



Volume 4. Issue 12

## More on Borrowing

We have learnt that a *sho'el*, a borrower, has a higher level of responsibility than all other *shomrim* (guardians). The *sho'el* is responsible for compensating the owner if the object is lost, stolen or destroyed in nearly all circumstances; even if it was an unavoidable accident beyond his control (*onsin*). Last week's issue discussed one exception, where if the lender was employed by the borrower at the time the article was borrowed, then the borrower is not responsible for any damage it endures. There is however one other exception. Even though normally the borrower is responsible if the object is destroyed no matter the cause, if it is destroyed during normal use by the borrower, he is not liable (*Bava Metzia* 96b). We shall analyse why.

The *Ramban* (s.v. *ha de'amrinan*) explains that indeed a *sho'el* is liable for all *onsin*. The exemption here however is due to the negligence on the part of the lender for providing an object that cannot withstand its desired use.

The *Rashba* explains the exemption also comes from the lender. He however explains that it is not negligence but rather that the lender forgoes such damage. He explains that when someone lends another an object, he expects that the object will be subject to wear-and-tear under its normal use. If, for example, the lent animal dies under normal use, it is part of this wear-and-tear the lender accepted.

When the *Rambam* (*She'eilah U'Pikadon* 1:1) however mentions this exemption he makes no reference to the need for an exemption on the part of the lender. HaRav Lichtenstein explains that *Rambam* understands that the reason why the *sho'el* is not liable is because that situation falls outside the boundaries of a *sho'el's* responsibility. (According to this understanding, the exemption is

comparable to the exemption enjoyed by a paid-guardian in the case where the animal dies naturally.)

HaRav Lichtenstein explains that these different approaches are indicative of the different understandings of the overall responsibility of a *sho'el*.

The *Rashba* (*Bava Metzia* 36:) explains that the high level of responsibility is because since in this arrangement the borrower is the only one enjoying any benefit, the *Torah* made it as if it is his. In other words it is as if he has a full acquisition on the object and therefore bears full responsibility. According to this view, we can appreciate the opinions of the *Ramban* and *Rashba*; there is a need for an explicit exemption on account of the lender to explain why the lender is exempt if it is destroyed under normal use.

HaRav Lichtenstein explains that there is another way to understand the *sho'el*. In cases of *onsin*, the *shomer* cannot be considered negligent in his duty as a guardian. There is certainly no guilt on the *shomer's* part. Nonetheless a *sho'el* is liable. He explains that such concepts are found in the world of insurance policies. When an insurance company pays a claim, it is not because it was responsible for the loss, but rather because of the contract it agreed to at the signing of the policy. Similarly a *sho'el*, when he borrows an item, the *Torah* places on him responsibilities beyond the expectation of a normal guardian. According to this view we can appreciate the opinion of the *Rambam* above. There is no need for an explicit exemption. Instead the exemption of destruction under normal use is simply because it is outside the scope of the "policy" which the *Torah* set out.

David Bankier

### Revision Questions

בבא מציעא ז' – ט' – ג'

- If an animal in the hands of a *shomer* dies, when is it considered *ones*? (ז': ט')
- If an animal, in the hands of a *shomer*, falls of a cliff when is it not considered *ones*? (ז': ז')
- Can a *shomer* stipulate with the owner to change the level of responsibility? (ז': ז')
- What are the three cases of an invalid condition, and what is the law if one makes these conditions? (ז': ז')
- What is the exceptional case where a *sho'el* is exempt if the borrowed animal dies and what is the source of this law? (ז': ז')
- What is the law if a person borrowed an animal from someone and also rented this animal (for a different time) and the animal died and: (ז': ז')
  - Neither know when the animal died?
  - The lender claims it died during the time it was borrowed, and the renter claims it died during the time it was rented?
- Regarding the previous question, in what cases do we say the renter is *chayav* and when do we say he is *patur*? (ז': ז')
- If an animal was sent to the borrower by means of a *shaliach*, and it dies in transit, when is the borrower *chayav* and when is he *patur*? (ז': ז')
- What complication is raised in a case where a *kinyan chalipin* is performed exchanging a cow for a donkey and what is the law? (ז': ז')
- What is the law regarding a dispute between a buyer and a seller regarding which field was sold? (ז': ז')
- What is the law if *Reuven* sold *Shimon* his olive trees for him to cut down and use as wood, yet *Shimon* delayed and the trees grew olives and now each party wishes to claim ownership? (ז': ז')
- What other case is similar to the one in the previous question? (ז': ז')
- What is the law regarding when a tenant can remove an occupant if they did not initially fix a rental period if: (ז': ז')
  - The property is in the city?
  - The property is in a village?
- Regarding the previous question, is it different if it was a commercial property? (ז': ז')
- What may a landlord provide for his tenant? (ז': ז')
- When is the advent of a leap year advantageous to the tenant and when is it to the benefit of the landlord? (ז': ז')
- What responsibility is place on the landlord if the house collapses during the rental period? (ז': ז')
- What does it mean if someone is "*mekabel*" a field from another person? (ז': ז')
- What dictates the terms of such an arrangement? (ז': ז')
- If the nature of a field changes, when can a *choker* renegotiate the terms? (ז': ז')
- What is the law if an *aris* sits back and does not engage in any field work? (ז': ז')

### Local Shiurim

**Sunday -Thursday**  
Between mincha & ma'ariv  
Mizrachi Shul

**Friday & Shabbat**  
10 minutes before mincha  
Mizrachi Shul

**Audio Shiurim on-line!**

- [613.org/mishnah.html](http://613.org/mishnah.html)
- [www.shemayisrael.com/mishna/](http://www.shemayisrael.com/mishna/)

[www.mishnahyomit.com](http://www.mishnahyomit.com)

### Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
12 <sup>th</sup> August כ"ח אב	13 <sup>th</sup> August כ"ט אב	14 <sup>th</sup> August ל' אב	15 <sup>th</sup> August א' אלול	16 <sup>th</sup> August ב' אלול	17 <sup>th</sup> August ג' אלול	18 <sup>th</sup> August ד' אלול
Bava Metzia 9:4-5	Bava Metzia 9:6-7	Bava Metzia 9:8-9	Bava Metzia 9:10-11	Bava Metzia 9:12-13	Bava Metzia 10:1-2	Bava Metzia 10:3-4

