

Shomrim Part IV

BA'ALOV IMO

By Rabbi Chaim Weg - Rosh Kollel Zichron Gershon L'Dayanus

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

