

Shomrim Part IV

BA'ALOV IMO

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A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

BAALAV IMO:

The Torah tells us that if the owner of an item is working for the *Shomer* at the moment that the item is given over to his possession, the *Shomer* is exempt from liability no matter what subsequently happens to the item. He is *patur* from *geneivah*, *aveidah* and *ones*, and, according to the main *shitah* in the Gemara, even on negligence.

The halacha of *baalav imo* depends on whether or not the owner is working for the *Shomer* at the exact time that the item comes into his possession. It doesn't matter if he began then or if he had already been working for him before. It also makes no difference if the owner of the item is a paid employee or not. An exception would be if the owner is working for the benefit of the item – for example, he is helping to put a load onto an animal to make sure it isn't overloaded – the exemption would not apply.

IF A WIFE BREAKS HOUSEHOLD ITEMS:

The Rambam discusses what happens if a woman accidentally breaks household items, which technically belong to her husband. He says that according to halacha, she should be *chayav* because she is a *Shomer* on the items; however, there is a *takanah* that she cannot be made to pay, as this will create problems of *shalom bayis*. Either she will constantly be paying for things she breaks, or she will refuse to do household chores because she is afraid of breaking something and being held liable; therefore, there is a decree that she cannot be made to pay. The Magid Mishneh says that the source of this *takanah* is found in the Yerushalmi.

The Raavid disagrees and says that the wife is exempt from paying because her husband is working to support her and the family. Accordingly, even though she is a *Shomer*, this is a case of *baalav imo*.

The Mishnah L'Melech notes that, in this case, the woman actually broke the item. She is a *mazik b'shogeg*, an accidental damager. We thus see from the Raavid that in his opinion even an accidental *mazik* is exempt from liability in a case of *baalav imo*.

Since this is the Raavid's opinion, if such a case arises it will

be difficult to force a *Shomer* to pay, as he has the Raavid on his side and he can claim "*kim li*" that he holds like that opinion. At the very least, in the case of *baalav imo* where the *Shomer* inadvertently damages the item, he can force a compromise to be made.

The Avi Ezri writes that even according to the opinion that *baalav imo* exempts a *Shomer* from liability for *hezek b'shogeg*, that is only true in a case where the item was actually entrusted to him. This exemption cannot be applied in a case where someone damages an item that was not entrusted into his hands, even if the owner is working for the damager at the time that he broke it.

There is a big discussion about whether a communal worker is considered to be working for the community members. An example of this would be if someone borrows an item from a Hatzolah member while he is on call. According to many Poskim, the Hatzolah member is considered to be working for everyone in the community, which would mean that the rule of *baalav imo* would apply.

While the Gemara usually does not offer suggestions to help a person avoid liability, in this instance it does say that if a *Shomer* does not want to be responsible to pay for an item entrusted to him, he should ask the owner to give him a drink of water at the time that the item is being given over to him. If the owner is wise, he will tell the *Shomer* that he'll get him the cup of water after the item is given over to him.

SHOMER SHEMASAR L'SHOMER:

When someone gives his object to a *Shomer* to watch, he expects him, and only him, to be responsible for the item. He does not necessarily trust anyone besides him. If the *Shomer* cannot watch it anymore, for whatever reason, he has to go to a *bais din* to relinquish his responsibilities. He cannot simply pick another watchman to take his place. If he does give it over to someone else without permission, he is liable for any damages that occur to the object. This is certainly true if a *Shoel* lends the item to someone else and allows him to use it.

One interesting *halacha* is that if a *Shomer* gives the object he is watching to someone else, he is considered to be

negligent; however, if he can prove that the item was lost due to an oness, a *Shomer Chinam*, *Shomer Sachar* or *Socher* will not be liable, as this is not considered a *techilaso b'peshia v'sofo b'oness*.

An exception to the rule of *Shomer Shemasar L'Shomer* is the *Shomer's* wife and adult children. A person understands that when he gives his possession to another to watch, that individual may allow his wife or adult children to watch it on occasion, and he accepts that. Likewise, a person understands that when he gives his possession to a *Shoel*, that individual may allow his wife or adult children to use it. Accordingly, if someone lends his car to a man, it is permissible for him to allow his wife to drive it. Presumably, this is only true if the wife or adult child has a valid driver's license and knows how to drive well.

Another exception is a case of "*darko l'hafkid*." If it is known that the owner of the item generally trusts a certain person with his possessions, it would be permitted for a *Shomer* to entrust the item to that person. [The Shach is unsure if a *Shoel* is allowed to lend an item that he is borrowing to a person that is trusted as a *Shomer* by the owner. He wonders whether being trusted to watch also automatically makes the person trusted to borrow.] This exception only applies in a situation where we know that person is trusted for this item; however, if the owner only trusted that individual with a less valuable item or in a less dangerous circumstance, the *Shomer* cannot assume that he is trusted with a more valuable item or in a more difficult circumstance.

Additionally, we must know that the owner specifically trusts this individual. Even if this person is known to all as a more trustworthy person than the *Shomer*, the *Shomer* cannot assume that the owner trusts him.

This exception also applies in cases where it is obvious that someone other than the borrower will use the item. For example, if someone lends a car to a Rosh Yeshiva who never drives by himself, he obviously knows that his driver will be driving the car, and it is clear that he accepts that.

WHEN IS SHEMIRAH TERMINATED?

If a *Shomer* is given an item with no stipulated timeframe, he

retains his obligations of *shemirah* as long as the item is in his possession. If he is a *Shoel* or *Socher*, he may use the item as long as it is in his hands. If either party wants to terminate the agreement at any time, they may do so. The deal ends when the item is returned to the *reshus* of the owner.

If the item is borrowed for a specific length of time and a *kinyan* was made, the deal cannot be terminated until that time. If it is borrowed for a particular job or purpose, the owner cannot demand it back until that job is done. The *Aruch Hashulchan* does say that the borrower cannot take forever to do the job and, at a certain point, the owner can ask him to give it back already; however, generally speaking, it is in the *Shoel's* hands to complete the job before returning the object.

The *Shulchan Aruch* says that if a *Shomer* accepts to watch an item for a set period of time, he cannot force the owner to take it back early. This is an interesting *halacha* due to the fact a worker is usually permitted to back out of a job even in the middle of the day. Why is a *Shomer* any different?

The *Chasam Sofer* answers that a *Shomer* is permitted to back out of his "job", but he also accepted the responsibility to watch the item in his care. He cannot renege on that responsibility until the designated time.

If the owner asks for his item back before the designated time, he certainly has the right to do so; however, he may still be obligated to pay a *Shomer Sachar* the wages he was promised for the full amount of time.

The *Shulchan Aruch* rules that if a *Shoel* dies before the designated time, his children are still allowed to use the object until that time.

Once the designated time to return the object arrives, a *Shoel* is no longer allowed to use it. He also is no longer *chayav* for an oness; however, he is still liable for *geneivah* and *aveidah*. A *Shomer Sachar* is also downgraded after the designated time to return the object arrives and he is no longer obligated to do a *shemirah me'ulah* or to pay for *geneivah* and *aveidah*.

To watch the video or listen to the *shiur* given by the *Dayan*, visit: www.baishavaad.org/yorucha-topics

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