

BUSINESS WEEKLY

under the auspices of
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

ISSUE #101 / PARSHAS TZAV
FRIDAY, MARCH 30, 2012
7 NISSAN 5772

FOR INFORMATION ON
DEDICATING BUSINESS WEEKLY
IN YOUR COMMUNITY,
PLEASE EMAIL
director@businesshalacha.com

STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Mugged!

Mr. Eric Roth lived in Israel. "I'm flying to America next week," he told his neighbor, Shraga. "My niece is getting married!" "Mazal Tov!" said Shraga. "Do you want anything while I'm there?" Eric offered. "I need a new zoom lens for my Nikon camera," said Shraga. "It's hard to get that part here." "I'll try," said Eric. "How much does it cost?" "Between \$150 and \$200," said Shraga. "I'll give you money." That evening, he brought \$200 cash to Mr. Roth. "Do you want me to keep the money separate?" asked Eric. "I may prefer to use my credit card for the purchase and save the cash for other expenditures." "Either way is fine," said Shraga. "You can use the money if you want."

Mr. Roth put the money in his wallet. He wrote down the specifications of the lens that Shraga wanted. When Mr. Roth landed, he took a taxi to his sister's house. "The ride will cost \$40," said the taxi driver. "That's fine," Mr. Roth said. He opened his wallet and pulled out two of the \$20 bills that he had received from Shraga. The following day, Mr. Roth went shopping for the lens. As he turned off the main avenue and walked onto a side street, two men accosted him. One of them pulled a knife. "Gimme your money!" he ordered. Eric took out his wallet, shaking. The men grabbed the cash and ran off. Eric flagged down the next police car and reported the mugging. "There's not much we can do other than taking a description of the men and fingerprints

from the wallet," said the policeman. "If we should later catch the muggers, we can possibly charge them for this also." Mr. Roth was dazed by the experience and decided to cut his day short. As he headed back to his sister's house, he wondered, "What do I about the \$200 that Shraga gave me? Do I have to buy the lens with my own money?" That evening, Eric saw Rabbi Tzedek in shul. He related the whole story and asked, "Am I responsible for the money that was stolen from me in the mugging?" Rabbi Tzedek replied, "Since you requested permission to use the money for your own purposes and even used some of it for the taxi, you are responsible for the entire \$200." Rabbi Tzedek then explained. "An armed mugging is considered an oness, uncontrollable circumstance, for which only a borrower is responsible, not a shomer chinam (unpaid watchman) or shomer sachar (paid watch-

continued on reverse side

A Second Sponsor

Submitted by
G. M.

Reuven was in need of a loan. The local Gemach (free-loan fund) requires two guarantors, referred to in the loan document as arev kablan. Levi and I agreed to guarantee the loan for him.

When the loan came due, Reuven was unable to repay it. The administrator of the Gemach called me, and I told him that I am willing to pay half the loan. I see no reason that I should be liable to pay the entire amount, since there is a second guarantor,

Levi. The administrator insists that I repay the entire amount.

Q: Am I obligated to repay the entire loan?

A: There are two different categories of guarantors in halacha: arev and arev kablan. A standard arev is not obligated to repay the loan until the lender has exhausted all possible efforts to collect the loan from the borrower. If the lender did all that he could and

the borrower still did not repay, the lender may then demand payment from the guarantor. An arev kablan accepts a higher degree of responsibility for a loan. The lender may approach him to collect payment even without approaching the borrower first. For all intents and purposes, the arev kablan is considered the borrower. In your case, since you signed as an arev kablan, the Gemach has the right to ask you to repay the loan even without first ap-

continued on reverse side

FROM THE BHI HOTLINE

LEASELAND
Since 1991
Auto Leasing & Sales Inc.
(800)223-5327
info@leaseland.com

REDEEM YOUR AIRLINE MILES
AND CREDIT CARD POINTS
PEYD
It's your money, get PEYD for spending it!
646-801-PEYD
info@GETPEYD.com www.GETPEYD.com

YESHIVA.NET
Email only, or email plus just the sites
you need, and nothing else: 718-YESHIVA

Margaret Tietz
Nursing & Rehabilitation Center
Where Caring is Our Tradition

To place your logo here, email logo@businesshalacha.com

GET YOUR FREE SUBSCRIPTION TO BUSINESS WEEKLY - SEND AN EMAIL TO SUBSCRIBE@BUSINESSHALACHA.COM

man) (303:3). However, if a person is entrusted with money that he is allowed to use and uses it, he is considered a borrower and is fully responsible, even if lost through oness (292:7)."

"I used only \$40 of the money," argued Roth. "Why should I be responsible for the full amount?" "A number of authorities write that by using even a small part of the money, you are considered a borrower of the entire entrusted amount," replied Rabbi Tzedek. "The reason is that by spending some of it, you indicate readiness to use the money as your own (Nesivos 292:10; Pischei Choshen, Pikadon 5:17[63])."

"What if I hadn't used the money for the taxi?" asked Roth.

"That's a complex issue," answered Rabbi Tzedek. "When a person is entrusted with money in an open manner that implicitly indicates permission to use it, he is considered a shomer sachar because of the privilege of using the money, even if he did not use it. He is then responsible for regular theft, but not for armed

mugging. If the person already had the status of a shomer sachar, it is questionable whether he now becomes a borrower on account of the privilege to use the money (292:7; 267:25; P.C., Pikadon 1:[14]).

"However, if someone entrusted money and then gave explicit permission to use it," continued Rabbi Tzedek, "the Shach (72:31) writes that the guardian, whether a shomer chinam or shomer sachar, becomes fully responsible for the money as a borrower, even for circumstances beyond control. Other authorities disagree, but the Tummim (72:19) concludes that the dispute is only when the owner granted permission on his own. If the guardian initiated the request for permission, though, he is certainly liable. Here, you asked for permission to use the money; this is an additional reason to hold you liable (P.C., Pikadon 5:18)."

Mr. Roth thanked Rabbi Tzedek. The following day, he bought the lens with his credit card.

proaching Reuven. But there is another matter that must be addressed, an issue that applies even in a case of a regular arev where the lender failed to collect from the borrower: how do multiple areivim share the burden of repaying a loan? May the lender collect the entire amount from one guarantor, or do all of the guarantors share the burden of repaying the loan equally?

This topic is the subject of debate amongst halachic authorities (C.M. 132:3). In the opinion of some authorities, each guarantor is wholly responsible for the loan; the lender can choose to demand payment from any one of them. The essential definition of an arev is that he accepts responsibility for the loan, and if two people serve as areivim, they each become responsible for the full amount of money (also see Sema 77:3). Others disagree and maintain

that the lender may not collect from one guarantor when both are capable of repaying the loan. Since both guarantors knew that they were jointly guaranteeing the loan, it is assumed that each one accepted responsibility for only half the amount as long as the each is capable of repaying his half (see Shach 132:4, who seems to agree with this opinion. See also Ketzos 77:3).

Since the matter is subject to debate, the Gemach administrator cannot demand payment of the full amount from either guarantor, whether they are regular areivim or areveim kablanim. In the event that a Gemach wants to reserve the right to collect the full amount of the loan from any guarantor, it should be clearly written in the arev agreement that the Gemach has the right to collect jointly or severally from either guarantor (C.M. 132:3).

**PLEASE CONTACT OUR CONFIDENTIAL HOTLINE
WITH YOUR QUESTIONS & COMMENTS
877.845.8455 :: ASK@BUSINESSHALACHA.COM**

Shomrim: Guardians #1

Q: What are the basic rules of entrusted items?

A: There are four types of shomrim (guardians) for entrusted items: shomer chinam, shomer sachar, socher, and shoel (B.M. 93a).

A shomer chinam is a guardian who does not receive any payment or benefit for his service. He is responsible only for negli-

gence (p'shia), but not for theft or natural loss (C.M. 291:1).

A shomer sachar is a guardian who receives payment or benefit for his service. He is responsible for negligence, theft and natural loss (geneivah va'aveidah), but not for uncontrollable circumstances (303:2-3).

A socher is a guardian who rents an item. He is as responsible for the item as a shomer sachar, i.e. for negligence, theft and natu-

ral loss, but not for uncontrollable circumstances (307:1).

A shoel is a guardian who borrows an item without paying or giving benefit. He is responsible even for uncontrollable loss or damage (oness), and certainly for negligence, theft and natural loss. He is exempt only if the borrowed item died, broke or was damaged in the course of normal usage (meisa machmas melacha) (340:1).

MONEY MATTERS

SPONSOR

This week's newsletter has been sponsored in memory of

Mordechai ben Menachem Manus z"l
12 Nissan

Email sponsor@businesshalacha.com to reserve your week and receive **two free gifts**.



NEW RELEASE!

54 CHAPTERS

LEARN ONE CHAPTER EACH WEEK
AT THE SHABBOS-YOM TOV TABLE

ONLY \$10
Order by April 6th
and get
20% off

זכות רפואה שלמה לכוון
הרה"ג חיים ישראל בן חנה צירל

TO ORDER:
Go to www.thehalacha.com
Or call: **718-744-4360**

To support *Business Weekly* and the Business Halacha Institute, send your tax-deductible donation to
BHI · 1114 EAST 2ND STREET · BROOKLYN, NY · 11230

WWW.BUSINESSHALACHA.COM