

Does a Shomer Need to Make a Kinyan?

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Question: In the previous segment, we said that when someone puts his bag down in an airport next to someone else, the other person is not liable if he did not clearly accept to become a *shomer*. You said that there is also a second reason why he would be *patur*. What is that reason?

Answer: In addition to the halacha that one does not become a *shomer* if he does not accept responsibility to watch the item, there is a *machlokes Rishonim* if a *shomer* has to make a *kinyan*, – a proper act of acquisition, such as picking up the object, pulling it or bringing it into his property – in order to become liable in *hilchos shomer*. In the case of the laptop, the person never picked it up or moved it into his property; therefore, there was no *kinyan*, which means that even if he clearly accepted to watch the item, it would be a *machlokes Rishonim* if he becomes a *shomer* at all.

The general rule in every *machlokes Rishonim* is “*hamotzi m’chavero alav haraya*.” The *muchzik* (the party holding the money) is allowed to keep it unless the party that wants to remove the money from his possession has proof to their claim. For this reason, the Shach rules that the *muchzik* can say “*kim li*”, he holds like the opinion that he does not become a *shomer* without a *kinyan*, and he cannot be forced to pay.

I would like to mention this is true as long as the person watching the laptop is not being paid to do so, which would render him a *shomer chinam*. If he were being paid – for example, if the owner of the laptop handed him a dollar to watch his property – he would be a *shomer sachar*. In such a case, the prepayment of the money would be considered a “*kinyan kesef*”, an act of acquisition done with money, and if there was a *kabbalas shemirah*, the *shomer* would be liable.

In the case of a *shoel*, the usage of the object is also considered to be an act of acquisition. For example, if someone borrows a chair and sits on it, the Nesivos says that the act of sitting on the chair is a *kinyan*, which would make the *shomer* liable to pay.