



Among the many areas of civil law addressed in Parashat Mishpatim is that of *shomerim*, "guardians," or people who accept responsibility over the property of others. *Halakha* determines the *shomer's* liability based on a number of factors, primarily the kind of arrangement made with the owner, and the level of vigilance required to prevent the damage under the circumstances in which the damage occurred. For example, a *shomer chinam*, who agrees to watch somebody else's property without pay, bears the lowest level of accountability, as he is obligated to compensate the owner only for damages resulting from *peshi'a*, or negligence. If the circumstances required a higher level of vigilance or effort to protect the object, beyond the minimal standard of responsible handling, then he is free from liability. By contrast, a person who receives payment for guarding, or who rents the item for personal use, bears liability even in situations that required a higher standard of vigilance to protect the object. Finally, one who borrows an item without pay bears the highest level of liability, as he must pay compensation for even damages that resulted from circumstances beyond his control.

Amidst his presentation of the laws of *shomerim* (Hilkhot Sekhirut 2:3), Maimonides introduces a novel theory that has been discussed and debated by many later scholars, a theory that has become known as *poshei'a ke-mazik*. It concerns the rule established in the Mishna (Bava Metzia 56a) that limits the laws of *shomerim* to certain types of property. As the Sages inferred from the verses, these levels of liability do not apply when a person watches over land, servants, legal documents, or items consecrated to the Temple. Maimonides boldly asserted that there is one important exception to this rule: a watchman is liable in situations of *peshi'a*, negligence, even when guarding these types of property. Even if somebody accepts responsibility for a piece of land, for example, to which the laws of *shomerim* do not apply, he must nevertheless compensate the owner for damages resulting from his negligence. The reason, Maimonides explains, is that "*poshei'a ke-mazik*" – negligence is tantamount to directly causing damage. A person who causes damage to the property of another must pay compensation even though he never accepted any responsibility for that property. All people bear a minimum level of responsibility towards other people's belongings, to the effect that one must compensate for damages he causes. According to Maimonides, a *shomer* who acts negligently with regard to an item under his charge is essentially a *mazik* – he has caused damage to his fellow's property – and must therefore pay compensation, even if the laws of *shomerim* do not apply. Such a case, in his view, belongs to the category of damages, which covers all types of property, and not merely those to which the laws of *shomerim* are subject.

Maimonides' ruling baffled many later scholars, for a number of reasons. Primarily, there is no doubt that a *shomer's* liability for negligence extends further than that of other people, who did not accept responsibility over the given object. Let us take the example of birds that descend upon a person's field and begin eating the produce. An innocent passerby bears no legal obligation to send the birds away to save the owner's produce. A *shomer*, however, even if he receives no payment, and thus bears liability only for negligence, is certainly obliged to make at least minimal effort to send away the birds. If he fails to do so, and sits idly by as the birds consume the produce, or leaves the field altogether, he must compensate the owner for his losses. Since he accepted responsibility, he bears liability for his inaction even in situations where ordinary passersby would not.

How, then, could Maimonides compare this *shomer* to a *mazik*? If he bears liability beyond that of others due to the responsibilities of *shemira* he assumed, that liability should be limited to situations where the laws of *shemira* take effect.

Rabbi Chayim Soloveitchik of Brisk suggested a slight reformulation of Maimonides' theory in order to defend his position. He argued that when a person accepts the role of *shomer*, his level of responsibility towards the given property is raised, to the point where he can be considered a "*mazik*" even in circumstances where others cannot. A person who assumes responsibility for a given item and is negligent in effect causes the owner damage. Since the owner relied on him to exert a certain level of effort in protecting the property, he has caused the owner damage by failing to make even this minimal level of effort. Once a person assumes some level of responsibility towards an item, then regardless of whether the technical laws of *shemira* apply, he must compensate for damages he caused through negligence, for accepting responsibility and not following through is tantamount to causing damage: *poshei'a ke-mazik*.

This theory, particularly when viewed through the sharp, analytical lenses of the Rav of Brisk, has much broader implications for our responsibilities as Torah Jews. By accepting the Torah, and committing ourselves to abiding by its laws and living by its values, we have raised our level of responsibility towards it. If we are negligent towards these responsibilities, if we fail to set the example of Godliness and ethical conduct demanded by the Torah "under our charge," then we "damage" and desecrate the Torah. We bear liability even for failings and shortcomings that could perhaps be excused for others, who did not accept the prestigious but demanding role of "*shomer*," of guardian over God's law. It behooves us to recognize our status of "*shomerim*," and to display vigilance, rather than negligence, in fulfilling the responsibilities we proudly assume by virtue of this special role.