



Volume 4. Issue 11

## It's Yours – You Take Care of It *Sho'el Be'Ba'alim*

There are four types of *shomrim* (guards) the *shomer chinam* (free), *sho'el* (borrower), *nosei sechar* (hired) and *socher* (renter).....the *sho'el* pays for everything. (*Bava Metzia* 7:8)

This *Mishnah* comes to give us an introduction and background to the cases that can occur when transferring other people's movable property. A person who has someone else's moveable property in his possession must fall under one of the above four categories.

A *sho'el* is someone who borrows an object from his friend. The *Mishnah* states that a *sho'el* is responsible if he loses the object or if it was stolen. In fact, the *Torah* obligates him to pay even for accidents (*ones*) because it is under his full responsibility having borrowed it at no cost. The *Sefer HaChinnuch* (60) writes that he is like a person who borrows money, where, if it was taken from him by force, he cannot get out of the loan by claiming an accident.

However, there is a specific case where the *Torah* tells us that a borrower can be *patur* from *Onsim*. This is a case where he borrows something and the owner worked with him (see *Shmot* 22:14). In fact the owner does not even have to be there at the time of the accident or breakage. As long as he was with him at the time of *she'eilah* – the borrower is *patur*.

The *Gemara* (*Bava Metzia* 96a) asks why the exemption of the owner being there depends upon the owner being with the *sho'el* at the time of *she'eilah*. Perhaps it should depend upon him being with the *sho'el* at the time of the accident, because it is at that moment when the *sho'el* would normally (when the owner is not present) become obligated to pay for the *ones*. For example, if one borrowed an animal and the owner worked with him at the time of the borrowing, perhaps one should only be *patur* if the owner was there at the time of death. The *Gemara* concludes that the time of *she'eilah* is more important, because it is at that time that the *sho'el* becomes obligated to feed the animal.

The *Chinuch* writes that the reason the borrower is *patur* is since the owner is there while the borrower begins using the object, he should watch his own property. However since the *Torah* did not want to detail how long constitutes the owner actually being there – they say that as long as the owner was there at the start of the transaction, the borrower is *patur*.

The *Ohr Ha'Chaim* (*Shmot* 22:14) asks a very interesting question involving the law mentioned above. What will happen when *Hashem*, the 'owner', asks us to return the object that we have 'borrowed' – i.e. the soul. Our souls are able to be broken (by not fulfilling certain *mitzvot*), and stolen (by following impure sources). At the end of our lives, the 'owner' will ask us to return His object in the same state as he had lent it out – a whole and pure soul.

We all know that *Hashem* is with us at all times. He nurtures, feeds and protects us throughout our lives. He is in fact watching over our souls at all times. Therefore, the *Ohr Ha'Chaim* wonders whether this *din* of "the owner being with the object" applies even in *Olam Haba*. Are we able to now claim that we would be *patur* from damages to the soul because the owner was with us the whole time?

The *Ohr Ha'Chaim* explains why this claim is false. There is a concept that any *tenai* (condition) that is made in a monetary case is upheld. The *Gemara* in *Bava Metzia* (94a) states that the owner of collateral can stipulate that the holder of the collateral can be held liable as a *shoel* (*chayiv* for *onsim*) rather than the usual *shomer chinam*. Any stipulation or condition that is agreed to by both parties will be upheld in a monetary case. That is the case we are dealing with here. *Hakodesh Baruch Hu* lends us our souls under the condition that we follow in His ways, and accept responsibility if we do not. We agreed to those conditions before we accepted the *neshama*; therefore we cannot turn around in *olam haba* and make a claim that we should be *patur* because the owner was with us at all times.

*Yehuda Gottlieb*

**Revision Questions**

בבא מציעא ו' ד' – ו' ט'

- In what case is the renter of an ox and plough obligated to pay if the plough broke? (ו' ד')
- When is the renter obligated to pay if the ox slipped while involved in threshing legumes? (ו' ד')
- If someone rented an animal to transport a product of a particular weight, can he use the animal to transport a different product of the same weight? (ו' ה')
- What type of guardian is a craftsman that was supplied with material by the customer? When does this change? (ו' ו')
- What type of guardian are people the guard each others items on alternating days? (ו' ו')
- Explain the debate regarding the type of guardian that one who is holding a collateral of a loan is considered. (ו' ו')
- What does *Abba Shaul* allow to be done with a collateral belonging to a poor person? (ו' ו')
- What is the law regarding a paid removalist that breaks the item while moving it? (ו' ח')
- What is the law regarding a case where an employer hires a labourer for a days worker but did not formalise a workplace agreement? (ו' ט')
- What did *R' Yochanan ben Matya* find problematic with the agreement his son made with his workers and who argue that it was fine? (ו' ט')
- Which employees may take food (by biblical right) irrespective of the local custom regarding feeding workers? (ו' ב')
- What limitation does *R' Yosi bar Yehuda* place on the law referred to in the previous question? (ו' ג')
- Regarding the previous questions, can the employee be selective with the food he takes? (ו' ד')
- What limitation did the *Chachamim* place on this right for the benefit of the employer? (ו' ד')
- Explain the debate regarding whether the employee can consume food of a value that is greater than his salary. (ו' ה')
- Can an employee forgo the “right of food consumption” for money? (ו' ו')
- How is this right affected in a field of *neta revai*? (ו' ו')
- What is different about a guards “right of food consumption”? (ו' ח')
- What are the four type of guardians and explain the differences between them? (ו' ח')
- What are the two opinions about what constitutes *ones* for an attack by wolves? An attach by dogs? (ו' ט')

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**Next Week's Mishnayot...**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
5 <sup>th</sup> August כ"א אב	6 <sup>th</sup> August כ"ב אב	7 <sup>th</sup> August כ"ג אב	8 <sup>th</sup> August כ"ד אב	9 <sup>th</sup> August כ"ה אב	10 <sup>th</sup> August כ"ו אב	11 <sup>th</sup> August כ"ז אב
Bava Metzia 7:10-11	Bava Metzia 8:1-2	Bava Metzia 8:3-4	Bava Metzia 8:5-6	Bava Metzia 8:7-8	Bava Metzia 8:9-9:1	Bava Metzia 9:2-3

