



Monetary Responsibility of One Member of a Group

לעילוי נשמת
יואל אפרים בן אברהם עוזיאל זלצמן ז"ל

Question: Reuven and four friends rented a car with bangs and scratches from Shimon; Reuven gave a deposit check. When they returned the car, Shimon claimed they damaged it. Reuven is sure no damage occurred when he was in the car and assumes (but is unsure) the damage was there before. His friends deny they owe anything and are unwilling to speak seriously to Shimon about it. Shimon cashed Reuven's deposit check and says that if he wants money back, he should pay for the damage or make his friends do so. Reuven and Shimon preferred not to go to *beit din* and approached me for guidance. We decided I would present the **general principles** (without possibly impactful questions) on whether Shimon can hold Reuven responsible for the whole group or whether he must pursue the others if he wants their payment.

Answer: There are two halachic issues to discuss regarding the extent of Reuven's responsibility: 1. Does Reuven have more than 20% responsibility for the car, and if so, to what extent? 2. Is indirect responsibility activated because the others refuse to take responsibility?

The Yerushalmi (Shvuot 5:1) concludes that if two people borrow a sum of money together, they become *areivim* (guarantors) for each other, even without explicit agreement for that. In other words, one of the borrowers could end up paying the lender the entire amount. (If he acted correctly - see Pitchei Choshen, Halva'ah 14:14-18 - the *arev* can demand reimbursement from the other borrower - Shulchan Aruch, Choshen Mishpat 130:1). The Shulchan Aruch (CM 77:1) extends this concept to two who buy an object together (regarding payment for it), and the Rama (ad loc.; see Shach ad loc. 1) adds two who accept an object to watch (regarding payment if they do not successfully return it). This is thus a broad concept that should apply also to rentals. In essence, renting a car contains two elements that can lead to payment - paying for the right to use it, which is like buying (see Bava Metzia 56b), and paying if he does not return it intact, like a watchman (see Mishpat Haschirut 1:9).

The two main forms of *arevim* are: a regular *arev* and an *arev kablán*. A regular *arev* is responsible to potentially pay for what his friend owes, but only when the creditor has a valid reason to view the debt as impractical to receive from the debtor

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(Shulchan Aruch, CM 129:8). An *arev kablán* is treated like a direct recipient of a loan, even though someone else is the ultimate beneficiary. Resultantly, while a creditor can approach a regular *arev* only after it is apparent that the debtor will not pay, he can approach an *arev kablán* before even trying the debtor (ibid. 15).

Rishonim disagree on the status of two who borrow together. The Rosh (Shvuot 5:2) considers each lender as an *arev kablán*, which means that the borrower can take full payment from either without even trying to get half from the other. The Sha'ar Mishpat (77:1) explains that we view the matter as if each of the borrowers received all the money, no matter how they decided to split it among them. The Shulchan Aruch (CM 77:1), though, accepts the opinion of the *Rishonim* who say that each is a borrower on half and a regular *arev* on the other, so that generally each person only has to pay when his partner will not.

At what point has the lender exhausted his necessary efforts to receive payment from the borrower and can demand pay from an *arev*? The Shulchan Aruch (CM 129:10) says a case where one can demand payment from the *arev* is if the other borrower is a powerful person who does not listen to *beit din*. The Rama (ad loc.) cites but does not accept an opinion that we wait until *beit din* tries to force the borrower to pay. Clearly, though, if there has been only refusal to pay without being

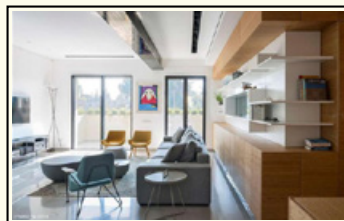
summoned by *beit din*, it is too early to demand payment from the *arev* (see also Bava Batra 174a). This is even clearer if the debtor has real claims for exemption, in which case going to *beit din* before paying is the defendant's right (even if he is presently not eager to do so). ■

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