An unpaid custodian and a borrower

שומר חנם והשואל –

Overview

תוספות will explain why the order of the four שומרים in this ר' אושעיא of ר' אושעיא does not match the order in which they are written in the תורה.

שומר חנם פטור מן הכל חוץ מן הפשיעה שואל חייב בכל חוץ ממתה מחמת מלאכה A שומר הנם exempt from paying for all losses the owner incurred except for those loses that were incurred due to (gross) negligence; while a שואל is liable for all losses except for the case where it died on acount of the work, for which he borrowed the object (animal).

- ונושא שכר חייב במקצת בגניבה ואבידה ופטור באונסין And a paid custodian is partially liable; he is liable for theft and loss and he is exempt from unavoidable accidents.

לכך נקט להו בזה הסדר ולא כסדר שנכתב בפרשה¹:

Therefore הי"ח, שואל, 'mentioned these custodians in this order (ש"ח, שואל, and not in the order which they are written in the פרשה פרשה (נושא שכר והשוכר), and not in the order which they are written in the ברייתא שוהל, שוכר), and then continues with the moderate (ש"ח, שומר(ים) which is the (השוכר).

Summary

In the שומרים the שומרים are mentioned beginning with the extreme and continuing to the moderate.

Thinking it over

- 1. Why however, did the ברייתא choose different methods how to order the four שומרים?!
- 2. If we assume that a שוכר is like a 2 "ש then why is he mentioned last?!

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 $^{^{1}}$ שמות [משפטים] כב, ו-יד.

² See previous תוספות ד"ה שלשה.