

Craft Fair

March 7, 2024

Excerpted and adapted from a *shiur* by Dayan Yehonoson Dovid Hool

https://baishavaad.org/wp-content/uploads/2024/03/SH74_10_Vayakhel_Damage_Through_Negligence_Am_I_a_Ganav.mp3

One of the four *shomrim* (custodians) in the Torah is the *shomer sachar* (paid custodian), who is responsible if the item in his care is stolen or lost. The Shulchan Aruch (C.M. 303:2) says that some extend his liability even to a case where he took extra precautions but did not watch the item directly, like if he buried it deep underground or built a wall around it. The Sma (303:2) explains that all cases of theft are considered *karov le'oness* (nearly accidental), and the Torah nevertheless renders a *shomer sachar* liable for them, so the extent of the *oness* is immaterial.

Others explain the Shulchan Aruch based on the Rashba, who writes that the owner can say that the reason he paid a *shomer* is precisely so that his property would be watched in the best way, so the *shomer sachar* is liable even in those cases. The Shach (C.M. 303:4) cites the Maharshal, who disagrees and says that these cases have the status of *oness*, from which a *shomer sachar* is exempt.

The Chasam Sofer says that only an actual *shomer sachar* is liable for theft or loss, not others given the status of one, like an *uman* (craftsman; See Shulchan Aruch C.M. 306:1), even according to the Shulchan Aruch. He explains the reason for the liability of a *shomer sachar* much as the Rashba does: because the owner paid for the highest level of *shmirah*. An *uman*, however, is not paid to watch an item, but to repair or improve it, so he has less liability. Other *Acharonim* disagree, following the above Sma, whose point applies equally to an *uman*.