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**TALMUDIC METHODOLOGY**

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***Shiur* #06: The Exemption of *Ba’alav Imo***

One of the most intriguing payment exemptions is the rule of “*ba'alav imo*.” If the owner of a deposited item HIMSELF services the *shomer* (watchman) of the item, the latter is excused from all payments in cases of loss. This *de-oraita* *petur* is a sweeping exemption that applies to all *shomrim*, and potentially even to cases of gross negligence (see the two opinions cited by the *gemara* in *Bava Metzia* 95a).

The *gemara* dictates certain parameters to this rule, but never articulates the logic of it. In fact, its basis is so elusive that Tosafot (*Bava Metzia* 97a) claim that it is a non-logical *gezeirat ha-katuv* (which therefore cannot be independently applied to broader contexts). A [previous shiur](http://etzion.org.il/en/sheila-be-baalim-0) probed whether the work of the owner for the potential *shomer* merely exonerates the *shomer* from payment or entirely hampers his status as *shomer*. However, the *gemara* and *Rishonim* do not directly address the logic of this *halacha*.

Nevertheless, the dual restrictions imposed on this exemption by one *Amora* do, in fact, yield an obvious logic. R. Hamnuna (*Bava* *Metzia* 95b) claims that the exemption only applies if the owner serves the *shomer* in the same activity that the item typically performs AND if the owner is present during the entire term of the deposit – from the point of transfer until the damage occurs. By requiring the continued presence of the owner as well as his labor in the same activity for which the *sho'el* (borrower) utilizes the borrowed item, R. Hamnuna is probably shifting the BLAME for the damage to the owner. Since he was present during the entire period, he should have personally safeguarded the item, and the *shomer* is therefore not culpable. The *Sefer Ha-Chinukh*, Vilna Gaon, and *Meshekh Chokhma* all suggest this logic for the *ba'alav imo* rule according to R. Hamnuna's strict limitations.

Of course, the *gemara* rules against R. Hamnuna and extends the exemption even to situations in which the owner is only present at the point of transfer and even if he is serving the potential watchmen in some other area - unrelated to the deposited object (*pikadon*). How can the rule of *ba'alav imo* be explained given this very broad application?

One approach (suggested by the *Bechor Shor* in his commentary to *Shemot* and alluded to by the *Torah Temima*) asserts that any items owned by a manual laborer are earmarked for use by the employer of the workman. In fact, it is unclear that the *gemara* rejects R. Hamnuna second stipulation that the owner work in the same labor as his deposited item. Rav Hamnuna had imposed two strict conditions for *ba'alav imo* to apply:

1. The owner must work for the *nifkad* throughout the entire term of the deposit
2. The owner must work for the *nifkad* in the exact service which the animal works in (for example, the owner must plow with his cow or work alongside his donkey)

Rabbenu Yehonatan (cited by the *Shitta Mekubezet Bava Metzia* 97a) claims that *ba'alav imo* only applies if there is an overlap between the manual labor and the item that was deposited. This may indicate that even if we do not accept R. Hamnuna's full list of limitations, we do require the overlap. Accordingly, according to the Bechor Shor’s reasoning, the deposited item is not a separate and autonomous *shomer* arrangement, but rather an extension of the labor agreement. When a person agrees to work for someone, all his items are indebted to that work as part of the labor agreement. The deposit of the items to the recipient of the labor cannot be defined as a separate *shomer* arrangement.

Even if we reject R. Hamnuna's second clause and allow *ba'alav imo* to exonerate even if there is no OVERLAP between the labor deal and the deposited item, this logic may still obtain. Perhaps ANY labor agreement is so central that all other transactions are subsumed within it. In other words, if a person agrees to work for another person, all the worker's items are included – even those not directly related to the actual labor performed. Hence, no separate deposit occurs, since all objects of the owner are already committed to the recipient of the labor agreement.

An interesting consequence of this logic would result in a situation in which the utility of the item CANNOT be subsumed under the original labor agreement. Perhaps in this instance the exemption of *ba'alav imo* would not apply. The *gemara* (at least according to the Rambam's minority view) questions situations in which the animal was borrowed for non-conventional purposes (for sexual purposes, to appear to be wealthy). Would these instances still be covered by the *ba'alav imo* exemption? At first glance, this question is troubling; why should these unique cases NOT be covered by the exemption? In fact, most *Rishonim* felt that this option was so farfetched that they reinterpreted the *gemara* as referring to a completely different question. However, the Rambam maintained that these non-standard forms of borrowing may not be covered by the *ba'alav imo* exemption.

Perhaps the *gemara* was probing the aforementioned logic. Even if the owner is not working in an overlapping fashion with this item, all items and their utility can be subsumed under the original labor agreement, and hence no new deposit has occurred. However, STRANGE and unorthodox forms of utility are not part of any labor agreement and cannot be subsumed. As such, they represent a completely new arrangement and the exemption of payment does not apply.

A third option toward understanding the *ba'alav imo* exemption stems from the language of one of the *beraitot* cited to refute R. Hamnuna, who required presence and labor of the owner throughout the entire loan. The first source cited to reject R. Hamnuna merely states that the presence of the owner during the inception of the loan is sufficient to exempt the *nifkad* from subsequent payments. The second *beraita* is more specific in allowing only INITIAL presence to exempt the *shomer*. Once the item exits the *reshut* (property) of the owner while he is working for the *shomer*, the *petur* of *ba’alav imo* obtains and covers damages that occur subsequently, even when the owner is no longer laboring for the shomer. This *beraita* emphasizes the DEPARTURE POINT of the item from the zone of the owner as the critical point.

Perhaps this provides a logic toward explaining the rationale of *ba'alav* *imo*. Every *shomer* agreement entails a partial displacement of the original owner by the watchman. The *shomer* does not merely serve the owner; he also becomes the custodian of the item. This is most powerfully sensed in the *shomer’s* responsibilities to cover damages that the item causes to third party victims. He never agreed to serve or repatriate those third parties in the manner that he agreed to serve the original owner. His payment can only be understood in light of the fact that he stands in lieu of the original owner and must repatriate victims of the item's damage in the same manner that an owner must. As the *gemara* in *Bava Kama* (44b) expresses it, he is *nichnas tachat* *ha-ba'alim* – he replaces the original owner. Furthermore, the execution of a *ma'aseh kinyan* to launch the *shemira* proves that a *shomer* is actually supplanting the owner and achieving partial “owner” status upon the item he is watching. Perhaps the presence of the owner at the point of transfer or *kinyan* impedes the transfer. As the second *beraita* stresses, once the owner is present at the point of *kinyan*, the transfer can no longer occur and the *shemira* never materializes.

Interestingly, R. Ashi (*Bava Metzia* 96a) offers an alternate source for the *ba’alav imo* exemption that may reflect this logic. The *petur* itself is explicit in the *pasuk* and the suggestion of an alternate is therefore surprising. Rashi (96a, s.v. *Rav Ashi*) notes that R. Ashi is not asserting a new source; he is merely suggesting a verse to reinforce the rejection of R. Hamnuna’s view and explain that presence of the point of transfer is sufficient to activate the exemption. The *pasuk* describes the genesis of a *she'eila* (loan agreement) through the words "*ve-chi yishal me'im rei'ehu*" – “If a person borrows from his colleague.” R. Ashi translates this phrase to refer to distinguish the borrower from one who borrows an item ALONG WITH his colleague (the owner) – *ve-lo rei'ehu imo*. Perhaps this explains the mechanism of *ba'alav imo*. If the owner accompanies the item (by working with the recipient during the point of transfer), the item is not transferred from one *reshut* to another and the *shemira* cannot be initiated.