

If Someone Borrows an Item From a Worker in His Home, Is He Liable If He Damages It?

**Rav Chaim Weg**

**Question:** Reuven gave his son his cell phone and the boy took the phone to the store. Later, he realized that he needed to make an important call, but he didn't have his phone. There was a frum electrician doing some work in his home, so he asked if he could borrow his cell phone. He agreed. While he was on the phone, he dropped it and cracked the screen. Does he have to pay for the damages?

**Answer:** There is a unique *gezeiras hakasuv* in *hilchos shomer* in a case of "*baalav imo*", i.e. when the owner of the item is working for the *shomer* at the time the item is given over, the *shomer* is *patur* from all liability for the item.

Although the Torah only says that about a *shoel*, a borrower, we also apply it to all *shomerim*. Furthermore, the halacha is that the same rule applies even in a case of negligence. If a *shomer chinam*, *shomer sachar*, or even a *shoel* is negligent in a case where the owner had been working for him at the time the item was taken, the halacha is that he would be *patur* even if the item is ruined directly due to his negligence.

What about our case of "*hezek b'shoge'eg*" where the *shomer* physically damaged the item unintentionally?

In such a case, most Poskim hold that the *shomer* would be *chayav*, even if the owner was working for him at the time of the loan. The exception is the opinion of the Raavid, who says that the rule of *baalav imo* exempts him from liability even if he damaged the item unintentionally.

In the case in question, since the electrician is working for the *shomer*, it would be a case of *baalav imo*. If dropping the phone would be considered a regular *peshia*, the majority opinion would be that he is not liable. However, it is very probable that dropping the cell phone would place him in the category of a "*mazik*" because he inadvertently damaged the phone, which would mean that he is obligated to pay for the phone according to most Poskim. The Raavid, however, would hold that he is *patur*, therefore a compromise should be worked out between the two parties.