

# MITZVOT 57, 58 & 60

## FOUR KINDS OF SHOMRIM

SHEMOT 22:6-14

כִּי־יִתֵּן אִישׁ אֶל־רֵעֵהוּ כֶסֶף אֹו־כֵלִים לְשֹׁמֵר וְגָנַב מִבֵּית הָאִישׁ אִם־יִמָּצָא הַגָּנֵב יִשְׁלַם שְׁנַיִם:

When a man gives money or goods to another for safekeeping, and they are stolen from the man's house—if the thief is caught, he shall pay double;

אִם־לֹא יִמָּצָא הַגָּנֵב וְנִקְרַב בְּעַל־הַבַּיִת אֶל־הָאֱלֹהִים אִם־לֹא שָׁלַח יָדוֹ בְּמִלְאֲכַת רֵעֵהוּ:

if the thief is not caught, the owner of the house shall depose before God that he has not laid hands on the other's property.

עַל־כָּל־דְּבַר־פְּשָׁע עַל־שׂוֹר עַל־חֲמוֹר עַל־שֵׂה עַל־שְׁלֵמָה עַל־כָּל־אֲבֹדָה אֲשֶׁר יֵאמַר כִּי־הוּא זֶה עַד הָאֱלֹהִים יָבֵא יָדָיו שְׁנֵיהֶם אֲשֶׁר יִרְשִׁיעַן אֱלֹהִים יִשְׁלַם שְׁנַיִם לְרֵעֵהוּ: (ס)

In all charges of misappropriation—pertaining to an ox, an ass, a sheep, a garment, or any other loss, whereof one party alleges, "This is it"—the case of both parties shall come before God: he whom God declares guilty shall pay double to the other.

כִּי־יִתֵּן אִישׁ אֶל־רֵעֵהוּ חֲמוֹר אֹו־שׂוֹר אֹו־שֵׂה וְכָל־בְּהֵמָה לְשֹׁמֵר וּמָת אֹו־נִשְׁבַּר אֹו־נִשְׁבָּה אֵין רָעָה:

When a man gives to another an ass, an ox, a sheep or any other animal to guard, and it dies or is injured or is carried off, with no witness about,

שְׁבַעַת יְהוָה תִּהְיֶה בֵּין שְׁנֵיהֶם אִם־לֹא שָׁלַח יָדוֹ בְּמִלְאֲכַת רֵעֵהוּ וְלִקַּח בְּעַלְיוֹ וְלֹא יִשְׁלַם:

an oath before the LORD shall decide between the two of them that the one has not laid hands on the property of the other; the owner must acquiesce, and no restitution shall be made.

וְאִם־גָּנַב יִגְנַב מֵעִמּוֹ יִשְׁלַם לְבַעְלָיו:

But if [the animal] was stolen from him, he shall make restitution to its owner.

אִם־טָרַף יִטָּרַף יִבְאֵהוּ עֵד הַטָּרְפָה לֹא יִשְׁלַם: (פ)

If it was torn by beasts, he shall bring it as evidence; he need not replace what has been torn by beasts.

וְכִי־יִשְׁאַל אִישׁ מֵעַם רֵעֵהוּ וְנִשְׁבַּר אֹו־מָת בְּעַלְיוֹ אֵין־עִמּוֹ שְׁלַם יִשְׁלַם:

When a man borrows [an animal] from another and it dies or is injured, its owner not being with it, he must make restitution.

אִם־בְּעַלְיוֹ עִמּוֹ לֹא יִשְׁלַם אִם־שָׂכִיר הוּא בָּא בְּשָׂכְרוֹ: (ס)

If its owner was with it, no restitution need be made; but if it was hired, he is entitled to the hire.

## SEFER HACHINUCH 57, 59 AND 60

The commandment on the court to judge the case of an unpaid guardian: To judge the case of an unpaid guardian, as it is stated (Exodus 22:6), "If a man gives his neighbor silver or vessels to keep, etc." And the explanation that comes for it (Bava Metzia 94b) is that this section is stated about an unpaid guardian. And therefore it exempted him from [liability for] theft. And the understanding of "unpaid" is that the [guardian] did not receive any wage for his guardianship from the [owner]. ... And [it] is practiced in every place and at all times. And a court that transgresses it has violated a positive commandment.

The commandment on the court to judge the case of one who takes a wage and of a renter: To judge the case of one who takes a wage and a renter. And the understanding of one who takes a wage is someone who guards a deposited item for a wage they give to him for guarding [it]; and [of] a renter is like its simple meaning, that he rented an animal from his fellow to ride or to do work, or he rented movable objects from him. And [if a] disagreement arose between the renter and the owner or between the owner of the deposited item and the one guarding it for a wage, it is a commandment upon us to adjudicate between them, as it is written in this section (Exodus 22:9), "If a man gives to another a donkey, an ox, a sheep or any animal to guard, etc."

The commandment to judge the case of the borrower: To judge the case of the borrower, meaning to say a man who borrows any object or animal from his fellow. And borrowing is without a wage at all, but rather, he is doing a kindness for him to do him this favor. And if a disagreement breaks out between them about the matter, we must judge the law that is stated about this [upon] them, as it is written in this section (Exodus 22:13), "And if a man borrows from his neighbor, etc." And regarding the law of the borrower, the Torah made [him] liable even for things of duress (out of his control) - as it is his responsibility: Since he borrowed it and did not put out any thing of his for it, behold he is like one who took out a monetary loan - who if something beyond his control occurred to him could not be exempt from [paying the] creditor, with the claim that it was duress. And about the matter that he is exempt if borrowing in the presence of the owners, we can say according to the simple understanding that the Torah did not make the borrower liable since the owner of the vessel or or the animal is with him - as since he is there, he will guard what is his.

## BAVA METZIA 93A, 93B

מתני' ארבעה שומרים הן שומר חנם והשואל נושא שכר והשוכר שומר חנם נשבע על הכל והשואל משלם את הכל ונושא שכר והשוכר נשבעים על השבורה ועל השבויה ועל המתה ומשלמין את האבידה ואת הגניבה

הווא רעיא דהוה קא ויע' חיותא אגודא דנהר פפא שריג חדא מינייהו ונפלת למיא אתא לקמיה דרבוה ופטריה אמר מאי הו"ל למעבד

§ The Gemara relates: There was a certain shepherd who was herding animals on the bank of the Pappa River, when one of them slipped and fell into the water and drowned. He came before Rabba, and Rabba exempted him from payment. Rabba stated the following reasoning in support of his ruling: What could he have done? A drowning of this kind is a circumstance beyond his control, and although a shepherd is a paid bailee he is exempt from liability in circumstances beyond his control.

הוא נטר כדנטרי אינשי אמר ליה אביי אלא מעתה על למתא בעידנא דעיילי אינשי הכי גמי דפטור אמר ליה אין גנא פורתא בעידנא דגנו אינשי הכי נמי דפטור א"ל אין

BAVA METZIA 94B-95A

THE FORMS OF LIABILITY OF THE FOUR TYPES OF SHOMRIM

INTRODUCTION

"1st Parshah" (Shemos 22:6-8) : Shomer Chinam(1)

"2nd Parshah" (Shemos 22:9-12) : Shomer Sachar(1)

"3rd Parshah" (Shemos 22:13-14): Sho'e'l

"4th Parshah" (Shemos 22:14) : Socher

	(A) SHOMER CHINAM	(B) SHOMER SACHAR	(C) SHO'EL	(D) SOCHER
1) PESHIAH (NEGLIGENCE)	Chayav (v. 8: "Al Kol Davar Pesha")(3)	Chayav (Kal v'Chomer from Shomer Chinam)(2)	Chayav (Kal v'Chomer from Shomer Chinam)(2)	Chayav (Kal v'Ch. from Sh. Chimam)(2)
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2) AVEIDAH(7) (LOST)	Patur(6)	Chayav(5) (Kal v'Chomer from Geneivah)	Chayav (Kal v'Chomer from Shomer Sachar)	Machlokes (4)
3) GENEIVAH (STOLEN)	Patur (v. 7)	Chayav (v. 11)	Chayav (Kal v'Chomer from Shomer Sachar)	Machlokes (4)
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4) SHEVURAH OR MESAH (BROKE OR DIED)	Patur(8) (Kal v'Chomer from Geneivah)	Patur (v. 9)	Chayav (v. 13)	Patur (v. 14)
5) SHEVUYAH(10) (TAKEN CAPTIVE)	Patur(8) (Kal v'Chomer from Geneivah)	Patur (v. 9)	Chayav(9) (v. 13: "v'Nishbar *O* Mes")	Patur (Kal v'Ch. from Shevurah u'Mesah)

He safeguarded them in the manner that people safeguard, and he is not required to do anything more. Abaye said to him: If that is so, in a case where he entered the city at a time when other people enter, as shepherds normally do, when their animals are grazing in a quiet and safe place, and a theft occurred at that hour, so too will you say that he is exempt? Rabba said to him: Yes. Abaye raised a further difficulty: If he slept a little at a time when people generally sleep, so too is he exempt? Rabba said to him: Yes.

אייתיביה אלו הם אונסין ששומר שכר פטור עליהן כגון (איוב א, טו) ותפל שבא ותקחם ואת הונערים והכו לפי חרב אמר ליה התם בחזני מתא

Abaye raised an objection to him from a baraita: These are the circumstances beyond one's control for which a paid bailee is exempt: For example, as it is stated in the verse: "The oxen were plowing, and the donkeys feeding beside them. And the Sabeans made a raid and took them away, and they have slain the servants with the edge of the sword" (Job 1:15). This teaches that only a robbery by an army is considered a circumstance beyond his control, but nothing less. Rabba said to him: There it is referring to city watchmen, i.e., professionals hired to watch over city property, who are exempt due to an occurrence on that scale, i.e., a military incursion.

אייתיביה עד מתי שומר שכר חייב לשמור עד כדי (בראשית לא, מ) הייתי ביום אכלני חורב וקרח בלילה א"ל התם נמי בחזני מתא אמר ליה אטו יעקב אבינו חזן מתא הוה זאמר ליה ללבן נטרי לך נטירותא יתרתא כחזני מתא

Abaye raised an objection to Rabba from another baraita: To what extent is a paid bailee obligated to safeguard? He is obligated to the extent that Jacob said to Laban: "Thus I was: In the day the drought consumed me, and the frost by night" (Genesis 31:40). Rava said to him: There too, the baraita is speaking of city watchmen, whose responsibility extends further. Abaye said to him: Is that to say that Jacob, our forefather, whose statement is the source of this halakha, was a city watchman? Rava replied: It means that Jacob said to Laban: I safeguarded for you an extra level of safeguarding, like that of city watchmen.

RAMBAM, BEIT HABECHIRA, 8:1

שמירת המקדש מצות עשה. ואף על פי שאין שם פחד מאויבים וליא מלקטים. שאין שמירוננו אלא כבוד לו. אינו דומה פלטרין שיש עליו שומרין לפלטרין שאין עליו שומרין

It is a biblical positive command to guard the sanctuary, even in the absence of fear of enemies or marauders, since by guarding the sanctuary honor is accorded to it. A palace that is attended by guards is quite unlike a palace that is not attended by guards.