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Understanding Free Guardians

The second *perak* begins dealing with the burden of responsibility regarding *machatzit ha'shekel* collections that were sent from a city with a messenger and were lost or stolen in transit. The *Mishnah* differentiates between two scenarios: before and after *trumat ha'lishcha* – the time where some of the stored funds are transferred to the coin boxes as active funds. At this time these funds are separated on behalf of all stored, collected and to be collected funds such that the communal sacrifices purchased can be truly considered as being purchased for the entire nation. Consequently, after *trumat ha'lishcha*, even the money in transit is considered *hekdesh* and property of the *Beit Ha'Mikdash*.

With the above explanation in mind the *Mishnah* explains that if the money was lost after *trumat ha'lishcha* then the messenger is answerable to the treasurer of the *Beit Ha'Mikdash*, since it is already *hekdesh*. If he swears that he was not negligent in his task, then he is exempt from any repayment. Finally, as this money was already considered the property of the *Beit Ha'Mikdash*, the citizens are also exempt from contributing *machatzit ha'shekel* again to replace the lost funds.

If however the money was lost prior to *trumat ha'lishcha* then the messenger is answerable to the citizens who sent him. Similarly if he swears that he was not negligent in his task, then he is exempt from any repayment. The citizens however, would be required to contribute once again as the coins were never considered the property of the *Beit Ha'Mikdash*.

The *Yerushalmi* deals with the status of this messenger – is he a paid or unpaid guardian? The first assumption is that we are dealing with an unpaid guardian, since a paid guardian is responsible for a lost or stolen object whether or not he was negligent. *Rav Adda* however explains that the *Mishnah* could also be referring to a paid guardian, yet discusses extreme cases of loss or theft where even a paid guardian would not be held responsible, e.g. he was apprehended by armed bandits or the ship carrying the money sunk. (See also *Bava Metzia* 57-58)

Most *Rishonim* therefore conclude that whether the messenger was a paid or unpaid guardian and he swore that he was not negligent in his duty, the citizen would only be

required to replace the lost funds if e.g. the ship sunk **prior** to *trumat ha'lishcha*.

The *Rambam* (*Hilchot Shekalim* 3:8-9) however rules that if the messenger was an unpaid guardian, then the citizens would always be required to replace the lost funds irrespective of when the funds were lost. If after *trumat ha'lishcha* it is already considered the property of the *Beit Ha'Mikdash* why should they be required to give *machatzit ha'shekel* again?

In his commentary to the *Mishnah* the *Rambam* explains: "If they sent their coins with an unpaid guardian they are obligated to repay in all cases as they were negligent in sending it with him."

How do we understand this statement? If an unpaid guardian is a *halachically* qualified guardian, why are the citizens considered negligent? One would expect that since coins are considered the property of the *Beit Ha'Mikdash* as long as the guardian was not negligent in his duty, then the citizens should not be considered negligent in trusting him.

One could suggest a novel explanation based on an insight by HaRav Lichtenstein shlita regarding the difference between an unpaid guardian and any other guardian (See *Shiurei HaRav Lichtenstien – Bava Metzia HaShoel* 1). He explains that, for example, a paid guardian's responsibility of repayment in the case of loss or theft stems from expectations and requirements placed on guardians. He continues that a free guardian does belong under this banner explaining why he is exempt in the case of theft or loss. He is only obligated if he was negligent in guarding the item. This he explains, is not because he breached the laws pertaining to guardians in general, but rather because in his negligence he has committed an act which is similar (but not necessarily equivalent) to damaging. (See also *Rambam Schirut* 2:3)

Based on this, one could suggest that a free guardian is not a guardian in the formal sense. Furthermore, at the time they gave the money to the messenger, they were effectively free guardians for the *Beit Ha'Mikdash*. Handing the money to a free guardian would then be tantamount to handing it to no guardian at all – a clearly negligent act.

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Revision Questions

שקלים ב: א' – ד': ה'

- Were the change tables in each city allowed to convert the collected half *shekels* to other coins to lighten the load? (ב: א')
- What was the shape of the collection boxes? (א: א')
- If the coins collected from a particular city were stolen or lost in transit, when are the citizens required to replace the lost coins? (ב: א')
- If a person gave his friend a half *shekel* to give on his behalf, yet the friend went and gave it on his own behalf, when do we say that the friend has transgressed the prohibition of *me'ilah*? (ב: ב')
- What should one do if they contributed their half *shekel* from *ma'aser sheni* money? (ב: ב')
- Explain the debate between *Beit Shammai* and *Beit Hillel* about what to do with the money that is left over from a bunch of coins that were set aside for giving *machatzit ha'shekel*. (ג: ב')
- How does *R' Shimon* explain the different rulings of *Beit Hillel* regarding the left over coins for *machatzit ha'shekel* and left over coins for a *korban chatat*? (ב: ד')
- What is done with the left over coins that were separated for a: (ב: ה')
 - *Korban chatat*?
 - *Korban nedava*?
 - *Korban olah*?
 - *Korban mincha*?
 - *Korban shlamim*?
 - *Korban pesach*?
- How many times during the year would they refill the coin boxes? (א: ג')
- According to *R' Akiva* what else occurred during these dates? (א: א')
- How many coin boxes were there? (ג: ב')
- How big were the coin boxes? (ב: ג')
- What was special about the dress of the person responsible for refilling the coin boxes? (ג: ב')
- How would they authorise the person responsible for filling the coin boxes to begin work? (ג: ג')
- After filling the coin boxes, when and with what did they cover the coins remaining in the storeroom? (ד: ג')
- For which sacrifices was the money used? (א: ד')
- Was the money used for anything else? (א: ב')
- What was done with the leftover funds found in the storeroom? (ג: ד')
- What was done with the leftover funds found in the coin boxes? (Include all four opinions) (ד: ד')
- What was done with the leftover *ketoret*?

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
19 th February כ"א שבט	20 th February כ"ב שבט	21 st February כ"ג שבט	22 nd February כ"ד שבט	23 rd February כ"ה שבט	24 th February כ"ו שבט	25 th February כ"ז שבט
Shekalim 4:6-7	Shekalim 4:8-9	Shekalim 5:1-2	Shekalim 5:3-4	Shekalim 5:5-6	Shekalim 6:1-2	Shekalim 6:3-4

