



# Business weekly

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## STORYLINE

### partner guardian

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Yosef Mashbir and Menashe Meilitz served as corporate financial advisors. Their work often took them from their office to give presentations at their clients' premises. "We've got a meeting scheduled this afternoon with representatives from Israel Food Importers," Yosef said to Menashe. "It's been years since we've met with them." They packed up their presentation equipment – laptop, projector, cables and portable screen – in Yosef's car and drove to the meeting, which went well into the evening. "We have a meeting tomorrow morning with Regal Silver," said Yosef when they finished. "I'll take the equipment with me and bring it to the meeting tomorrow." Menashe helped return the equipment to Yosef's trunk. When Yosef pulled into his driveway, he took his attaché case out of the car trunk.

"What about the rest of the equipment?" his wife asked. "I'm going to leave it in the trunk," Yosef answered. "We're meeting with Regal Silver early tomorrow morning, and it will just delay me getting out. I've got to get up at the crack of dawn. It should be safe overnight in the trunk; there haven't been any break-ins in the neighborhood recently." The following morning, Yosef got up for the 5:30 minyan. He came home, grabbed his attaché case, and went out to the car. As he went to open the trunk, he noticed with alarm that it had been pried open during the night. The computer and projector were gone! "I don't believe this!" he exclaimed. "Someone must have spied on us last night!" Yosef met Menashe at Regal Silver. "I left the equipment in my trunk last night," he said.

"Someone broke in and stole the computer and projector. I have the presentation on my flash drive, though." "Does our insurance cover this?" "I don't think so," said Yosef. "It wasn't on the business premises. Car insurance doesn't cover theft of items in the car. And business property is not included in our home insurance." "That was a brand new laptop and an expensive projector," said Menashe. "You should pay for it; you were watching it for the night." "Why should I have to pay?" said Yosef. "I simply agreed to take it home. I didn't accept responsibility for it." "You should have taken it into the house," said Menashe. "I thought it would be safe overnight," replied Yosef. "I never dreamt this would happen."

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## FROM THE BHI HOTLINE

Submitted by  
C. B.

### the amateur agent

I mentioned to my neighbor, Shimon, that I was selling my home. Unbeknownst to me, Shimon told Levi that my house was on the market. Levi ultimately purchased the house. Shimon contacted me and suggested that since he was the one that informed Levi that I was selling my house, he deserves a commission as a broker.

**Q: Am I actually obligated to pay Shimon**

#### a broker's fee?

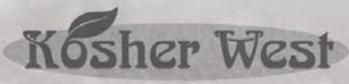
**A:** The first issue that requires clarification is what could trigger an obligation to pay a broker's fee in this case. If you had asked Shimon to work as your agent, you would obviously have to pay a broker's fee, but what generates an obligation if one did not hire a broker? The answer is that one must, in principle, compensate anyone who performs a service for

him, regardless of whether he was hired to perform that service (Rema C.M. 264:4). This is based on the principle of yored lishdei chaveiro, lit. cultivating someone else's field without the owner's knowledge. Assuming that the owner gains from the presence of this cultivation, he must reimburse the planter for the beneficial service he provided (Bava Metzia 101a, C.M. 375). The same principle applies to a self-appointed broker. Since he provided a ben-

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"We'll have to discuss this with Rabbi Tzedek after the meeting," Menashe said. Rabbi Tzedek ruled: "Partners who take turns tending to shared property are considered shomeri sachar, paid guardians, for each other. However, if the partner is not required to watch the property, he is considered, at most, a shomer chinam, unpaid guardian. Therefore, Yosef is not responsible for the theft." Rabbi Tzedek then explained, "An unpaid guardian is responsible only if the item is lost or ruined due to negligence (p'shia). A paid guardian is responsible also for theft or loss (geneiva va'veida) that is not due to negligence (C.M. 291:1; 303:2)." "I wasn't being paid to watch the equipment," said Yosef. "I didn't even accept responsibility for it." "That is true," said Rabbi Tzedek. "However, since you and Menashe are business partners, there is often a mutual expectation to watch the property on behalf of each other. The Gemara (B.B. 42b) teaches that a business partner is considered a shomer sachar." "Then why is Yosef not responsi-

ble for the theft?" asked Menashe. "The Rama writes that this applies only when the partnership arrangement is that each party will take turns tending to the shared property," replied Rabbi Tzedek. "However, if the partner is not obligated to tend to it, he is considered only a shomer chinam and not responsible for theft. Some authorities maintain that if the partner just held the property for his convenience and did not accept responsibility for it, he would not even be considered a shomer chinam (C.M. 176:8; Shach 176:16; Pischei Choshen, Shutfim 1:29)." "But is it acceptable to have left the equipment in the trunk?" asked Menashe. "In most places, keeping something locked in an opaque trunk would not seem to be considered negligence, especially if the car was parked in a private driveway," answered Rabbi Tzedek. "Furthermore, since partners have a mutual responsibility to work for one another, it is usually considered b'alav imo, which is reason to exempt even when there was negligence involved (176:8; 291:28)."

official service, the beneficiary must reimburse the provider for that service (Gr"a 185:13). This principle, however, is not enough to obligate you to pay Shimon. If someone is a broker by profession, or if he performs the work of a broker that people do not commonly do gratis, there is an obligation to reimburse him. In your case, since Shimon is not a real estate broker and did nothing more than share information about the availability of the house, he has no right to claim that he should be reimbursed. Providing a service that is commonly done for friends and does not involve special effort is not a payable service. An example of this principle is illustrated in the following halacha: If Reuven asks Shimon to drop something off for him, Shimon is not considered a shomer sa-

char (paid custodian) unless he receives remuneration for that job (C.M. 303:1). Seemingly, since he is performing a service for Reuven, he should be entitled to be considered a shomer sachar and demand remuneration. However, since it is common for friends to drop things off for one another, Shimon has not done anything out of the ordinary that would indicate that he deserves payment; therefore, Reuven is under no obligation to pay him (Chochmas Shlomo 185:1). Similarly, in your case, since Shimon merely passed on the information that you are selling your house - a common practice of friends and neighbors - and did nothing more to facilitate the sale of your home, you are not obligated to pay him a broker's fee (see Teshuvos Cheishev Ho'Ephod 2:145).

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# MONEY MATTERS

## borrowing and lending week #9

**Q: My retail business is low on cash. Can we repay our debt with merchandise instead? Is the merchandise's worth evaluated at retail or wholesale cost?**

**A:** If the borrower has cash, he is not allowed to turn the lender aside with other items, whether moveable (metaltelin) or real estate. If the borrower does not have any cash, though, he can pay with what-

ever available assets he has. Nonetheless, the lender is entitled to say that he prefers to wait until the borrower has cash and he does not want to accept payment now with merchandise (C.M. 101:1-4; Pischei Choshen, Halva'a 4:10). If the payment is made with merchandise, it is usually not evaluated at the retail cost (unless the lender was interested in purchasing such an item anyway). Rather, the

merchandise is evaluated by the amount that the lender could receive by selling it relatively quickly at the current time and place, in order to convert it to cash (C.M. 101:9). Therefore, the merchandise would generally be evaluated at the wholesale price that the lender could receive by selling it to a vendor, or the price that he could obtain selling it on eBay or the like.

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