

# BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



## CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

### REMAINING BOOKCASE

Mr. Green owned a rental apartment. His current tenant was moving out; a new tenant was slated to move in the following month.

"Please make sure to remove all your belongings when you leave," Mr. Green instructed his tenant.

"I'm moving most of the stuff this week," replied the tenant. "However, I have one bookcase of *seforim* that I can't move now, and will move next week."

A few weeks passed, but the bookcase and *seforim* remained in the apartment.

The new tenant moved his belongings in. "There's a bookcase sitting in the apartment," he told Mr. Green.

"I know," Mr. Green apologized. "It's from the previous tenant. He was supposed to remove it a few weeks ago."

"I'd like to set up my own bookcases," said the new tenant. "It's in my way!"

Mr. Green tried contacting the prior tenant, but without success.

The new tenant lost patience. "If he doesn't come take his bookcase soon," he said, "I'm just going to cart it outside and let him get it from the street! I'll donate the *seforim* to a yeshivah!"

"I'm not sure you can do that," said Mr. Green. "If you leave the bookcase outside, it will get ruined by the rain and likely taken. And what right do you have to give his *seforim* away?"

"Then what do you suggest?" asked the tenant.

"I'll continue to try contacting him," replied Mr. Green. "If I can't reach him, I'm not sure what to do."

"Please try," said the tenant. Meanwhile, he called Rabbi Dayan and asked:

"If Mr. Green doesn't reach the previous tenant, can I leave his bookcase outside?"

"The *Gemara* (B.M. 101b) tells of a person who tricked a woman into allowing him to store wine in her property," replied Rabbi Dayan. "Because he acted deceitfully, the woman was vindicated in removing the wine at the owner's expense and leaving it outside" (C.M. 319:1).

"Rambam extends this *halachah* to one who stored his items in another person's property without permission. However, other *Rishonim* write that unless the owner acted deceitfully, the items cannot be removed to a place prone to loss" (Sma 319:1; Aruch Hashulchan 319:3; see also Pischei Teshuvah 319:1 citing Chavos Yair #165).

### DID YOU KNOW?

Earning interest on a loan for the days of Shabbos and Yom Tov can be considered schar Shabbos

Ask your Rav or email  
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for guidance and solutions.



## BHI HOTLINE

לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

### LIABILITY FOR LOSS

**Q:** I was waiting in a bus stop, and someone I know walked up and asked if I was going to a certain neighborhood. I said that I was, and he asked if I could take a parcel of documents to his brother, who was in that neighborhood. I gladly agreed.

When I reached my destination, I grabbed all of my packages from the luggage compartment beneath the bus. As it rumbled away, I immediately realized that I had left the parcel of documents on the bus. I called the bus company many times to try to retrieve it, but they claimed that they hadn't found the package and said they had no way to help me.

When I called the sender and informed him of my mistake, he told me that those documents were worth \$1,000, which I would now have to pay him. I was shocked — I had no idea that the parcel I agreed to take was so valuable.

Does the fact that I forgot the parcel make me liable for the value of the documents?

I also suspect that this person is exaggerating and that the documents aren't worth nearly that amount. Am I required to believe his claim?

**A:** A *shomer* (guardian) is not required to compensate the owner of the object he is guarding for more than the amount he thought the object was worth, because his liability is limited to the value for which he accepted responsibility (*Shulchan Aruch*, C.M. 291:4). Therefore, if someone gave a *shomer* a gold coin, but claimed that it was silver because he was worried that if he said it was gold the *shomer* wouldn't agree to guard it, the *shomer's* liability is limited to the value of a silver coin.

The Maharshal (*Yam Shel Shlomo*, B.K. 6:44) writes that this is true only if the owner of the object deceived the *shomer*. But if the owner did not tell the *shomer* how much the item was worth, and the *shomer* accepted responsibility for it, he is responsible for the full value of the object, regardless of how much he thought it was worth.

The *Shach* (72:40) writes, however, that this *halachah*



## CASE FILE

"In our case even more so, the bookcase was brought in with permission, but the rental lease expired. Rav Moshe Feinstein (C.M. 2:56) was asked about a similar case by a Rav who allowed an *esrog* seller to store thousands of *esrog* boxes in his basement for two months. Three years passed and the Rav needed the basement space, but he didn't know the *esrog* seller's address to contact him.

"Rav Moshe writes that the Rav is not considered a *shomer aveidah* on the boxes, since the owner should arrange to take them. Furthermore, although he was a guardian for the two months, he is no longer so, since he previously told the owner to take the boxes" (see C.M. 304:6 and *Shach* 306:2).

"Nonetheless, Rav Moshe rules that the Rav is not allowed to actively damage the boxes by putting them outside in a place prone to theft. He suggests that even according to the Rambam – and even in cases of deceit or without permission – if the owner is not local to collect his items from the street, they cannot be left there prone to loss without notifying him first of this. *Pis'chei Choshen* (*Pikadon* 1:[63], 7:[6]) similarly writes that when items were stored with permission and left beyond the time, they cannot be removed to the street.

"Nevertheless, Rav Moshe allowed the Rav to sell some of the boxes to rent storage space and cover moving costs, as *Shulchan Aruch* writes.

"Alternatively," concluded Rabbi Dayan, "you can transfer responsibility of the item to *beis din* or sell it on behalf of the owner" (C.M. 292:15, 293:3).

**Verdict: A tenant who did not vacate his furniture, should be notified to take it. Otherwise, it should not be disposed of but can be stored at the tenant's expense.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

### MONEY MATTERS

*Dayanim* (Judges) #1

**Har, Mitzvah of Appointing Dayanim**

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' ח' בת ר' שמואל חיים ע"ה

### Q: What does the mitzvah of appointing *dayanim* entail?

A: There is a *mitzvah* to appoint official *dayanim* as needed for *beis din*, as it says: "Judges and officers you shall appoint in all your cities" (*Devarim* 16:18).

We further derive from the verse, "that you shall place before *them*" (*Shemos* 21:1), the need to appoint *dayanim semuchim*, who were ordained in an unbroken chain from Moshe Rabbeinu. We no longer have this nowadays (*Sma* 1:9).

In Eretz Yisrael, there is a *mitzvah* to appoint *dayanim* for each tribe, each region, and each city. Outside of Israel, there is no need to appoint in each city, only each region. Some write that there is no requirement outside of Israel (*Makkos* 7a; Ramban *Devarim* 16:18; Tur, C.M. 1; *Sma* 1:1).

There is a further requirement to establish a large Sanhedrin (High Court) of 71 *dayanim* in the Temple compound (*Lishkas Hagazis*) and a small Sanhedrin of 23 *dayanim* in each large city (Rambam, *Sefer Hamitzvos* #176).



## BHI HOTLINE

depends on the type of object the owner gave the *shomer*. Only if that type of object is generally of considerable value, then the *shomer* accepts responsibility for the full value. But if the object is generally of minimal value, then the *shomer* is not liable for more than that amount.

In your case, since a parcel of documents could be worth a lot, according to all opinions you would be liable for their value.

The *poskim* debate, however, whether forgetting something is considered negligence (see *Divrei Geonim*, 99:10, *Mishneh Berurah*, *Shaar HaTziyun* 433:14, and *Kovetz Beis Aharon v'Yisrael* 94, p. 96).

The nature of the forgetfulness would also make a difference.

If a *shomer* forgot where he put the object he agreed to safeguard, that is considered serious negligence, because he should have created some sort of reminder (C.M. 291:7).

If a *shomer* forgot about the object because he got distracted by any sort of emergency, it would not be considered negligence (*Mabit* 3:133, cited *Shach* 291:20).

In your case, placing the parcel in the luggage compartment is a normal place to guard it when riding on the bus. Leaving something behind in the luggage compartment is quite common, but because it is common, you should have made some sort of mental note to remember to take it.

But even if you were negligent, we must consider another aspect of this *she'eilah*.

The Torah limits liability of a *shomer* to objects that have inherent monetary value (*gufo mammon*). This means that if a document doesn't have inherent value, but merely enables the holder to obtain money — a check, for instance, or a contract — according to many *poskim*, a *shomer* is not liable even if he was negligent in guarding it (*Shulchan Aruch* 301:1 and 66:40, with commentaries). A *shomer* who lost such a document would therefore be entitled to claim "*kim li*" (see BHI issue #473) and absolve himself of payment (*Pis'chei Teshuvah* 301:4 and *Erech Shai* 66), although he might still be obligated to pay *latzeis yedei Shamayim* (to avoid being held to account in Heavenly judgment; see *Imrei Binah*, *Hilchos Pesach* 5; cf. Business Weekly issue #292, where we cite opinions that there isn't even an obligation *latzeis yedei Shamayim*).

If the parcel contained cash — which most *poskim* consider *gufo mammon* — the *shomer* is liable if he was negligent in guarding it (see *Pis'chei Teshuvah*, C.M. 95:1).

Regarding the question of whether you are obligated to believe your acquaintance's valuation of the contents of the parcel, *halachah* would require the owner to take an oath that the parcel was worth the amount he wants the *shomer* to pay. Since nowadays, we do not take oaths, *beis din* will estimate how much the owner must be willing to forgo in order to avoid taking that oath (see *Pis'chei Teshuvah* 12:3 and *Divrei Malkiel* 2:133).

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

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