



Buying on Consignment

רפואה שלמה הרב מנחם בן חנה

Buying from jewelers:

Case: Many times, people will have a local jeweler bring them pieces of jewelry, in which they can show their spouse, what she likes he will keep and what she doesn't like he will return.

What is their level of responsibility, does it matter if she liked it or not?

What if the item gets stolen or lost?

What if the person gets held up at gun point. Is he responsible?

Buying on consignment

Many sellers main not be purchasing the item until after it sells, what is their level of responsibility before it sells?

How about a store that has all different items on consignment and a fire breaks out will they be held responsible?

Repair or craftsman

What level of responsibility does a watch, shoe, bicycle repair have. How about if he notified you the item is done, and you delayed picking it up?

How about if one gives a jeweler diamond to set and he loses them, is the jeweler held responsible?

The obligations of the four types of Shomrim:

	Shomer for free	Paid shomer/ renter	Borrower
Negligent	Responsible	Responsible	Responsible
Stolen or Lost	Exempt	Responsible	Responsible
Mishap	Exempt	Exempt	Responsible
Died during work	Exempt	Exempt	Exempt

מתני' כל האומנין שומרי שכר הן וכולן שאמרו טול את שלך והבא מעות שומר חנם

MISHNA: All artisans and laborers who take raw materials to their homes **are** considered **paid bailees** for those items until they return them to the owner. **And** with regard to **all those who said** to the owner: I finished the work, and therefore **take** what is **yours**, i.e., this item, **and bring money** in its stead, from that point on each of them is considered **an unpaid bailee**.

Question in order to be considered a paid watchman he has to get paid to watch, the artisan is getting paid to do a service where is his payment to watch?

Also why if he says you can pick it up and pay later does he turn into a non paid watchman?

The insurance to know he will get paid:

בההיא הנאה דתפיש ליה אאגריה דלא בעי למיעל ולמיפק אזוזי הוי עליה ש"ש

Through that benefit that the skilled laborer receives from the fact **that he holds** onto the item **so that he is not required to go in and go out for his money, he becomes a paid bailee over** the item.

הלוהו על המשכון שומר שכר

One who lent to another based **on collateral** is a **paid bailee** for the collateral.

בבא מציעא דף פא

יְהִלֻּקְחָה כָּלִים מִבֵּית הָאוֹמֵן לִשְׁגָרָן לְבֵית חֲמִיו וְאָמַר לוֹ אִם מִקְבִּלִין אוֹתָן מִמֶּנִּי אֲנִי נֹתֵן לָךְ דְּמִיָּהּ וְאִם לֹא אֲנִי נֹתֵן לָךְ לְפִי טוֹבַת הַנָּאָה שְׂבָהָן וְנֶאֱנָסוּ בַּהֲלִיכָה חַיִּיב בַּחֲזִירָה פְּטוּר מִפְּנֵי שֶׁהוּא כְּנוֹשֵׂא שֶׁכֶר הִיא הוּא גִבְרָא דּוֹבִין לִיה חֲמֵרָא לְחִבְרִיהָ א"ל קָא מִמַּטִּינָא לִיה לְדוֹכְתָא פְּלוּנִי אִי מְזוֹדְכְנָא מוֹטָב וְאִי לֹא מִהֲדֻרְנָא לִיה נִהְלִיךְ אוֹל וְלֹא אוֹדְכְנָא וּבִהְדִּי דְקָא אֲתָא אֲתָנִים אֲתָא לְקַמִּיָּה דְרַב נַחֲמָן יְחִיבִיהָ אִתִּיבִיהָ רַבָּה לְרַב נַחֲמָן נֶאֱנָסוּ בַּהֲלִיכָה חַיִּיב וּבַחֲזִירָה פְּטוּר מִפְּנֵי שֶׁהוּא כְּנוֹשֵׂא שֶׁכֶר א"ל יְחִזְרָה דִּהְיָ הִלִּיכָה הִיא מֵאִי טַעֲמָא סָבְרָא הוּא בַּחֲזִירָתוֹ אִילוּ אִשְׁכַּח לְזוֹכְנִיָּה מִי לֹא זָבְנָה: שְׁמוֹר לִי וְאִשְׁמוֹר לָךְ שׁוֹמֵר שֶׁכֶר: וְאִמָּאִי הִשְׁמִירָה בְּבַעֲלִים הִיא

The Gemara cites support for Ameimar's hypothesis:

הלוקח — It was taught in a Baraisa in accordance with Ameimar. תניא כוותיה דאמימר לשגרן לבית — If SOMEONE BUYS UTENSILS FROM THE SHOP OF A CRAFTSMAN חמיו — AND HE SAYS TO [THE CRAFTSMAN]: ^[16] ואמר לו — "IF THEY ACCEPT THEM FROM ME, אני נותן לך דמיהן — I WILL PAY YOU THEIR full PRICE; ואם לאו — BUT IF NOT, שבהן — I

WILL return them and PAY YOU an amount CORRESPONDING TO THE BENEFIT I derive FROM THEM."^[17] ונאנסו — He took the utensils, AND then THEY WERE UNAVOIDABLY [DESTROYED]. The law is: בהליכה חייב — If they were destroyed ON THE WAY THERE, HE IS OBLIGATED to pay the seller the full price.^[18] בחזרה פטור — But if they were destroyed ON THE WAY BACK, HE IS NOT OBLIGATED to pay the full price, מפני שהוא בנושא שקר — SINCE HE IS then LIKE A PAID *SHOMER*.

^[19] This Baraisa rules that on the way back he is a paid, rather than an unpaid, *shomer*. Evidently, this is because he had received some benefit from the utensils he is now safeguarding for the owner. Thus we see, as Ameimar asserted above, that one who safeguards an article after having received some benefit from it is considered a paid *shomer*.

^[20]

16. He is sending them as a gift to his *arusah* [his betrothed, who is still living with her family] ([Rashi](#)). However, he is not sure whether she wants these utensils, and so he stipulates the provision that follows.

17. Even if his *arusah* decides not to accept the utensils, the purchaser will still have benefited from them, since his gesture will have been appreciated. Accordingly, he tells the seller that in the event that the utensils are returned, he will pay the value of this benefit ([Rashi](#)).

The purchase is thus a conditional one: If the utensils are accepted, he will pay for them in full; if they are not accepted, he will return them, and pay only for the benefit he derives from them.

18. If something happens to the utensils while they are on the way to his *arusah*, even due to factors beyond his control, he is obligated to pay the seller in full. When someone buys an item for an agreed-upon price with an option to return it under certain circumstances, then he decides to return the item, he is treated as having purchased it. Accordingly, if the item is lost or damaged before that point, he must pay the seller even if the mishap was due to factors beyond his control ([Rashi](#), from [Bava Basra 87b](#); cf. [Ran to Nedarim 31a](#) [ד"ה אמר שמואל](#)).

19. If the utensils are not accepted, and while he is returning them to the seller they are unavoidably destroyed, he is not obligated to pay for them. Once it becomes clear that the purchase is not going to be consummated, he ceases to be treated as a purchaser, and is instead considered a paid *shomer*, who is not liable for unavoidable accidents.

20. The benefit that the purchaser derived from the utensils was that his gesture was appreciated by his *arusah's* family. Although he pays for this benefit, the fact that he derived benefit from the objects causes him to be classified as a paid *shomer*. It follows then that a borrower, who did not even pay for the benefit he derived from the lender's property, certainly assumes the liability of a paid *shomer* when the term of the loan expires ([Rashi](#)).

The following incident qualifies the practical implications of the preceding Baraisa:

אמר. A certain person sold a donkey ^[20a] to his fellow. לחבריה היה חמרא דובין ליה חמרא לחבריה — [The purchaser] said to [the seller]: ליה לרובתא פלוני: “I am taking it to such-and-such a place in order to sell it there. מוטב אי מזרבנא מוטב — If it gets sold, fine; ואי — אול ולא אורבנא ^[21] but if not, I will return it to you.” [The purchaser] went to the specified place, but [the donkey] did not sell. He therefore set out on his way back to the seller to return the donkey. ובהדי דקא אתא אתניס — As he was coming back, [the donkey] was unavoidably [destroyed]. אתא לקמיה דרב נחמן — He came before Rav Nachman for a ruling. חייביה — Rav Nachman obligated [the purchaser] to pay for the donkey.^[22]

Rav Nachman's ruling is challenged:

אִיתִיבִּיהָ רַבָּה לְרַב נַחְמָן — Rabbah challenged Rav Nachman from the Baraisa quoted above: נָאֲנָסוּ — Where [THE UTENSILS] WERE UNAVOIDABLY [DESTROYED]: בְּהַלִּיכָהּ חַיִּיב — If they were destroyed ON THE WAY THERE, HE IS OBLIGATED to pay for them in full; וּבַחֲזָרָה פָּטוּר — BUT if they were destroyed ON THE WAY BACK, HE IS NOT OBLIGATED to pay the full price, מִפְּנֵי שֶׁהוּא — כְּנוֹשֵׂא שֶׁכֶּר — SINCE HE IS then LIKE A PAID *SHOMER*.^[23] — ? —

Rav Nachman responds:

— This one's returning is treated like going. — Rav Nachman said to Rabbah: חזרה דהאי הליכה היא — אָמַר ליה — What is the reason? מַאי טַעמָא — סִבְרָא הוּא — It is simple logic. — On his way back, if [the purchaser] would have found someone to whom to sell [the donkey], would he not have sold it? [24]

21. Thus, the purchase of the donkey was conditional. According to the Baraisa above (about one who bought a gift for his *arusah*), it would be expected that on his way to the place where he intends to sell the donkey, the purchaser should be liable even for unavoidable accidents; but on his way back, he should be considered a paid *shomer*, who is not liable for unavoidable accidents.

22. Rav Nachman ruled that the purchaser was liable to pay even though the unavoidable mishap occurred on his way to return the donkey to the seller. This seems contrary to the ruling of the Baraisa above (see [note 21](#)) and is immediately challenged by Rabbah.

23. Likewise, the purchaser of the donkey should be treated like a paid *shomer* and hence be exempt from liability for the unavoidable loss of the donkey on his way back to the seller. Why then did Rav Nachman rule that he is liable to pay?

24. The purchase of the donkey was to be consummated if the purchaser could sell the donkey. Therefore, as long as the purchaser is still trying to sell the donkey, the sale remains in force. It is only when the purchaser gives up any attempt to sell it that he ceases to be deemed a purchaser and becomes a paid *shomer*. Hence, even after the purchaser started to make his way back to the seller to return the donkey, he is still considered a purchaser, because if he would have found a buyer on his way back, he would surely have sold it to him.

25. And is therefore liable even for theft and loss [that are not due to negligence] (*Rashi*; see [80b note 20](#)).

Once he decides to purchase it, one does not have to make another kinyan (act to acquire):

רש"י:

ונאנסו בהליכה חייב - דהואיל וקצץ דמיהן ומשכן לשם לקיחה הרי הם לקוחין בידו עד שידע שאינה לקוחה והכי נמי אמרינן בהמוכר את הספינה (ב"ב דף פז:): אמר שמואל הלוקח כלי מן האומן על מנת לבקרו ואם אין בו מום יקחנו ונאנס בידו חייב והוא דקיצי דמיה: