

## כאן שנה רבי אין השואל רשאי להשאיל –

### **Rebbee taught here; the borrower is not permitted to lend**

#### **OVERVIEW**

The משנה taught that if the husband told the שליח הגט, 'retrieve for me an object from my wife', the שליח may not appoint another שליח. From this ריש לקיש inferred that רבי in this משנה taught us the rule that a borrower (שואל) may not lend out (להשאיל) what he borrowed to someone else.<sup>1</sup> גמרא reconciles our גמרא with a seemingly contradictory גמרא.

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אפילו למאן דאמר בהמפקיד (בבא מציעא דף לו, א) שומר שמסר לשומר פטור<sup>2</sup> –

**Even according to the one who maintains in פרק המפקיד, a watchman who delivered what he was watching to another שומר, the first שומר is פטור if the item was destroyed, the reason is -**

שהרי מסרו לבן דעת דאין יכול לומר לו אין רצוני שיהא פקדוני ביד אחר<sup>3</sup> -

**That since he gave it over to a responsible person, therefore the owner cannot say to the original שומר, 'I do not want my deposit to be in the hand of another', but rather the שומר is פטור –**

replies: תוספות

נהי דלא מיחייב מכל מקום לכתחלה אין לו<sup>4</sup> לעשות:

**Granted that this מ"ד maintains that he is not חייב, nevertheless initially one should not do this; giving over a deposit to another.**

#### **SUMMARY**

One can maintain שומר פטור לשומר שמסר and that השואל רשאי להשאיל לכתחלה.

#### **THINKING IT OVER**

How can we compare the two cases; in our משנה if he gave the גט to another שליח and the second שליח took the object from the woman and lost it, the first שליח will

<sup>1</sup> He cannot make another שליח for perhaps the husband trusts only the original שליח.

<sup>2</sup> The גמרא there explains that this rule holds (according to this מ"ד) even if a שומר שכר transferred it to a שומר חנם and there was an אונס, the ש"ש is פטור.

<sup>3</sup> The question is how we can reconcile that opinion with this which ר"ל states here that כאן שנה רבי that one may not transfer a פקדון to someone else, and presumably he will be חייב for its loss.

<sup>4</sup> רבי merely teaches us that השואל רשאי להשאיל, but there is no indication whether he will be חייב or פטור, if he did it.

be פטור,<sup>5</sup> therefore in this case the husband is מקפיד that he should not give the גט to a שליח שני, since he will suffer a loss, however by שומר שמסר לשומר, the first שומר will be חייב (for whatever he is חייב as a שומר)<sup>6</sup> even if he gives it to a שני, so the owner does not care that much if he gives it over to another שומר! Why is there a contradiction?!

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<sup>5</sup> We cannot obligate him since he never took the item from the woman.

<sup>6</sup> This means if he was a שומר חנם he will be חייב for the פשיעה of the second שומר, and if he is a ש"ש he will be חייב for the גניבה ואבידה of the second שומר.

<sup>7</sup> See תפארת יעקב.