

Is the Shepherd a Crook?

Abe donated \$100,000 to help the Barak Charitable Foundation. Caleb, the director of the foundation, turned over the funds to an independent financial planner named Daniel and told him manage it so it would grow. Daniel had seen great returns through the Ezekiel Hedge Fund and knew the foundation needed a great deal more funds to meet its goals. Plus, the Fund gave great commissions. Investors were told that the fund aggressively pursued investments with high returns, but Ezekiel did not explicitly tell them he had heavily invested in many very high risk and novel financial instruments. When the market collapsed, the entire fund was lost.

The Beit Din must decide if anyone is liable for the lost money.



Stewardship

If a man shall deliver to his neighbor money or utensils to keep, and it is stolen from the man's house... if the thief is not found, then the master of the house shall be brought to the judges, to see whether he has put his hand to his neighbor's goods. If a man delivers to his neighbor an ass, or an ox, or a sheep, or any beast, to keep; and it dies, or is hurt, or driven away, no man seeing it; then shall an oath of the Lord be between them both, that he has not put his hand to his neighbor's goods; and its owner shall accept this, and he shall not make it good. And if it is stolen from him, he shall make restitution to its owner. If it is torn in pieces, then let him bring it for witness, and he shall not make good that which was torn. And if a man borrows anything from his neighbor, and it is hurt, or dies, its owner being not with it, he shall surely make it good. But if its owner is with it, he shall not make it good; if it is a hired thing, it came for his hire. (Exodus 22:6-14)

Type of shomer (steward)	Relative benefit	Degree of responsibility
Shomer chinam free guard שומר חנם	Gains no benefit: all the benefit is the owner's	Not responsible except in cases of negligence
Shomer sakhar paid guard שומר שכיר	Mixed benefit: gets paid but can't make use of it	Responsible for theft and loss but not for <i>ones</i> אונס; i.e., unexpected loss like the animal's sudden death
Sokher renter שוכר	Mixed benefit: gets to use it but must pay for it	Responsible for theft and loss but not for <i>ones</i> אונס; i.e., unexpected loss like the animal's sudden death
Shoel borrower שואל	Gains all the benefit: may use the object for free	Always responsible even for <i>ones</i> אונס

Partnership/Loans/Brokerage

Rav Hama used to hire out a zuz for a peshita per day - his money evaporated. Now he argued, [How is it different] from a spade? But the analogy is false: the exact same spade is returned, and its depreciation is assessable; but the exact same coins are not returned, nor can their depreciation be estimated.

Raba said: One may say to his neighbor, 'Take these four zuz and lend money to so-and-so,' [because] the Torah forbade only usury which comes from the borrower to the lender. Raba also said: One may say to his neighbor, 'Here are four zuz, and persuade so-and-so to lend me money.' Why so? He merely receives a fee for his talking,... which is permitted. (Bava Metzia 69a)

An agent who makes a purchase for himself with the money of his client, even when the money was given as a loan, the purchase belongs to the client. (Chosen Mispat 183:3)

Brokers are agents who secure payment for their services. Should they go against the intent of the client, they must compensate for any losses. For example, Reuven gives an object to Shimon and says to him, "sell this for me, but not for less than 100." Should Shimon sell it for 50, he must compensate 50 from his own assets. Should he sell it for 200, it all belongs to Reuven. (Chosen Mispat 185:1)

Fraud & Error

You shall not curse the deaf, nor put a stumbling block before the blind, but shall fear your God; I am the Lord. (Leviticus 19:14) – before someone who is blind in that particular matter... don't say to your neighbor 'sell your field and buy a donkey,' when your whole purpose is to deceive him and buy his field. (Sifra ad loc.)

Produce may not be mixed together with other produce, even new produce with new produce, and needless to say new with old. (Bava Metzia 4:11)

If one sells commodities to another by measure or by weight or by number and has made even the slightest error, the difference must always be returned... Thus, if one has sold to another one hundred nuts for a dinar and it is found that there were one hundred and one or ninety-nine, the transaction is valid, but the amount of the error must be returned to the aggrieved party.... So too if one has sold an item... and a defect of which the purchaser was unaware is found on the purchased article, the purchaser may return the article even after the lapse of many years because this was a transaction in error.... (Mishneh Torah, Laws of Sale 15:1)

If one shows a coin to a money changer, who says that it is legal currency, and it is not, if he charged for the appraisal he must pay even if he is an expert who does not lack experience. If he appraised it for free, he is exempt from paying, provided he is an expert. If he is not an expert, he must pay even if he appraised it for free, provided that [the customer] said: 'See that I am relying on you' or it was clear that that he was relying on him and not showing it to others. (Chosen Mispat 306:6)

Even if one did not become an guarantee explicitly, but only told the lender to lend to the borrower because he is safe and he did so based on his [the advisor's] word and it was false, he has to pay because it is as if he became an guarantee. [Later sages explain that even though he is not a guarantee, he is liable for semi-direct damages (garmi).] (Choshen Mishpat 129:2)

Tzedakah Stewardship

Money belonging to orphans may be lent on terms that are near to profit and far from loss. (Bava Metzia 70a)

Rabbi Akiva said: No sale for profit is made with the sacred funds nor out of those of the poor. Why [is] no [sale for profit made] with the poor funds? — Because a poor man might come unexpectedly and there would be nothing to give him. (Ketubot 106b)

Rav Yitzchak says, a person should divide his money into thirds, and invest 1/3 in real estate, 1/3 in inventory, and 1/3 should remain liquid so that it will be available in case merchandise is suddenly available to him at a bargain price. (Bava Metzia 42a)

