow.

<p>Our Mishna:</p>	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center; vertical-align: top;"> <p>Tanna Kamma</p> <ol style="list-style-type: none"> <li>1. The owner of a cow rents to a renter.</li> <li>2. The renter lends the cow to a borrower.</li> <li>3. The cow dies of natural causes while in the borrower's possession.</li> </ol> </td> <td style="width: 50%; text-align: center; vertical-align: top;"> <p>R' Yose</p> </td> </tr> <tr> <td style="vertical-align: top;"> <ol style="list-style-type: none"> <li>1. The renter must swear to the owner that the cow died naturally.</li> <li>2. The borrower then pays the renter.</li> </ol> </td> <td style="vertical-align: top;"> <p>The renter had no right to do business with the owner's cow. The borrower must pay the owner.</p> </td> </tr> </table>	<p>Tanna Kamma</p> <ol style="list-style-type: none"> <li>1. The owner of a cow rents to a renter.</li> <li>2. The renter lends the cow to a borrower.</li> <li>3. The cow dies of natural causes while in the borrower's possession.</li> </ol>	<p>R' Yose</p>	<ol style="list-style-type: none"> <li>1. The renter must swear to the owner that the cow died naturally.</li> <li>2. The borrower then pays the renter.</li> </ol>	<p>The renter had no right to do business with the owner's cow. The borrower must pay the owner.</p>
<p>Tanna Kamma</p> <ol style="list-style-type: none"> <li>1. The owner of a cow rents to a renter.</li> <li>2. The renter lends the cow to a borrower.</li> <li>3. The cow dies of natural causes while in the borrower's possession.</li> </ol>	<p>R' Yose</p>				
<ol style="list-style-type: none"> <li>1. The renter must swear to the owner that the cow died naturally.</li> <li>2. The borrower then pays the renter.</li> </ol>	<p>The renter had no right to do business with the owner's cow. The borrower must pay the owner.</p>				
<p>Rav Yehudah in the name of Rav:</p>	<p>The halacha follows R' Yose.</p>				
<p>A question from Rav Shmuel bar Yehudah to Rav Yehudah</p>	<p>You told us that that R' Yose also argues with the Tanna Kamma of the first Mishna about a stolen object. The <i>Chachomim</i> say that after the <i>shomer</i> swears, the <i>shomer</i> gets the double payment from thief. R' Yose says that the double payment goes to the owner.</p> <p>Does the halacha also follow R' Yose in the first Mishna also?</p>				
<p>Rav Yehuda responds and R' Elazar concurs:</p>	<p>Yes. The halacha follows R' Yose in the first Mishna also.</p>				
<p>R' Yochanan has a different opinion about the halacha in the first Mishna:.</p>	<p>In the first Mishna, R' Yose agrees with the <i>Chachomim</i> that the double payment of the thief goes to the <i>shomer</i> because the <i>shomer</i> already paid.</p>				
<p>A seeming contradiction of R' Yochanan:</p>	<p>R' Chiya bar Abba said in the name of R' Yochanan:</p> <p>The <i>shomer</i> does not really need to pay it. He just has to say that he intends to pay it.</p>				
<p>A restatement of R' Yochanan's opinion on the first Mishna:</p>	<p>In the first Mishna, R' Yose agrees with the <i>Chachomim</i> that the double payment of the thief goes to the <i>shomer</i> because the <i>shomer</i> already <u>said</u> he will pay.</p>				

**37a) Mishna: Returning One Object To Several People.**

The Mishna discusses the halacha of four cases where one person owes one object to more than one person.

Our Mishna		
The cases:	Case 1 A man tells two people “I stole a <i>maneh</i> (=100 <i>zuz</i> ) from one of you, but I do not remember which one.”	Case 2 A man tells two people “The father of one of you deposited a <i>manah</i> with me, but I do not remember which one.”
The halacha:	He must give each one a <i>manah</i> , because he acknowledged the claim himself.	
The case:	Case 3 Two people deposited money with one <i>shomer</i> . One deposited a <i>manah</i> (= 100 <i>zuz</i> ) and another deposited two <i>manah</i> (= 200 <i>zuz</i> ). He does not remember which one gave what. Each one says that they were the one who gave 200 <i>zuz</i> .	
The halacha:	Tanna Kamma Give each one a <i>manah</i> and the last <i>manah</i> should be put away until Eliyahu Hanavi comes.	R’Yose If we follow the Tanna Kamma, the liar has nothing to lose. Rather, put all three <i>manah</i> away until Eliyahu Hanavi comes.
The case:	Case 4 Two people deposited two utensils with one <i>shomer</i> . One utensil was worth a <i>manah</i> (= 100 <i>zuz</i> ) and another utensil was worth 1,000 <i>zuz</i> . He does not remember which one gave what. Each one says that they were the one who gave the more expensive one.	
The halacha:	Tanna Kamma Give one the less expensive one and sell the more expensive one. Give the other from the money of the more expensive one. The rest keep, until Eliyahu Hanavi comes.	R’Yose If we follow the Tanna Kamma, the liar has nothing to lose. Rather, put everything away Eliyahu Hanavi comes.

**37a) Returning One Object To Several People (part one).**

The Gemara resolves two seeming contradictions between cases of our Mishna.

<p>A seeming contradiction about taking money from someone who is in doubt:</p>	<p style="text-align: center;">Case 1</p> <p>A man tells two people “I stole a maneh (=100 zuz) from one of you, but I do not remember which one.”</p> <p>He must give each one a <i>manah</i>,</p> <p>We extract money even though he is in doubt.</p>	<p style="text-align: center;">Case 3</p> <p>Two people deposited money with one <i>shomer</i>. One deposited a <i>manah</i> (= 100 zuz) and another deposited two <i>manah</i> (= 200 zuz). He does not remember which one gave what. Each one says that they were the one who gave 200 zuz.</p> <p>Give each one a <i>manah</i> and the last <i>manah</i> should be put away until Eliyahu Hanavi comes.</p> <p>We do not extract money even though he is in doubt.</p>
<p>A resolution to the seeming contradiction:</p>	<p>This is a case of stealing and the thief is being punished for stealing.</p>	<p>This is not a case of stealing. The <i>shomer</i> is not punished to pay each one the 200 zuz.</p>
<p>A seeming contradiction about deposits:</p>	<p style="text-align: center;">Case 2</p> <p>A man tells two people “The father of one of you deposited a <i>manah</i> with me, but I do not remember which one.”</p> <p>He must give each one a <i>manah</i>.</p> <p>He must give each one what they might have been owed.</p>	<p style="text-align: center;">Case 3</p> <p>Two people deposited money with one <i>shomer</i>. One deposited a <i>manah</i> (= 100 zuz) and another deposited two <i>manah</i> (= 200 zuz). He does not remember which one gave what. Each one says that they were the one who gave him 200 zuz.</p> <p>Give each one a <i>manah</i> and the last <i>manah</i> should be put away until Eliyahu Hanavi comes.</p> <p>He does not need to give each one what they requested.</p>
<p>Rava’s resolution to the seeming contradiction:</p>	<p>This case is like two people who deposited two different objects with a <i>shomer</i>. The <i>shomer</i> is responsible to pay attention to who gave what. He did not, so he is punished.</p>	<p>This case is like two people who deposited one bundled object. The <i>shomer</i> does not need to pay attention to who gave what. He is not punished for not remembering.</p>

**37a) Returning One Object To Several People (part two).**

The Gemara resolves a seeming contradiction between cases of our Mishna and another Mishna.

A seeming contradiction between our Mishna and R' Tarfon about uncertainty:	Our Mishna	Mishna Yevomis 15:7	
	Case 1		
	A man tells two people "I stole a <i>maneh</i> (=100 <i>zuz</i> ) from one of you, but I do not remember which one."	Someone stole money from one of five people. The thief says he does not know which. Each of the five says he stole from him.	
	Case 2	R' Tarfon	R' Akiva
	A man tells two people "The father of one of you deposited a <i>manah</i> with me, but I do not remember which one."	The thief leaves the stolen money with them and walks away. They will decide among themselves. He does not have to give each one.	This is not the way to spare him from sinning. There is no remedy unless he pays each and every one of them.
	He must give each one a <i>manah</i> ,		
	We extract money even though there is doubt.	We do not extract money when there is doubt.	We do extract money when there is doubt.
Possible resolution:	Maybe our Mishna follows R' Akiva and not R' Tarfon.		
This resolution fails:	Our Mishna does follow R' Tarfon as it is stated in the following:  Baraisa R' Tarfon agrees that when a thief tells two people "I stole from one of you a <i>manah</i> , but I do not remember which one" he must give each one a <i>manah</i> .		
A final resolution:	Here, the thief wants to fulfill his heavenly obligation. As the Mishna says, "he acknowledged the claim himself."	Here, the victims are suing him and he just wants to pay the actual victim.	



**37a) Returning One Object To Several People (part three).**

The Gemara analyses the circumstances of the Mishna in Yevomis about stealing from one of five.

	Mishna Yevomis 15:7  Someone stole money from one of five people. The thief says he does not know which. Each of the five says he stole from him.	
What the thief said after each claim:	Rav Yehudah in the name of Rav  The thief was silent.	Rav Masnah in the name of Rav  <b>37b)</b> The thief cried out “I do not recognize you.”
A problem:	Silence is an admission of guilt. Maybe he should have to give each one a <i>manah</i> .	
A solution:	The thief can say that he was silent because he did not know, and he said to himself, maybe this one.	

**37b) Returning One Object To Several People (part four).**

The Gemara examines another seeming contradiction with the Mishna in Yevomis.

<p>A seeming contradiction:</p>	<p>Mishna Yevomis 15:7</p> <p>Someone stole money from one of five people. The thief says he does not know which. Each of the five says he stole from him.</p> <p>R' Tarfon</p> <p>The thief leaves the stolen money with them and walks away. They will decide among themselves.</p>	<p>Rav Abba bar Zavda said in the name of Rav</p> <p>An object in doubt should not be picked up and if it is picked up, it should not be left to be returned.</p>
<p>A resolution:</p>	<p>He is not leaving it to them in order to determine who is the real owner. Rather, he is leaving it for <i>bais din</i> to determine who is the real owner.</p>	

**37b) Returning One Object To Several People (part five).**

Does R' Akiva believe that we extract money when there is doubt?

Abaye told Rava of a seeming contradiction about R' Akiva:	Mishna Yevomis 15:7  Someone stole money from one of five people. The thief says he does not know which. Each of the five says he stole from him.  R' Akiva  Returning one object to all five people is not the way to spare him from sinning. There is no remedy unless he pays each and every one of them the value of the single object.  R' Akiva says we do extract money when there is doubt.	Mishna Baba Basra 9:10  1. If the house collapsed on a son and upon his mother, and it is unknown who died first. 2. The mother's family claims that the son died first, and therefore they inherit from the mother. 3. The son's heirs claim that the mother died first and her son inherited from her, and therefore they inherit from the son.	
		Beit Shammai and Beit Hillel Divide the property between them.	R' Akiva The property stays with the retains its previous owner.  R' Akiva says that we do not extract money when there is doubt.
Rava's resolution:	Here, one of the five claims is, in fact, true. So, the thief must return it to each one.	Here, both the claim of the mother's family and the son's family are possibilities. Neither knows for sure. So, R' Akiva says do not return it to both of them.	
A seeming contradiction of Rava's resolution:	Our Mishna Case 1 A man tells two people "I stole a <i>maneh</i> (=100 <i>zuz</i> ) from one of you, but I do not remember which one." He must give each one a <i>maneh</i> . (The Gemara has a proof that our Mishna agrees with R' Akiva. The Gemara also shows that in our Mishna the two possible victims are not certain that they are the victim. So, this case is like the case in Baba Basra.)		
A resolution:	Here, the thief wants to fulfil his heavenly obligations. So, he must pay both.	Here, there is no heavenly obligation to fulfill. So, there is no reason to give both.	

**37b) Two Deposits At Different Times.**

We return to an explanation that Rava gave on 37a about two people depositing their object at different times.

<p>Ravina pointed out to Rav Ashi a seeming contradiction of Rava's opinion:</p>	<p style="text-align: center;">Our Mishna Case 2</p> <p>A man tells two people "The father of one of you deposited a <i>manah</i> with me, but I do not remember which one."</p> <p>He must give each one a <i>manah</i>. That is, he must give each one what they might have been owed.</p> <p>Rava explained that this case is like two people who deposited two different objects with a <i>shomer</i>. The <i>shomer</i> is responsible to pay attention to who gave what. He did not, so he is punished.</p>	<p style="text-align: center;">Rava (Some say Rav Pappa)</p> <p>All agree that if two people deposited two sets of animals with a shepherd and then they disagreed, then the shepherd should place the disputed animals between the two people and walks away. The shepherd is not responsible to pay both people.</p>
<p>Rav Ashi's resolution:</p>	<p>Here, the fathers deposited the <i>manah</i> with the <i>shomer</i>'s knowledge.</p>	<p>Here, the two people deposited their animals to the shepherd without the shepherd's knowledge.</p>

**37b) The Law Was Stated Both For Money And Utensils.**

The Gemara gives reasons why the Mishna needed to say the same case for money and for utensils.

Our Mishna:	Case 3 Two people deposited money with one <i>shomer</i> . One deposited a <i>manah</i> (= 100 <i>zuz</i> ) and another deposited two <i>manah</i> (= 200 <i>zuz</i> ).	Case 4 Two people deposited two utensils with one <i>shomer</i> . One utensil was worth a <i>manah</i> (= 100 <i>zuz</i> ) and another utensil was worth 1,000 <i>zuz</i> .
	I would have thought...	However, would not know...
If it only said money:	The rule is only true with money because money is easy to divide up	The law is also true for utensils which are worth less when they have to be divided. Without the law stated, I would think we follow R' Yose who said to keep it until Eliyahu Hanavi comes.
If it only said utensils:	R' Yose says his rule only with utensils because there is a loss if you break them up.	That R' Yose rules it is also true for money where there is no loss.
A problem with this understanding:	R' Yose's reasons were not about loss of money. His reason was a deterrence so that people do not lie. So, the question still stands: why did the Mishna need to say both laws?	
A solution:	The Mishna needed to say both laws to state the Tanna Kamma/Rabbonon's position in both cases.	

**38a) Mishna: A Shomer Selling Produce To Save It.**

What is to be done with produce that a *shomer* is watching and it begins to rot? Should the *shomer* sell it and save the money for the owner? Or should the *shomer* just leave it as it is?

Our Mishna		
The case:	A man deposits produce with a <i>shomer</i> , and it is becoming ruined.	
The halacha:	<p>Tanna Kamma</p> <p>The <i>shomer</i> should not sell it.</p>	<p>Rabbin Shimon ben Gamliel</p> <p>He should sell it in front of <i>bais din</i> because such an action is like he is returning a lost object.</p>

**38a) A Shomer of Rotting Produce (part one).**

The Gemara discusses the Tanna Kamma’s reason for not selling the rotting produce.

<p>Our Mishna:</p>	<p>A man deposits produce with a <i>shomer</i>, and it is becoming ruined. The Tanna Kamma says that the <i>shomer</i> should not sell it.</p>		
<p>Two Reasons for the Tanna Kamma’s opinion:</p>	<p>Rav Kahana  A person prefers one of his own portions more than nine portions of someone else.</p>	<p>Rav Nachman bar Yitzchak  We are worried that the owner made it <i>terumah</i> and <i>maaser</i> in another place. So, the <i>shomer</i> is not permitted to sell it.</p>	
<p>A related Baraisa:</p>			<p>Baraisa  A man deposits produce with a <i>shomer</i>. The <i>shomer</i> is not permitted to sell it. Therefore (לפיכך) the owner can make it <i>terumah</i> and <i>maaser</i> in another place.</p>
<p>How do these reasons compare with the Baraisa:</p>	<p>The Baraisa agrees with Rav Kahana:  A person prefers his own portion more than another’s portion, and it will not be sold, <u>therefore</u> the owner can make it <i>terumah</i> and <i>maaser</i> in another place.</p>	<p>The Baraisa seems confused according to Rav Nachman  Problem: It seems the Baraisa’s “Therefore” (לפיכך) goes the other way.  Solution: A better way to read the Baraisa that agrees with Rav Nachman: Since the <i>shomer</i> is not permitted to sell because we are worried that the owner might make it <i>terumah</i> and <i>maaser</i>, <u>therefore</u> the owner is permitted to make it <i>terumah</i> and <i>maaser</i></p>	

**38a) A Shomer of Rotting Produce (part two).**

The Gemara continues the discussion of the Tanna Kamma’s reason for not selling the rotting produce.

<p>A related ruling:</p>			<p>Rabbah bar bar Chanah said in the name of R’ Yochanan</p> <p>The <i>machlokis</i> between the Tanna Kamma and Rabbin Shimon ben Gamliel was only for a normal amount of depletion. For more than a normal amount of depletion, all would agree that the <i>shomer</i> should sell the produce.</p>
<p>How do the two reasons compare with the ruling:</p>	<p>The ruling does agree with Rav Kahana because the owner does want to save something of his produce.</p> <p>Even though Rav Kahana says “the owner prefers his one portion to nine of others”, that is an exaggeration. Really the owner would want it sold.</p>	<p>The ruling does not agree with Rav Nachman bar Yitzchak because the quickly depleting produce may still be <i>terumah</i> and <i>maaser</i>.</p>	



**38a) A Shomer of Rotting Produce (part three).**

The Gemara continues the discussion of the Tanna Kamma's reason for not selling the rotting produce.

<p>A Baraisa and a seemingly conflicting rule of R' Yochanan:</p>	<p>A Baraisa</p> <p>A man deposits produce with a <i>shomer</i>. The <i>shomer</i> is not permitted to sell it. Therefore (לפיכך) the owner can make it <i>terumah</i> and <i>maaser</i> in another place.</p>	<p>Rabbah bar bar Chanah said in the name of R' Yochanan</p> <p>The dispute between the Tanna Kamma and Rabbin Shimon ben Gamliel was only for a normal amount of depletion. For more than a normal amount of depletion, all would agree that the <i>shomer</i> should sell the produce.</p> <p>How can R' Yochana say to sell it when the owner can make it make it <i>terumah</i> and <i>maaser</i> in another place?</p>
<p>A resolution</p>	<p>Usually, one is not permitted to sell it.</p>	<p>However, when more than a normal amount of depletion happens, one is permitted to sell it. More than a normal amount of depletion does not happen often.</p>
<p>A problem with the resolution:</p>	<p>Nevertheless, when more than a normal amount of depletion does happen, we should be concerned that the owner made it <i>terumah</i> and <i>maaser</i> in another place.</p>	
<p>A further resolution:</p>		<p>We only sell the rotting produce to kohanim who can eat it. That way we do not have to worry about the owner making it <i>terumah</i> and <i>maaser</i> in another place.</p>
<p>A problem with this resolution:</p>	<p>If we are going to sell it to the kohanim, why is Rav Nachman bar Yitzchak worried about the owner making it <i>terumah</i> and <i>maaser</i> in another place?</p>	

**38a) A Shomer of Rotting Produce (part four).**

The Gemara continues the discussion of more than a normal amount of depletion. The Gemara offers a better explanation of the disagreement about what to do with produce that is depleting at a rate more than normal.

<p>There is a disagreement about what should be done:</p>	<p>Rabbah bar bar Chanah said in the name of R' Yochanan</p> <p>For more than a normal amount of depletion, all would agree that the <i>shomer</i> should sell the produce.</p>	<p>Rav Nachman bar Yitzchak</p> <p>We are worried that the owner made it <i>terumah</i> and <i>maaser</i> in another place. So, the <i>shomer</i> is not permitted to sell it.</p>
<p>A better way to understand the disagreement:</p>	<p>Rabbah bar bar Chanah</p> <p>Believes it is not typical to have more than a normal amount of depletion. When it happens, it happens late. And when it happens, we should sell it to kohanim.</p>	<p>Rav Nachman bar Yitzchak</p> <p>Believes that it is typical for more than a normal amount of depletion. And when it happens, it is immediate. We cannot sell it to kohanim because the owner might still try to make it <i>terumah</i> and <i>maaser</i> when it is not his anymore.</p>

**38a) A Shomer of Rotting Produce (part five).**

The Gemara continues the discussion of more than a normal amount of depletion.

A Baraisa and a seemingly conflicting rule of R' Yochanan	A Baraisa		Rabbah bar bar Chanah said in the name of R' Yochanan  The dispute between the Tanna Kamma and Rabbin Shimon ben Gamliel was only for a normal amount of depletion. For more than a normal amount of depletion, all would agree that the <i>shomer</i> should sell the produce.
	One who deposits produce with a friend.		
	<ul style="list-style-type: none"> <li>• It rotted, or</li> <li>• it was wine and it fermented, or</li> <li>• it was oil and it putrefied, or</li> <li>• honey and it spoiled,</li> </ul>		
	R' Meir	<i>Chachomim</i>	
	The <i>shomer</i> should not sell it.	The <i>shomer</i> should sell it. However, he should not sell it to himself. <sup>1</sup>	
	R' Meir does not agree with R' Yochanan's statement about both <i>tanayim</i> saying to sell it.		
A resolution:	R' Meir was talking about a normal amount of depletion and said not to sell it.		R' Yochanan was talking about more than a normal amount of depletion and said to sell it.
A problem with the resolution:	Two examples that are mentioned in the Baraisa <ul style="list-style-type: none"> <li>• it was wine and it fermented, or</li> <li>• it was oil and it putrefied, or</li> </ul> have more than a normal amount of depletion. So, why did R' Meir say not to sell it.		
A solution:	R' Meir said not to sell it, because in these cases, when it depletes, it does not get worse. So, there is no reason to sell it.		

The Gemara concludes by discussing what can the rotted produce be used for. There is also a discussion as to why R' Meir and the *Chachomim* disagree.

<sup>1</sup> We are worried that the *shomer* will take advantage and sell it to himself at a lower price., The Gemara parenthetically lists other cases where there are similar concerns.

**38b) The Halacha Concerning A Shomer Of Rotting Produce.**

The Gemara discusses who the halacha follows.

Our Mishna:	A <i>shomer</i> watching produce that is rotting.	
	<p style="text-align: center;">Rabban Shimon Ben Gamliel</p> <p>The <i>shomer</i> should sell the produce</p>	<p style="text-align: center;">The <i>Chachomim</i></p> <p>The <i>shomer</i> should not sell the produce.</p>
The halacha:	<p style="text-align: center;">Abba the son of R' Yaakov said in the name of Rav Yochanan</p> <p>The halacha follows Rabban Shimon Ben Gamliel.</p>	<p style="text-align: center;">Rava said in the name of Rav Nachman</p> <p>The halacha follows the <i>Chachomim</i>.</p>
A ruling that seems to show that R' Abba's statement is not needed:		<p style="text-align: center;">Rabbah bar bar Chanah said in the name of R' Yochanan</p> <p>The halacha always follows Rabban Shimon Ben Gamliel (except for three cases: guarantee, Tzidon, and the last case of proof).</p>
A resolution:	<p>R' Abba (a later <i>amorah</i>) held that R' Yochanan (an early <i>amorah</i>) followed Rabban Shimon Ben Gamliel (a <i>tanna</i>) only in specific cases and had to say it.</p>	<p>Rabba bar bar Chanah (a later <i>amorah</i>) held that R' Yochanan (an early <i>amorah</i>) followed Rabban Shimon Ben Gamliel (a <i>tanna</i>) in almost all cases. There is no reason to say it in each case.</p>

**38b) Comparing Watching Produce And Having A Guardian For The Field Of A Captive.**

Since we are talking about the possibility of *bais din* overlooking the sale of rotting produce, we bring in a similar case. If a man becomes a captive, should *bais din* appoint a relative of his to take care of his field during his absence?

Our Mishna:	A <i>shomer</i> watching produce that is rotting.	
	Rabban Shimon Ben Gamliel	The <i>Chachomim</i>
	The <i>shomer</i> should sell the produce	He should not sell the produce.
Inference of the opinions:	Since <i>bais din</i> is concerned with the owners produce, we can infer that when a person is a captive, <i>bais din</i> installs a relative to take care of the owner's property.	Since <i>bais din</i> is not concerned with the owners produce, we can infer that when a person is a captive, <i>bais din</i> does not install a relative to take care of the owner's property.
Perhaps this is not a good inference:	With rotting produce, RShbG says the <i>shomer</i> should sell because the produce would be destroyed if left alone.  With a captive, RShbG says not to install a relative because the field of the captive will not be destroyed if left alone.	With rotting fruit, The <i>Chachomim</i> say the <i>shomer</i> should not sell because of Rav Kahana's reason (a person prefers his own portion more than other's portions) or Rav Nachman's reason (we are worried that the owner made it <i>terumah</i> and <i>maaser</i> ).  With a captive, the <i>Chachomim</i> say to install a relative because these two reasons do not apply.
A proof that both cases are about one idea. Namely <i>bais din</i> taking care of the property of the owner:	Rav Yehudah said in the name of Shmuel  RShBG is right about <i>bais din</i> selling produce.	Shmuel  <i>Bais din</i> installs a relative.
A proof that there are actually two ideas here:	Rava said in the name of Rav Nachman  The halacha is like the <i>Chachomim</i> and we do not sell the rotting produce (because of the two reasons given earlier.)	Rav Nachman  We install a relative of the captive because we are worried about it being destroyed.

The Gemara concludes that the second option is correct and that there are two issues here.

**38b) A Guardian For The Field Of A Captured Relative (part one).**

The Gemara discusses if a relative should become a guardian for the field of a captured relative.

A case:		A man owns a field and is captured.	
Two opinions:		Rav	Shmuel
The status of the captive	They heard the captive died:	<i>Bais din</i> installs a relative to be a guardian for the field	
	They did not hear the captive died:	<i>Bais din</i> does not install a relative to be a guardian for the field.	<i>Bais din</i> installs a relative to be a guardian for the field.
Reason:		The guardian might ruin the field	The guardian will get paid like a sharecropper and therefore will take care of the field.
A seeming contradiction to Shmuel:		<p>A Baraisa</p> <p>R' Elazar explains the <i>posuk</i></p> <p>Shemois 22:23          וְחָרָה אַפִּי, וְהָרַגְתִּי אֶתְכֶם בְּחֶרֶב; וְהָיוּ נְשֵׁיכֶם          אֶלְמָנוֹת, וּבְנֵיכֶם יְתָמִים.</p> <ul style="list-style-type: none"> <li>• “My anger will be aroused, and I will kill you with the sword;</li> <li>• your wives will become widows ( we learn: we will not let them remarry)</li> <li>• <u>and your children fatherless (we learn: your children will want to enter your father’s property, and we will not let them).</u>”</li> </ul>	
Rava’s resolution:		The <i>posuk</i> means the children will not be able to enter and sell the land.	However, they will be able to be a guardian of the field and take care of the field.

**38b) A Guardian For The Field Of A Captured Relative (part two).**

The Gemara discusses if a relative should become a guardian for the field of a captured relative.

A case:	Such a situation happened in Nehardea.	
Two ways this case was decided:	Rav Sheishess based himself on the previous Baraisa that the relatives should not be guardians of the field.	Rav Amram said that maybe the <i>posuk</i> means the children will not be able to enter and sell the land. However, they will be able to be a guardian of the field and take care of the field.
Rav Sheishess's criticism of Rav Amram's decision:	"Rav Amram, maybe you come from Pumbedisa where they try to push an elephant through the eye of a needle. (Your reasoning is farfetched.)" The Baraisa says just like a woman absolutely cannot marry, so too the children cannot go to the field. Not even to be the guardian of the field.	

**38b) Types Of Abandoned Fields That Might Get A Guardian.**

The Gemara discusses three types of fields that are abandoned and whether or not *bais din* should appoint a guardian.

A case:	A man owns a field and is captured.			
Two opinions:	Rav		Shmuel	
When they did not hear that the captive died	<i>Bais din</i> does not install a relative to be a guardian for the field.	<i>Bais din</i> installs a relative to be a guardian for the field.		
Perhaps this argument of early <i>amaroim</i> (Rav and Shmuel) is the same argument of <i>tanayim</i> (T”K and RshbG) as reported in this Baraisa:	A Baraisa A father, brother, or one of those who he inherits is not here. A caretaker goes into the field.  There are three types of abandoned properties and the rules for each are as follows:			
	The owner traveled overseas and people heard that the owner died.  If the caretaker enters the property of the captive, we do not remove him from the property. Even if he heard that the captive is slowly coming home, and he eats all the produce quickly, we do not punish him for this enthusiasm.	<i>Netushim</i> / forsaken property  The owner went overseas but people did not hear that the owner died.		<b>39a) Retushim /</b> abandoned property  The owner disappeared and we do not know where he is.  We remove the caretaker.
		T”K  We remove the caregiver.  This is like Rav.	RShbG  Like a captive’s field, we do not remove the caretaker.  This is like Shmuel.	
The sources of these names:	The <i>posuk</i> Sheimois 23:11 וְהִשְׁבִּיעַת תְּשֻׁמְטָנָהּ וְנִטְשָׁתָהּ "but the seventh year you should let it rest and lie fallow" This land is abandoned by force, i.e., forsaken.		The <i>posuk</i> Hosea 10:14 אִם עַל-בָּנִים, רָטְשָׁהּ “The mother was dashed in pieces upon her children.” This land is voluntarily left, i.e., abandoned.	



**39a) Paying the Caretaker.**

In the last Gemara we mentioned three types of properties and their caretakers. Here we discuss how they get paid.

A ruling:	The end of the Baraisa The caretakers are paid like sharecroppers.			
A review of the types of properties that get guardians:	The owner traveled overseas and people heard that the owner died.  If the caretaker enters the property of the captive, we do not remove him from the property. Even if he heard that the captive is slowly coming home, and he eats all the produce quickly.	<i>Netushim</i> property The owner went overseas but people did not hear that the owner died.		<i>Retushim</i> Property The owner disappeared and we do not know where he is.  We remove the caretaker.
		T”K  We remove the caregiver.	RShBG  Like a captive’s field, we do not remove the caretaker.	
For which of these types of properties is this ruling mentioned?	The ruling cannot be for this type of property because the Baraisa already said that he can eat all he wants, so surely he will get paid like a sharecropper.	The ruling cannot be for this type of property, because we remove him and hence, are definitely not going to pay him.	<u>The ruling is for this type of field and this opinion.</u>	The ruling cannot be for this type of property, because we remove him and hence, are definitely not going to pay him.
A similarity:	Here, we do not remove the caretaker		Here, we do not remove the caretaker.	
A difference:	Here, the caretaker can eat as much as he wants		Here, the caretaker only gets paid like a sharecropper.	

**39a) Paying The Caretaker Compared To Other Cases.**

The Gemara compares our case of paying the caretakers with other cases. It also discusses who's field gets a caretaker.

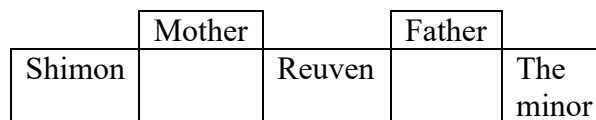
A ruling:	<p>The end of the Baraisa</p> <p>And all the caretakers are paid like sharecroppers.</p>	
How does the Baraisa compare with another ruling?		<p>Mishna Kesuvos 8:5</p> <p>Regarding one who pays expenses for his wife's property to improve it. A man spends a lot and used little of his wife's property, or he spends a little and uses a lot of his wife's property. Whatever he spent he spent, and whatever he used he used.</p> <p>He took what he took and is not paid like a sharecropper. This is <u>not</u> the same as the end of our Baraisa.</p>
A case that is like our Baraisa:		<p>A Ruling</p> <p>One that spends money on his minor wife's property is like one that spends money on someone else's property.</p> <p>The reason for this is that he was not sure he was going to get any of the property (because she can annul the marriage), the rabanim made a rule that he gets paid so that he does not ruin the property. This means he gets paid like a sharecropper.</p>
In the Baraisa, " <u>all the caretakers</u> " refers to fugitives also (not only captives) as it says:		<p>Rav Nachman said in the name of Shmuel</p> <ul style="list-style-type: none"> <li>• If one was taken captive, <i>bais din</i> appoints a caretaker.</li> <li>• If one just left, <i>bais din</i> does not put in a caretaker.</li> </ul> <p>Rav Nachman said himself</p> <ul style="list-style-type: none"> <li>• If one is a fugitive, then we treat him like a captive and <i>bais din</i> appoints a caretaker. <ul style="list-style-type: none"> <li>○ If he fled because he did not pay taxes, then he was not in a rush and should have arranged it for himself.</li> <li>○ It must be that he fled because he was accused of murder, ran away fast, and hence did not have the time to arrange for someone to take care of his field.</li> </ul> </li> </ul>

**39a) Laws About Caretakers.**

Special cases of caretakers are discussed. Who is not permitted to be a caretaker for a relative is discussed.

A ruling:	Rav Yehudah said in the name of Shmuel  If one was taken captive and he left <ul style="list-style-type: none"> <li>• standing grain ready to be reaped, or</li> <li>• grapes, dates, or olives to be harvested, then</li> </ul> <i>Bais din</i> appoints an administrator (אפוטרופוס) to harvest for the owner. After that, <i>bais din</i> appoints a relative who is paid like a sharecropper.		
A question:	Why doesn't <i>bais din</i> appoint a permanent administrator who will do all of this without pay?		
An answer:	<i>Bais din</i> does not appoint a permanent administrator for adults ("people who have beards"). Rather, they appoint administrators only for children. People do not want to do this voluntarily work for adults. Only for children.		
Another ruling:	Rav Huna <i>Bais din</i> does not let a caretaker be...		
	A minor in a captive's property	A relative in a minor's property	A relative's relative in a minor's property
Reasons for these rules:	The minor might ruin the property.	The relative will try to take over the property and the minor will not know how to fight back.	See explanation below.

Rashi explains the case of a relative's relative of a minor who cannot be a caretaker.



Reuven is the minor's paternal brother, and Shimon is Reuven's maternal brother.

Shimon cannot be a caretaker because he might try to take over the property from the minor (who does not know how to fight back) by claiming that Reuven inherited the property from the minor and he (Shimon) received it from Reuven.

**39a) A Caretaker For A Minor's Property.**

Various aspects of Rav Huna's rule about not letting a relative be a caretaker for a minor's property are discussed.

<p>A ruling:</p>	<p style="text-align: center;">Rav Huna</p> <p><i>Bais din</i> does not let a caretaker be a relative in a minor's property (because the minor does not know how to fight back).</p>		
<p>Rava infers from this ruling:</p>	<p>One cannot get property from a minor from <i>chazokah</i>. (Explanation: we do not let a relative be a caretaker because we are afraid that the relative might take over the field and the minor will not know how to protest. What about a non-relative? Why are we not afraid that the non-relatives will try to take over the property by <i>chazokah</i>? It must be that Rav Huna held that <i>chazokah</i> does not work with a minor.)</p> <p><b>39b)</b> This is true even if the if the caretaker is on the field for three years after the minor becomes an adult.</p>		
<p>The circumstances is the rule of Rav Huna applied:</p>	<p>A <u>maternal brother</u> can be a caretaker for the minor because he cannot claim property.</p>	<p>A <u>paternal brother</u> cannot be a caretaker, because he can claim that he inherited the property from the father.</p>	
		<p>A paternal brother can be a caretaker for a <u>house</u> because neighbors could testify who owns the house.</p>	<p>A paternal brother cannot be a caretaker of a <u>field</u> because he will try to inherit it and people do not know who owns fields.</p>
		<p>A paternal brother can be a caretaker of a <u>field</u> if <u>there is a document that records it.</u></p>	<p>A paternal brother cannot be a caretaker of a <u>field</u> if <u>there is no document.</u></p>
<p>A retraction:</p>	<p>The Gemara says that all these difference as to when a relative can be a caretaker are not really true. A maternal brother can also claim the property; a house can also be argued about; a document can be lost and hence irrelevant.</p>		

**39b) The Case Of The Kidnapped Mother Of Three Daughters.**

The Gemara discusses installing a guardian to take care of the property of a certain captive woman.

	A woman who was kidnapped has three daughters: <ul style="list-style-type: none"> <li>• Daughter 1 was kidnapped with the mother.</li> <li>• Daughter 2 died and left a minor son.</li> <li>• Daughter 3 was alive and free.</li> </ul>	
Abaye's first thought:	Let Daughter 3 take over the mother's property.	
Problem with this thought:	What if the mother died. In that case the grandson is supposed to get one third of the property. It is not right to have a relative (Daughter 3 is the grandson's aunt) take over the grandson's property.	
Abaye's second thought:	Put half the mother's property under Daughter 3....	And half the mother's property under the grandson.
Problem with this attempt:	What if the mother did not die. In that case, the minor grandson is installed as a guardian to take care of his grandmother's property. However, we do not use minors as guardians.	
Abaye's conclusion:	Put half the mother's property under Daughter 3.	Put half the mother's property under a guardian for the grandson.
Rava's conclusion:	Since you are putting the grandson's property under a guardian, put the property of Daughter 3 also under a guardian.	Put half the mother's property under a guardian for the grandson.

The story continues: people heard that the mother died in captivity.

Abaye's conclusion:	Put a third of the mother's property under Daughter 3. This is her inheritance.	Put a third of the mother's property under the grandson. This is his inheritance.	Give 1/6 <sup>th</sup> to Daughter 3 as inheritance or guardian of Daughter 1.	Give 1/6 <sup>th</sup> to a guardian of the grandson as inheritance or guardian of Daughter 1.
Rava's conclusion:	The same.	The same.	Since we appointed a guardian for the other 1/6 <sup>th</sup> , appoint for this one also.	The same.

**39b) The Case Of The Unrecognizable Brother (part one).**

The Gemara discusses a case where one brother took over his father’s property. The Gemara presents the case as a series of dialogues between each brother and Rav Chisda.

The Case		
<p>A man came to Mari bar Isak from Bei Chozai and said “I am your brother. Give me my share of our father’s property”. Mari responded negatively and said that he does not recognize the man.</p>		
Mari	Rav Chisda	The Brother
		<p>@Rav Chisda, “Mari will not give me what is mine.”</p>
	<p>@Brother, “Mari is right for not recognizing you.” Because it says Berashis 42:8:                      וַיִּכַּר יוֹסֵף, אֶת-אֶחָיו; וְהֵם, לֹא הִכְרָהוּ.                      “And Yoseph knew his brothers, but they did not know him.”</p> <p>Yoseph left the house clean-shaven and the brothers all had beards. Now Yoseph had a beard and was unrecognizable to them. Here also Mari did not recognize his bearded brother.</p> <p>@Brother, “Get witnesses that you are his brother.”</p>	
		<p>@Rav Chisda, “I have witnesses, but they are scared to testify against Mari.”</p>
	<p>@Mari, “Bring witnesses that he is <u>not</u> your brother.”</p>	
<p>@Rav Chisda, “Is this the law? He wants to get something out of me. Therefore, the burden of proof is on him.”</p>		

**39b) The Case Of The Unrecognizable Brother (part two).**

The case continues. The witnesses came and they gave testimony that the man is, in fact, the brother.

Mari	Rav Chisda	The brother
	@Mari, "You are powerful, and this is how I judge you and your friends."	
@Rav Chisda, "At the end, the witnesses will come but they will not testify against me."		
	@Mari, "They might not show up to give testimony against you. However, they will not testify falsely."	
		@Rav Chisda, "Mari should also give me half from the improvements that he made to our father's property."
	<p>@Mari, "Your brother is justified in what he asks and you should give it to him. We know this from the following Mishna."</p> <p style="text-align: center;">Mishna Baba Basra 9:3</p> <p>In the case of one who died and left behind adult and minor sons, if the adult sons enhanced the property, they enhanced it so that the profit goes to the middle, i.e., it is distributed among all the sons.</p> <p><b>40a)</b> Rabbah agreed with the ruling of Rav Chisda.</p>	

**40a) The Case Of The Unrecognizable Brother (part three).**

The ruling is discussed.

	The case of the unrecognizable brother	Mishna Baba Basra 9:3
Abaye complains that the Mishna cannot be applied to this case:	Here, Mari did not know about his brother and so when he was making the improvements to their father's property, he did not intend to give it to his brother.	Here, the older brother knew about the younger brother and when he was making the improvements to their father's property, he intended to give it to his brother.
R' Ami has another complaint against the Rav Chisda's ruling:	Here, Mari was not paid for his labor at improving their father's property.	Here, the older brother was paid like a sharecropper for improving the property that he was watching.
Rav Chisda's defense of his ruling:	Here, Mari was not made as a guardian by <i>bais din</i> . Also the brother was a minor and Mari could not have been a guardian.	Here, <i>bais din</i> made the older brother a guardian, so he should be paid.
R' Ami accepts Rav Chisda's defense:	"They did not tell me that the brother was a minor. Rav Chisda is correct."	



**40a) Mishna: Returning Produce That Might Have Depleted.**

When a *shomer* watched produce, it is expected that some of it will be depleted by either rotting or mice. Therefore, the *shomer* does not have to return the same amount as he was given.

Our Mishna			
One deposits produce with a <i>shomer</i> . When the <i>shomer</i> returns the produce, he is permitted to take off for depletion.			
How much?			
Tanna Kamma		R' Yochanan ben Nuri	R' Yehudah
Product:	Amount:	The mice do not care how much produce there is. They eat the same amount whether there is a lot or a little. Rather than giving a percentage, the <i>shomer</i> takes off only for the first <i>kor</i> .	If the quantity is large, the <i>shomer</i> does not deduct anything because the amount depleted is the same as the amount expanded.
Wheat and Millet	9 half- <i>kavs</i> for each <i>kor</i> (=180 <i>kavs</i> =360 half- <i>kavs</i> )  2.5%		
Barley and <i>Pani</i>	9 <i>kavs</i> for each <i>kor</i> (=180 <i>kav</i> )  5%		
Spelt and Flax seed	Three <i>se'ahs</i> for each <i>kor</i> (= 30 <i>se'ahs</i> )  10%		
Proportional to the amount and the time.			

**40a) Depletions Of Produce.**

The Gemara discusses various aspects of the Mishna.

Mishna	Discussion
For Millet: 9 half- <i>kavs</i> for each <i>kor</i> .	<p>Question: Millet decreases more than that!</p> <p>Answer: Rabbah bar bar Chanah said in the name of R' Yochanan that this rule was said about peeled millet.</p>
For Spelt and Flax seed: three <i>se'ahs</i> for each <i>kor</i> .	<p>R' Yochanan said in the name of R' Chiya This rule was said for flax seed in its husk.</p> <p>A Baraisa taught the same ruling.</p>
Proportional to the amount and the time.	<p>A Baraisa</p> <p>The same amount for each <i>kor</i> and for every year.</p>
<p>R' Yochanan ben Nuri</p> <p>The mice do not care how much produce there is. They eat the same amount whether there is a lot or a little. Rather than giving a percentage, the <i>shomer</i> takes off only for the first <i>kor</i>.</p>	<p>The following Baraisa was said about this part of the Mishna.</p> <p>A Baraisa</p> <p>The Rabonim responded to R' Yochanan ben Nuri: It is not only mice that explains the depletion. It is also because much of the produce is ruined, and much is scattered.</p>

**40a) Returning produce.**

One returns a reduced amount of produce only if the produce is mixed with the *shomer's* own produce.

Our Mishna:	One deposits produce with a <i>shomer</i> . When the <i>shomer</i> returns the produce, he is permitted to take off for depletion.			
A related Baraisa that discusses our Mishna:	<p>A Baraisa</p> <p>When does the Mishna's rule apply?</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td data-bbox="386 667 919 913" style="width: 50%; vertical-align: top;"> <p>Only when the <i>shomer</i> mixed his produce with the owner's produce.</p> </td> <td data-bbox="919 667 1432 913" style="width: 50%; vertical-align: top;"> <p>Not when the <i>shomer</i> has a special place for the owner's produce. In such a case, the <i>shomer</i> can just say to the owner, "This is yours!" and does not take off for depletions.</p> </td> </tr> </table>		<p>Only when the <i>shomer</i> mixed his produce with the owner's produce.</p>	<p>Not when the <i>shomer</i> has a special place for the owner's produce. In such a case, the <i>shomer</i> can just say to the owner, "This is yours!" and does not take off for depletions.</p>
<p>Only when the <i>shomer</i> mixed his produce with the owner's produce.</p>	<p>Not when the <i>shomer</i> has a special place for the owner's produce. In such a case, the <i>shomer</i> can just say to the owner, "This is yours!" and does not take off for depletions.</p>			
A question:	Let the <i>shomer</i> see how much was depleted from the combined produce and calculate exactly how much to return. Rather than using the Mishna's estimates.			
An answer:	The <i>shomer</i> was using the combined produce the whole time. So, no calculations can be done.			
A question:	Calculate the amount to return by seeing how much the <i>shomer</i> used.			
An answer:	The <i>shomer</i> did not keep track of how much he used.			

**40a) A Large Amount Of Produce.**

The Gemara discusses R' Yehudah's opinion in the Mishna.

Our Mishna	Discussion
<p data-bbox="428 449 586 485">R' Yehudah</p> <p data-bbox="191 525 802 632">If the quantity is large, the <i>shomer</i> does not deduct anything because the amount depleted is the same as the amount expanded.</p>	<p data-bbox="1013 449 1268 485">How much is large?</p> <p data-bbox="932 525 1349 594">Rabbah bar bar Chanah said in the name of R' Yochanan</p> <p data-bbox="1094 632 1187 667">10 <i>kors</i></p> <p data-bbox="948 707 1365 743">A Baraisa taught the same ruling.</p>

**40a) Measuring The Returned Depreciated Produce.**

The Mishna discusses the mechanisms of measuring how much to return.

Our Mishna:	R' Yehudah said if the quantity is large, the <i>shomer</i> does not deduct anything because the amount depleted is the same as the amount expanded.			
A ruling:	<p style="text-align: center;">A Baraisa was said to Rav Nachman</p> <p style="text-align: center;">In what circumstance is R' Yehuda's rule taught?</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">The rule applies when the owner measured it out from his granary and when the <i>shomer</i> returned it measured from the owner's granary. In this case, one is permitted to take off for depletion.</td> <td style="width: 50%; padding: 5px;">The rule does not apply when the owner measured it out from the owner's granary and when the <i>shomer</i> returned it measured from the <i>shomer</i>'s house. In this case one is not permitted to take off for depletion.</td> </tr> </table>		The rule applies when the owner measured it out from his granary and when the <i>shomer</i> returned it measured from the owner's granary. In this case, one is permitted to take off for depletion.	The rule does not apply when the owner measured it out from the owner's granary and when the <i>shomer</i> returned it measured from the <i>shomer</i> 's house. In this case one is not permitted to take off for depletion.
The rule applies when the owner measured it out from his granary and when the <i>shomer</i> returned it measured from the owner's granary. In this case, one is permitted to take off for depletion.	The rule does not apply when the owner measured it out from the owner's granary and when the <i>shomer</i> returned it measured from the <i>shomer</i> 's house. In this case one is not permitted to take off for depletion.			
Rav Nachman's response:	Are we dealing with fools? Of course, we are not talking about when different measures are used.			
A better explanation of the Baraisa:	The rule applies when the owner measured it out in the season of the granary, and when the <i>shomer</i> returned it in the season of the granary.	The rule does not apply when the owner measured it out in one season and when the <i>shomer</i> returned it measured in another season because in the different seasons, the produce expands.		
R' Pappa asked Abaye:	In this case of changed seasons, a sealed barrel with produce should burst.			
Two possible answers:	<ul style="list-style-type: none"> <li>• In fact, it did burst.</li> <li>• Or, because of the pressure of the barrel, it does not burst.</li> </ul>			

**40a) Mishna: Returning Liquid Produce That Might Have Depleted.**

When an owner gives a *shomer* wine or oil, some of it is expected to become absorbed into the barrel, and some of it will become sediment. The Mishna goes through two opinions as to how much should be expected to be returned.

Our Mishna			
	Tanna Kamma		R' Yehudah
Wine	Deduct a sixth of the wine.		Deduct a fifth of the wine.
Oil		Deduct for Sediment	Deduct for Absorption
	Regular oil	1.5 logs per 100	1.5 logs per 100
	Refined oil (without sediment)	0	1.5 logs per 100
	Old barrels (that do not absorb anything)	1.5 logs per 100	0
			This rule that refined oil will have 1.5 logs of sediment is true even for someone who sells oil at regular times. In other words, when one receives 100 logs of refined oil, they should expect that 1.5 logs are sediment.

**40a) Different Rates Of Wine Absorption.**

The Gemara discusses reasons for why there is a difference of opinion about how much wine to return.

Our Mishna:	When returning wine, deduct for absorption and sediment.	
	Tanna Kamma Deduct a sixth of the wine.	R' Yehudah Deduct a fifth of the wine.
Reason for the difference:	Where he lived, they coated the barrel with wax and so the barrel does not absorb much.	Where he lived, they coated the barrel with pitch and so the barrel does absorb more.
Another reason for the difference:	Where he lived, they made the barrels with a clay that does not absorb much.	Where he lived, they made the barrels with a clay that absorbs more.

**40a) The Profit Of Selling Wine Wholesale.**

The Gemara goes through a calculation of how much a wine wholesaler profits.

Our Mishna:	The Tanna Kamma says deduct a sixth of the wine.											
A calculation of how much profit a wholesaler makes:	<table border="1" data-bbox="418 443 1414 884"> <tr> <td data-bbox="418 443 964 516">A barrel of wine contains</td> <td data-bbox="964 443 1414 516">48 <i>kuz</i></td> </tr> <tr> <td data-bbox="418 516 964 630">Sold to 6 customers and each customer bought 6 <i>kuz</i>.</td> <td data-bbox="964 516 1414 630">- 36 <i>kuz</i> = 6*6 <i>kuz</i></td> </tr> <tr> <td data-bbox="418 630 964 703">What is left in the barrel</td> <td data-bbox="964 630 1414 703">=12 <i>kuz</i></td> </tr> <tr> <td data-bbox="418 703 964 816">One sixth of 48 <i>kuz</i> (which is 8 <i>kuz</i>) is absorbed or sediment.</td> <td data-bbox="964 703 1414 816">-8 <i>kuz</i></td> </tr> <tr> <td data-bbox="418 816 964 884">What is left in the barrel for profit.</td> <td data-bbox="964 816 1414 884">=4 <i>kuz</i> = a 12th of 48 <i>kuz</i></td> </tr> </table>		A barrel of wine contains	48 <i>kuz</i>	Sold to 6 customers and each customer bought 6 <i>kuz</i> .	- 36 <i>kuz</i> = 6*6 <i>kuz</i>	What is left in the barrel	=12 <i>kuz</i>	One sixth of 48 <i>kuz</i> (which is 8 <i>kuz</i> ) is absorbed or sediment.	-8 <i>kuz</i>	What is left in the barrel for profit.	=4 <i>kuz</i> = a 12th of 48 <i>kuz</i>
A barrel of wine contains	48 <i>kuz</i>											
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What is left in the barrel	=12 <i>kuz</i>											
One sixth of 48 <i>kuz</i> (which is 8 <i>kuz</i> ) is absorbed or sediment.	-8 <i>kuz</i>											
What is left in the barrel for profit.	=4 <i>kuz</i> = a 12th of 48 <i>kuz</i>											
A question:	<p style="text-align: center;">Shmuel</p> <p>Shmuel says that one who profits should not profit more than a 6<sup>th</sup>. So, why is he only profiting a 12<sup>th</sup>?</p>											
An answer:	He sells the barrel and the sediment also to make more profit.											
A problem with the answer:	Then he is profiting more than a 6 <sup>th</sup> ?											
An answer:	He has other expenses like labor and advertising. This brings his profit down to less than a 6 <sup>th</sup> .											



**40b) Absorption In Old Barrels.**

The Mishna said that one does not need to deduct for absorption if one uses old barrels. The Gemara questions this ruling.

Our Mishna:	<p>The Tanna Kamma says</p> <ul style="list-style-type: none"> <li>• When the oil is refined, one takes off nothing for sediments.</li> <li>• <u>When the oil is in an old barrel, one takes off nothing for absorption.</u></li> </ul>
A question:	However, even old barrels absorb something!?!
Rav Nachman's answer:	The barrels referred to in the Mishna are lined with pitch, and hence absorb nothing.
Abaye's answer:	You can say the barrels referred to in the Mishna were not lined with pitch. They are saturated, and hence nothing more can be absorbed.

**40b) Refined Oil (part one).**

The Gemara discusses the sediment of oil and how to sell refined oil.

One sells refined oil throughout the year to a customer		
	R' Yehudah	The <i>Chachomim</i> 's inferred belief.
The Mishna:	When a customer receives 100 <i>logs</i> of refined oil, they should expect that 1.5 <i>logs</i> are sediment.	When a customer receives 100 <i>logs</i> of refined oil, it should be all oil and no sediment.
Abaye inferred the rule:	The seller is permitted to mix the sediment and the refined oil before distributing it.  The seller can say to the buyer "I could mix it if I want. So, I will give you a reduced amount of refined oil."	The seller is forbidden to mix the sediment and refined oil before distributing it.  The buyer can say the seller, "If you wanted to mix it, would that be legal? No! So now I do not take any deductions."
A question	A buyer can say to the seller, "Had you given me the mixed oil, I could have sold the sediment to someone else and made money."	
An answer:	The buyer in this case was a householder. He did not need the sediment.	

**40b) Refined oil (part one).**

The discussion about mixing oil and sediment continues.

<p>Another question:</p>	<p>The buyer can say to the seller, “Since you did not mix the sediment into the oil, you give up the rights to the sediment.”</p>		
<p>An answer:</p>	<p>This follows R’ Yehuda’s reasoning. We saw in the following</p> <p style="text-align: center;">Mishna Baba Basra 5:1</p> <ul style="list-style-type: none"> <li>• One who sold a yoke has not sold the oxen, and</li> <li>• one who sold the oxen has not sold the yoke.</li> </ul>		
	<p style="text-align: center;">R’ Yehuda</p> <p>The sum of money indicates what one has sold. If the buyer said to the seller: “Sell me the yoke for two hundred <i>zuz</i>, since it is known that a yoke is not sold for two hundred <i>zuz</i> , he intended to buy the oxen as well.</p> <p>The main point is that according to R’ Yehuda he does not give up his rights unless he says so. So too, he does not give up his rights to the sediment, unless he says so.</p>	<p style="text-align: center;">Rabonim</p> <p>The sum of money is not proof.</p>	
<p>Rav Pappa tells Abaye his way of understanding the Mishna:</p>	<p>The seller may not mix the oil and the sediment. The buyer must accept a reduction off what he gave. The seller may say to the buyer, “If I wanted to mix the sediment and the wine, I would not have been permitted to do so.”</p>		<p>The seller can mix the oil and the sediment. The buyer can say to the seller, “Since you did not mix the oil and the sediment, you have no right to it.”</p>

**40b) The Scum Of The Oil.**

The Gemara discussed what happened with sediment of the oil, which is the part of the oil that sinks to the bottom. Now it will discuss the scum of the oil, which is the part that floats on the top.

Our Mishna:	For regular oil, the <i>shomer</i> can refuse give back 1.5 <i>logs</i> per 100 because of expected sedimentation.	
A related enigmatic Baraisa:	Buyers and Sellers must follow the same laws with scum.	
A possible explanation of the Baraisa:	Just as a buyer does not accept the scum when getting oil, so too when an owner deposits oil with a <i>shomer</i> , he does not have to accept the scum when he gets the oil back.	
A problem with the explanation:	The <i>shomer</i> can say to the owner ‘What am I supposed to do with your scum? The scum was part of the oil that you gave me.’”	
A better explanation:	Just as an owner accepts the scum when getting oil back from a <i>shomer</i> , so too a buyer has to get scum when he buys oil.	
A seemingly contrary Baraisa that points to a problem with this explanation:		<p>Does a buyer really need to accept the scum? We learned the following:</p> <p style="text-align: center;">A Baraisa</p> <p>R’ Yehudah said that the loss due to the cloudy oil (oil with scum in it) was the responsibility of the seller alone. one, since the buyer already accepts a <i>log</i> and a half of sediment. He wants the rest without the scum.</p>
A resolution of the two Baraisas:	Here, the buyer pays his money in Tishri (when the oil is cloudy with scum and hence cheap) and receives the oil in Nisan at Tishri prices. So, here the buyer must accept the scum.	Here, the buyer pays his money in Nisan (when the oil is refined, without scum and more expensive) and receives the oil in Nisan at Nisan prices. So, here the buyer can refuse it and the loss is incurred by the seller.

**40b) Mishna: A *Shomer* broke a barrel while moving it.**

The Mishna discusses when a *shomer* is responsible for a broken object. This depends on what the owner wanted, when it broke, and why the *shomer* moved it.

Our Mishna				
		A man deposits a barrel with a <i>shomer</i> , the <i>shomer</i> moved the barrel, and it broke.		
		The owner did not designate a set place for the barrel. (The <i>shomer</i> has more permission to move it.)	The owner designated a set place for the barrel. (The <i>shomer</i> has less permission to move it.)	
The barrel was in the <i>shomer</i> 's hand when it broke. (The <i>shomer</i> is more at fault):	Moved for the <i>shomer</i> 's benefit (The <i>shomer</i> is more at fault)	Moved for the barrel's benefit (The <i>shomer</i> is less at fault)	Moved for the <i>shomer</i> 's benefit (The <i>shomer</i> is more at fault)	Moved for the barrel's benefit (The <i>shomer</i> is less at fault)
	חייב	פטור	חייב	פטור
The barrel broke after the <i>shomer</i> put it down. (The <i>shomer</i> is less at fault):	פטור			

**40b) Moving A Barrel (part one).**

A comparison of the first part of our Mishna with a Baraisa. It seems our Mishna follows R' Yishmael and not R' Akiva:	The first part of our Mishna A man deposits a barrel with a <i>shomer</i> , the <i>shomer</i> moved the barrel and returned it. Then it broke.	A Baraisa One stole a sheep or a coin. If he returns it to its place without telling the owner.	
	When the owner did not designate a set place  פטור	R' Yishmael  פטור	<b>41a)</b> R' Akiva  חייב
A problem with this comparison:	Why does the Mishna say "When the owner did not designated a place"? According to R' Yishmael, as long as the <i>shomer</i> returns the barrel, he is פטור regardless of whether or not the owner designated a place.		
A solution	The Mishna was using a language where it is more novel to say it this way. It is more shocking that the <i>shomer</i> is פטור when the owner did not designate a place for the barrel.		
A comparison of the second part of our Mishna with the Baraisa. It seems the second part of the Mishna follows R' Akiva and not R' Yishmael:	The second part of our Mishna A man deposits a barrel with a <i>shomer</i> , the <i>shomer</i> moved the barrel for his own benefit and returned it. Then it broke.		
	The owner designated a set place  חייב		
A problem with this comparison:	Why does the Mishna say "When the owner designated a set place." According to R' Akiva, he is חייב regardless of there being a set place or not. The <i>shomer</i> is חייב as long he did not tell the owner.		
A solution:	In both situations he is חייב. The Mishna just stated the more novel ruling. It is more shocking that even though he returned it to the place where the owner designated, he is still חייב until he tells the owner.		

The Gemara concludes that the first part of our Mishna follows R' Yishmael and the second part of our Mishna follows R' Akiva. R' Yochanan said he will be a bathhouse attendant (sarcasm) for anyone who can explain Our Mishna with one opinion.

**41a) Moving A Barrel (part two).**

The Gemara discusses several different opinions as to what is going on in the Mishna.

Our Mishna	The <i>shomer</i> moved the barrel for his own needs.		
Two opinions as to what the means:	Rav Yaakov bar Abba explained this Mishna before Rav as  He took it to steal.	R' Nassan bar Abba explained this Mishna before Rav as  He took the object to misappropriate it (לְשָׁלוֹם בְּהַיָּד).	
An explanation of the two opinions:	He believes that being חייב for misappropriating an object needs loss. Here, the <i>shomer</i> did not cause a loss because he put it down and only then did it break. So, the Mishna must mean that the <i>shomer</i> stole it.	He believes that one can be חייב for misappropriating something and there not being a loss.	
A criticism of these two views and a third view:			Rav Sheishess says the Mishna did not say the <i>shomer</i> “took the barrel.” Rather, the Mishna says he “moved the barrel.”  The Mishna means that the <i>shomer</i> moved the barrel temporarily. For example, he moved the barrel to stand on it and reach some birds.
A summary:	All these opinions follow R' Yishmael, who said that the <i>shomer</i> is פטור if he returns the barrel to its place even without the owner's knowledge. The second part of the Mishna is talking about the <i>shomer</i> returning the barrel to another place that the owner did not designate. Here the <i>shomer</i> is חייב.		
One other opinion needs to be explained:	Why did R' Yochanan believe that the two parts of the Mishna cannot be reconciled? The Mishna said “the <i>shomer</i> placed the barrel” which indicates that he replaced it in its designated place. And still, he is חייב. It must be that this part of the Mishna is not like R' Yishmael, but R' Akiva.		

**41a) Misappropriating An Object (part one).**

The Gemara reports on a *machlokis* as to whether or not misappropriating an object means that there is a loss to the object. We are trying to determine who said what in the *machlokis*.

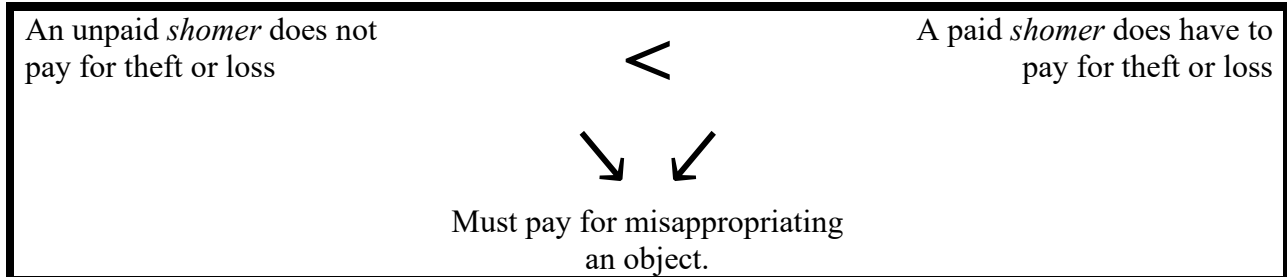
<p>A machlokis:</p>	<p>Rav and Levi argued as to whether misappropriating an object means that the object had a loss. We do not know who said which way.</p>	
<p>A proof that Rav said misappropriating does not need loss:</p>		<p style="text-align: center;">A Baraisa</p> <ol style="list-style-type: none"> <li>1. A shepherd was walking his flock, which had the animals of others.</li> <li>2. He abandoned his flock and went to the city.</li> <li>3. A wolf came and tore an animal, or a lion came and clawed an animal,</li> <li>4. The shepherd is פטור, because it is beyond his control.</li> <li>5. If he placed his staff and his purse on the animal that was later attacked, he is חייב. Why? Because he used the animal and he misappropriated it. So he is חייב to pay even in a case involving circumstances beyond his control.</li> </ol> <p>Question: Why should the shepherd be חייב if he put his staff and purse on the animal. He removed the staff and purse from the animal before the wolf or lion came.</p> <p>Answer from Rav: The staff and the purse were still on the animal.</p> <p>Question: what is the difference if the staff and purse were still on him?</p> <p>A better answer from Rav: The shepherd hit the animal with his staff so hard that the animal moved.</p> <p>The main point: according to Rav one can misappropriate an animal and be חייב for it even though there was no loss.</p>
<p>A rejection of the proof:</p>		<p>Maybe the shepherd hit the animal so hard, that there was a loss to the animal. After all, the Baraisa stressed that he was hit with the staff.</p>
<p>Summary:</p>	<p>Rav believes that misappropriating an object means that there is a loss.</p>	



**41b) Misappropriating An Object (part two).**

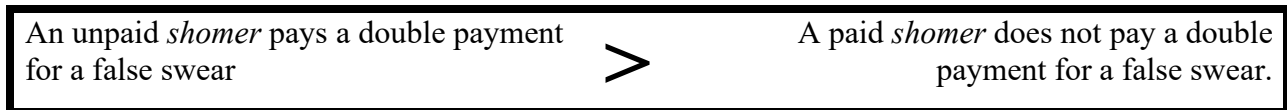
The Gemara goes through a long proof to show what Levi's opinion is.

R' Yose ben Nehori gives the following *kal ve'chomer* that a paid *shomer* must pay for misappropriating an object.



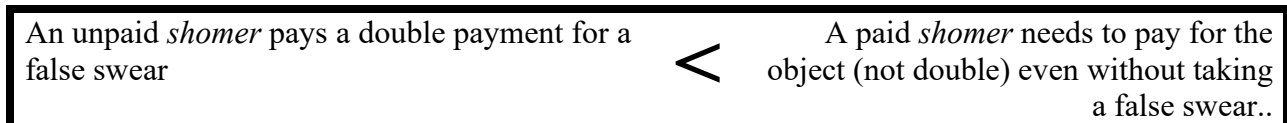
The laws of misappropriating an object is said twice in Shemos. Once for an unpaid *shomer* and once for a paid *shomer*. Why does it say it twice if we can learn it from a *kal ve'chomer*? R' Yose says because it is there to teach us that for a paid *shomer*, one does not need loss for misappropriation.

R' Yochanan does not believe R' Yose ben Nehori's (R' Yochanan's rebbe) *kal ve'chomer* because there is a reason to say that an unpaid *shomer* is more stricter than a paid *shomer*.



Because R' Yochanan does not believe in the above *kal ve'chomer*, he believes that both laws of misappropriating an object needs to be said in Shemos. And neither teach us that one does not need loss for misappropriation. This is like R' Elazer who said that the two laws in Shemos are telling us the same thing.

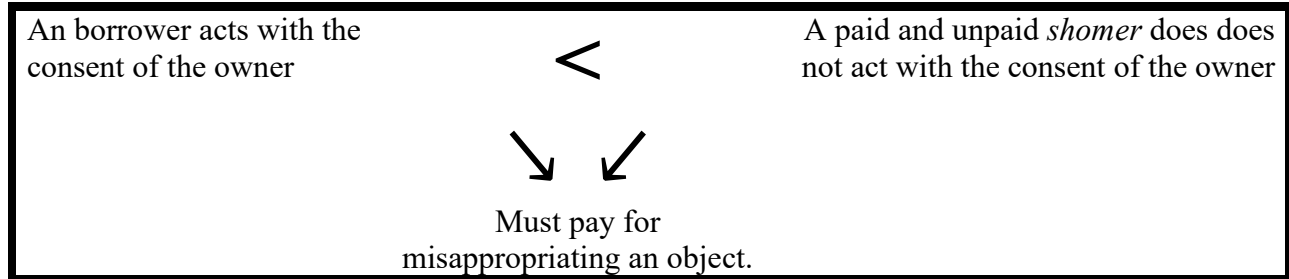
R' Yose ben Nehori does believe in the *kal ve'chomer* despite the previous criticism because even when it comes to false swearing, one can see why a paid *shomer* is stricter than an unpaid *shomer*.



**41b) Misappropriating An Object (part three).**

The Gemara goes through Rava's proof.

There is a similar *kal ve'chomer* from Rava



Rava now uses both times that the Shemos mentions misappropriation an object to teach us something different.

The Gemara continues this discussion.

**42a) Mishna: A Negligent Shomer Of Coins.**

The Mishna discusses different ways of being a *shomer* for money.

Our Mishna	
A man gave a <i>shomer</i> coins to watch.	
<p>The <i>shomer</i> watched the coins in an atypical way.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• He wrapped the coins in a cloth and slung it behind him,</li> <li>• He gave the coins to his minor son or daughter for safeguarding, or</li> <li>• He insufficiently locked the door (before the children with the money).</li> </ul> <p style="text-align: center;">חייב</p>	<p>The <i>shomer</i> watched the coins in a normal way.</p> <p style="text-align: center;">פטור</p>

**42a) Properly Holding Coins.**

The Mishna lists three inadequate methods of storing money. The Gemara wonders what is wrong with the first method.

Our Mishna:	If he wrapped the coins in a cloth and slung it behind him, then he is חייב .
Question:	How should he keep the money so that he is not חייב . ?
An answer:	<p style="text-align: center;">Rava said in the name of Rav Yitzchok</p> <p>The <i>posuk</i> says</p> <p style="text-align: center;">Devorim 14:25</p> <p style="text-align: center;">וְנָתַתָּהּ, בַּכֶּסֶף; וְצָרְתָּ הַכֶּסֶף, בְּיָדְךָ, וְהִלַּכְתָּ אֶל-הַמָּקוֹם, אֲשֶׁר יִבְחַר יְהוָה אֱלֹהֶיךָ בּוֹ.</p> <p>then you should turn it (<i>maaser sheni</i>) into money and bind up the money in your hand and go to the place that the Hashem your God chooses.</p> <p>So, you should bind up your money and keep it in your hand.</p>

**42a) Some Financial Advice.**

Since the Gemara just brought up a piece of financial advice, other financial advice is offered here.

Rav Yitzchok:	<p>A person's money should always be available to him. The <i>posuk</i> in Devorim 14:25 is used to teach this.</p>
	<p>A person should divide their money into three parts:</p> <ol style="list-style-type: none"> <li>1. One third: in land.</li> <li>2. One third: in investments/business (בִּפְרוֹקֵי מְטָיָא).</li> <li>3. One third: easily available to him.</li> </ol>
	<p>A blessing is only found in something that is hidden from the eyes. As it says in the <i>posuk</i></p> <p style="text-align: center;">Devorim 28:8</p> <p>וַיֹּצֵא יְהוָה אֶתְּךָ, אֶת-הַבְּרָכָה, בְּאֶסְמִיךָ, וּבְכֹל מְשַׁלַּח יָדְךָ; וּבְרָכָה--בְּאֶרְצֶךָ, אֲשֶׁר-יְהוָה אֱלֹהֶיךָ נָתַן לְךָ. “Hashem will command the blessing for you in your <u>storehouses (closed from view)</u> and in everything that you put your hand. And He will bless you in the land that the Hashem your God is giving you.”</p> <p>A Baraisa from the school of Rabbi Yishmael also teaches this from the same <i>posuk</i>.</p>
<p>Since the Gemara just mentioned that blessings come when objects are hidden, the Gemara now mentions a Baraisa about praying for abundance when objects are hidden and not hidden.</p> <p style="text-align: center;">A Baraisa</p> <ol style="list-style-type: none"> <li>1. One who goes (future) to measure the grain says             <p style="text-align: center;">”? רְצוֹן מִלְּפָנֶיךָ ה' אֱלֹהֵינוּ שְׁתִּשְׁלַח בְּרָכָה בְּמַעֲשֵׂה יְדֵינוּ” “May it be (future) Your will, Hashem, our God, that You send blessing upon the product of our hands.”</p> </li> <li>2. One who began (present) to measure the grain he says:             <p style="text-align: center;">”בְּרוּךְ הַשּׁוֹלֵחַ בְּרָכָה בְּפָרִי הַזֶּה” “Blessed is He Who sends (present) blessing upon this pile of grain.”</p> </li> <li>3. One who measured (past) and afterward recited this blessing, made a wasteful blessing, because blessings are not found in something that is weighed, nor measured, nor counted. Rather, it is found in a matter concealed from the eye, as the <i>posuk</i> says “Hashem will command the blessing with you in your storehouses.”</li> </ol>	

**42a) Storing Money.**

The Mishna listed some of the inadequate ways of storing money. The Gemara discusses what is the correct way of storing money

Our Mishna:	The <i>shomer</i> who watched the coins in a normal way is פטור.	
A rule:	Shmuel The only acceptable way of guarding money is burying the money in the ground.	
A qualification of the rule:	Rava Even Shmuel believes that 1. if the owner gave the money to someone to watch right before sunset (a little before <i>bain hashmoshes</i> ) before Shabbos, the <i>shomer</i> does not have to bury it before Shabbos. 2. But if he waited until after Shabbos and delayed he is חייב. 3. However, if the owner is a Talmud chochem, he is permitted to delay after Shabbos if he thought the <i>Talmud chachom</i> needs the money for wine for <i>Havdalah</i> . (They try to make <i>Havdalah</i> on wine.)	
A listing of different bad people and where they look for hidden money:	There are money-diviners who use instruments to find money in the ground.	The money can only be properly stored under the roof beams.
	There are house-breakers who look for money under the roof beams.	The money can only be properly stored within the spaces between bricks. Rav said that even Shmuel believes that money can be stored in the spaces between bricks.
	There are rappers who tap the walls looking for money within the spaces between bricks.	The money can only be properly stored within the spaces between bricks one <i>tefach</i> from the floor or one <i>tefach</i> from the ceiling, where tapping does not help.

**42a) Burying Money.**

Shmuel said that the only proper way to store money is to bury it. The Gemara discusses how deep does the money need to be buried.

<p>A rule:</p>	<p style="text-align: center;">Shmuel</p> <p>The only acceptable way of guarding money is burying the money in the ground.</p>		
<p>Rav Acha son of Rav Yosef mentioned to Rav Ashi a related Mishna:</p>		<p style="text-align: center;">Mishna Pesachim 2:3</p> <p>Chometz upon which a rockslide has fallen</p> <p style="text-align: center;">Tanna Kamma</p> <p>The chometz is considered as though it has been eliminated and does not need to be burned.</p>	<p style="text-align: center;">Rabban Shimon ben Gamliel</p> <p>The Chametz is eliminated a dog cannot search after it.</p> <p>A Baraisa taught that a dog cannot search for it if it is buried three or more <i>tefachim</i> in the ground.</p>
<p>Rav Acha's question:</p>	<p>Do we require to bury money three <i>tefachim</i> deep to safely store it?</p>		
<p>Rav Ashi's answer:</p>	<p>Here, where we are only concerned about a thief seeing it, we do not need three <i>tefachim</i>.</p>		<p>Here, where we are concerned about the smell, we need three <i>tefachim</i>.</p>
<p>The halacha:</p>	<p>How much does it have to be buried?</p> <p style="text-align: center;">Rafram of Sichra</p> <p>One <i>tefach</i>.</p>		

The Gemara concludes with five cases where money and objects were stored.

**43a) Mishna: Moneychangers, Housekeepers, And Storekeepers.**

The Mishna discusses what happens when an owner deposits money with different types of people. Are they responsible for the money if it is lost?

Our Mishna		
Moneychangers:	<p style="text-align: center;">The money is tied up. (This shows that the owner does not want it being used.)</p> <p>The moneychanger is not permitted to use the money. He is a <i>shomer chinom</i>. and is not responsible for losing it. So, if the money gets lost, the moneychanger is not liable.</p>	<p style="text-align: center;">The money is loose. (This shows that the owner permits it to be used.)</p> <p>The moneychanger is permitted to use the money. He is either a <i>shomer socher</i> or a <i>shoal</i>. So, if the money gets lost, the moneychanger is liable.</p>
Housekeepers:	<p>Whether the money is tied up or loose, the housekeeper is not permitted to use the money. He is a <i>shomer chinom</i>. So, if the money gets lost, the moneychanger is not liable.</p>	
Storekeepers:	R' Meir	R' Yehudah
	Storekeepers are like housekeepers.	Storekeepers are like moneychangers.

**43a) Tied Money.**

The Gemara asks why the money tied means that the moneychanger cannot use the money?

A question:	If the money is tied up, the owner intends that the moneychanger does not use it. What is the significance of the money being tied up? After all, most money is tied up.
The answer of Rav Assi in the name of Rav Yehudah:	The money was not only tied up, but also sealed.
(Version one) Rav Mari's answer:	The money was tied with an unusual knot.
(Version two) Rav Mari's asked:	What if the money was tied in an unusual knot?
The response to Rav Mari's question:	Teyku!



**43a) The Definition of “Lost”.**

A rule is introduced about a moneychanger.

Our Mishna:	The moneychanger can use the money if the money is loose. If it gets lost, the moneychanger is חייב.	
A rule that extends the Mishna:	Rav Huna’s rule The moneychanger is חייב even if it was an unavoidable accident אנס.	
A seeming contradiction to the rule:		Our Mishna The moneychanger is חייב if it is “lost”. This usually means an ordinary accident אבידה. However, for an unavoidable accident the moneychanger would be פטור.
A resolution:	The moneychanger is liable for an unavoidable accident אנס.	The Mishna uses the word “lost” like Rabbah used the word “lost”.  Mishna Shekalim 2:1  The people of a town who sent their shekels to the Beis Hamigdash and they <ul style="list-style-type: none"> <li>• were stolen from their agent</li> <li>• <u>or were lost...</u></li> </ul> Rabbah explains: <ul style="list-style-type: none"> <li>• The phrase “were stolen” means stolen by armed robbers.</li> <li>• <u>The word “lost” means lost in a ship wreck.</u></li> </ul> These are examples of an unavoidable accident. The Mishna means that he is חייב even for what Rav Huna would call אנס.

The Gemara is discussing which of the two highlighted boxes the case of the moneychanger is describing.

	Can he use it?	פשיעה	אבידה גניבה	אנס	מתה מחמת מלאכה
שמר חנם	No	חייב	פטור	פטור	NA
שמר שוחר	No	חייב	חייב	פטור	NA
שוכר	Yes	חייב	חייב	פטור	פטור
שואל	Yes	חייב	חייב	חייב	פטור

**43a) Determining the status of the moneychanger.**

Another opinion is said about a moneychanger.

Our Mishna:	The moneychanger can use the money if the money is loose. If it gets lost, the moneychanger is liable.	
A rule that extends the Mishna:	Rav Nachman's Rule If the moneychanger lost the money through unavoidable accident אנס , then he is פטור.	
Rava criticizes Rav Nachman:		According to you, if the moneychanger is פטור for אנס then he is not a borrower. Then what is he? He is not a paid <i>shomer</i> either because he was not paid.
Rav Nachman responds to Rava:	"I agree with you. He is an unpaid <i>shomer</i> until he uses the money. He has the right to use the money if there is profit to be made. When he uses the money he becomes a borrower.	

The Gemara is determining the status of the moneychanger by looking at the highlighted boxes:

	Can he use it?	פשיעה	אבידה גניבה	אנס	מתה מחמת מלאכה
שמר חנם	No	חייב	פטור	פטור	NA
שמר שוחר	No	חייב	חייב	פטור	NA
שוכר	Yes	חייב	חייב	פטור	פטור
שואל	Yes	חייב	חייב	חייב	פטור

**43a) The Treasurer And The Moneychanger.**

Rav Huna’s rule about a moneychanger is challenged from a different Mishna.

	<p style="text-align: center;">Our Mishna</p> <p>If the money is loose, he is permitted to use the money. So, if the money gets lost, the moneychanger is חייב.</p> <p style="text-align: center;">Rav Huna’s rule</p> <p>The moneychanger is חייב even if it was an unavoidable accident אנס.</p>	<p style="text-align: center;">Mishna Me’ilah 6:5</p> <p>A treasurer deposits consecrated money with a moneychanger.</p> <ul style="list-style-type: none"> <li>• If the money is bound, the moneychanger may not use it. Therefore, if the moneychanger spent the money, the treasurer is פטור for its misuse. Afterall, the treasurer signaled the moneychanger not to use the money.</li> <li>• If the money was unbound, the moneychanger may use it, and therefore if the moneychanger spent the money, the treasurer is חייב for its misuse. Afterall, the treasurer signaled the moneychanger that he can use the money.</li> </ul>
<p>Rav Nachman points out a seeming contradiction to Rav Huna:</p>		<p>Rav Huna says that the moneychanger is חייב even if it was אנס. So, why does the second part of the Mishna say that the moneychanger spent the loose money? The moneychanger is responsible (and hence the treasurer is responsible) even if the moneychanger did not spend the money. He is responsible even for unavoidably acts.</p>
<p>Rav Huna resolution:</p>		<p>The Mishna says in the second part (with loose money) that the moneychanger spent the money because it said he spent the money in the first part of the Mishna.</p>

**43a) Mishna: Paying For An Object Whose Value Changed.**

When the value of an object changes, how much should be paid?

Our Mishna		
<p>A man gives an object to a <i>shomer</i>. The <i>shomer</i> does not take care of it and it gets destroyed. The value of the object changed. How much does the <i>shomer</i> have to pay the owner?</p>		
Beis Shammai	Beis Hillel	R' Akiva
<p>The <i>shomer</i> pays the loss. Whether the value of the object went up or down, the <i>shomer</i> pays the higher value.</p>	<p>The <i>shomer</i> pays the value of the object at its removal. (The Gemara will determine when this is.)</p>	<p>The <i>shomer</i> pays the value of the object at the time the <i>shomer</i> was brought to <i>bais din</i>.</p>

**43a) The Case Of The Stolen Barrel Of Wine.**

Rabbah describes a case of stolen wine and two possibilities of it being lost. He also gives reasons for these halachas.

	<p>Rabbah: A man stole a barrel of wine from another.</p> <ul style="list-style-type: none"> <li>• When he took the wine, it was worth 1 <i>zuz</i>,</li> <li>• When the wine was destroyed, it was worth 4 <i>zuz</i>.</li> </ul>	
How it was lost:	He broke the barrel or drank the wine.	The barrel broke on its own.
The halacha:	Thief must pay 4 <i>zuz</i>	Thief must pay 1 <i>zuz</i>
Reason:	<p>If he had not destroyed the barrel or drunk the wine, he could have returned them. The moment he destroyed it or drank it, he stole it. And we know from the following Mishna an important rule.</p> <p style="text-align: center;">Mishna Bava Kamma 9:1</p> <p>All thieves pay according to the time of the theft.</p>	<p>He did not do anything to the barrel. So, he owes from when he took it.</p>

**43a) “The *Shomer* Pays The Value Of The Object At Its Removal.”**

The Mishna reported the Beis Hillel said a *shomer* must pay from “the time of its removal.” The Gemara goes through several possible explanations of what Beis Hillel means.

First attempt:	Beis Hillel said the <i>shomer</i> pays the value at the “time of its removal.” This means the time that the object was destroyed.	
Problem with the first attempt:  Did the object go down or up in value?	<p>The object went down in value.</p> <p>This meaning is in opposition to the following.</p> <p style="text-align: center;">Mishna Bava Kamma 9:1</p> <p>All thieves pay according to the time of the theft.</p>	<p>The object went up in value.</p> <p>This meaning is the same as Beis Shammai’s opinion.</p>
Second attempt:	Beis Hillel said the <i>shomer</i> pays the value at the “time of its removal.” This means the time that the object was taken from the <i>shomer</i> .	
Inference:	This means that when the object increased in price from when it was taken from the <i>shomer</i> to when it was broken.	
	Beis Shammai	Beis Hillel
	Pay the value when it was destroyed.	Pay the value when it was taken from the <i>shomer</i> .
Problem with the second attempt:	<p>Rabbah: A man stole a barrel of wine from another. He broke the barrel or drank the wine.</p> <ul style="list-style-type: none"> <li>• When he took the wine, it was worth 1 <i>zuz</i>,</li> <li>• When the wine was destroyed, it was worth 4 <i>zuz</i>.</li> </ul> <p>He should pay the value when it was destroyed.</p> <p>This means that Rabbah is following Beis Shammai. This is no good.</p>	

There is a long continuation of this discussion in the Gemara.

**43b) Mishna: A Shomer Intentions To Be Negligent.**

Here the Mishna deals with the *shomer* intending to be negligent in taking care of the object.

Our Mishna	
The <i>shomer</i> (says that) he intends to be negligent.	
Beis Shammai	Beis Hillel
He is liable from the moment he expressed his intention to be negligent.	He is liable from the moment he is negligent. The <i>posuk</i> Shemois 22:7 אִם-לֹא שָׁלַח יָדוֹ, בְּמִלְאֲכַת רֵעֵהוּ “Determine whether the owner of the house has laid hands on the other person’s property.” Beis Hillel uses this <i>posuk</i> to teach us that only when the <i>shomer</i> lays his hand on it, is he in violation.
If the <i>shomer</i> tilted the barrel of wine, took out a <i>revi'is</i> , and it later broke, then the <i>shomer</i> is only responsible for the <i>revi'is</i> of wine.	
If the <i>shomer</i> lifted the whole barrel of wine, took a <i>revi'is</i> , and it later broke, then the <i>shomer</i> is responsible to pay for the whole thing because by lifting the barrel, he acquired it.	

**43b) A Shomer's Intentions To Be Negligent.**

The Gemara determines the reasons for the different opinions.

	Beis Shamai	Beis Hillel
	The <i>shomer</i> is liable from when he had the intention to be negligent.	The <i>shomer</i> is liable from when he was negligent.
The reasons for their opinions:	<p>The following <i>posuk</i></p> <p style="text-align: center;">Shemois 22:8</p> <p style="text-align: center;">עַל-כָּל-פֶּלֶא-דְבַר-פְּשָׁע</p> <p>“For every matter of negligence.”</p> <p>Beis Shamai says use the word דְּבַר as “speak”. So, when you speak your intention.</p>	<p>The following <i>posuk</i></p> <p style="text-align: center;">Shemois 22:7</p> <p style="text-align: center;">אִם-לֹא-שָׁלַח יָדוֹ, בְּמִלְאֲכַת רְעֵהוּ</p> <p>“Determine whether the owner of the house has laid hands on the other person’s property.”</p> <p>Beis Hillel uses this <i>posuk</i> to teach us that only when the <i>shomer</i> lays his hand on it, is he in violation.</p>
Questions:	Bais Shamai and Beis Hillel question each other on why the other <i>posuk</i> is needed when their <i>posuk</i> is already stated.	
Beis Hillel’s response:	This <i>posuk</i> teaches us something else. From this <i>posuk</i> we learn that a <i>shomer</i> is liable if he דְּבַר “tells” an agent to be negligent.	This <i>posuk</i> teaches us that the <i>shomer</i> is liable from when he was negligent.

**44a) The tilted barrel.**

The intention of tilting a barrel of wine is discussed.

The Mishna:	If the <i>shomer</i> tilted the barrel of wine, took out a <i>revi'is</i> , and it later broke, then the <i>shomer</i> is only responsible for the revies of wine.
A rule from Rabbah:	If the barrel later broke, he only pays for the <i>revi'is</i> . However, if the wine in the barrel spoiled/fermented or turned into vinegar, he pays for the whole barrel.
A reason:	Because the <i>shomer</i> opening the barrel and taking some wine, leaves some room in the container which causes (“arrow”) the rest of the wine to spoil.



**44a) The Lifted Barrel.**

The intention of lifting a barrel of wine is discussed.

The Mishna:	If the <i>shomer</i> lifted the whole barrel of wine, took a <i>revi'is</i> , and it later broke, then the <i>shomer</i> is responsible to pay for the whole barrel because by lifting the barrel, he acquired it.	
A rule from Shmuel:	When the Mishna said the <i>shomer</i> took wine, it does not only mean that he actually took wine. Rather, when he lifted the barrel and had the intention to take the wine, he was responsible.	
Another rule sometimes stated:		Unlawful use need not involve loss.
A possible difference of cases:	However, in this case, although there is no loss, he wants the <i>revi'is</i> . The <i>shomer</i> is storing it the barrel to keep it from spoiling. He is now a unlawful borrower and is liable.	Shmuel does not believe in “Unlawful use need not involve loss.”
Rav Ashi presents a comparable case:		A <i>shomer</i> is watching a purse. He lifts the purse but does not take out the coin. Is he חייב for the whole purse?
One possibility:	Only the barrel of wine will be negatively affected by taking out a <i>revi'is</i> .	However, the rest of the purse is not negatively affected by the desire to take out one coin. He is not חייב until he takes the coin.
Another possibility:		Or maybe being a <i>shomer</i> for the purse is different than being a shower for one coin. He really wants the coin but put it back into the purse because it is a better place to store it. In this case he is חייב.
Conclusion:	Taiku.	