

## En Garde! How Far Must a Custodian Go to Protect Cash?

Adapted from the writings of Dayan Yitzhak Grossman

April 11, 2024

The Los Angeles Times reports:

In one of the largest cash heists in Los Angeles history, thieves made off with as much as \$30 million in an Easter Sunday burglary at a San Fernando Valley money storage facility, an L.A. police official said. The burglary occurred Sunday night at a facility in Sylmar where cash from businesses across the region is handled and stored, said L.A. Police Department Cmdr. Elaine Morales.

The thieves were able to breach the building, as well as the safe where the money was stored, Morales said. Law enforcement sources said the burglary was among the largest in city history when it comes to cash, and the total also surpassed any armored-car heist in the city. Mystery surrounds the break-in.

Sources familiar with the investigation told The Times that a burglary crew broke through the roof of the GardaWorld building on Roxford Street to gain access to the vault. But it is unclear how they avoided the alarm system.[1]

There are surely contracts and legal frameworks that govern GardaWorld's liability for the theft of its customers' money; in this article, we discuss some of the basic halachic rules and frameworks that would apply to a case like this absent such considerations.

The Rambam writes that the general rule governing an unpaid custodian (*shomer chinam*) is that he is exempt from liability for the loss of the item entrusted to him, provided he was not negligent and he guarded the article in the normal way of watchmen. He elaborates:

What is meant by "the way of watchmen"? Everything depends on the watched item. Certain items are watched by placing them in a gated building—for example, beams and rocks. Other items are watched by placing them in a courtyard—for example, large bundles of flax and the like. Other items are watched by placing them in a house—for example, a dress or cloak. Other items are watched by placing them in a chest or cabinet and locking it—for example, silk clothing, silver utensils, golden utensils, and the like.[2]

With regard to cash, the Gemara sets forth very specific rules for its safekeeping:

Shmuel says: There is no acceptable method for safeguarding money other than burial in the ground.

...The Gemara says: And today, when there is a prevalence of thieves who strike the ground with metal rods to ascertain whether there is a hollow beneath the surface in which valuables might be stored, there is no acceptable method for safeguarding money other than to hide it above the beams that are beneath the ceiling.

(In a later era, that method, too, was deemed inadequate.) But today, when thieves who break roofs are prevalent, there is no acceptable

method for safeguarding money other than to insert it between the rows of bricks in a wall. Rava says: Shmuel concedes that money may be stored in a wall.

(Later, even that method became ineffective.) But today, when there is a prevalence of thieves who tap on walls to ascertain whether there is a hollow in which valuables might be stored, there is no acceptable method of safeguarding money other than to insert it into a wall within a *tefach* of the floor or within a *tefach* of the ceiling.[3]

Many authorities assert, however, that these rules do not apply today, for various reasons:

- Many *Rishonim* maintain that the Gemara's discussion is limited to eras where thieves and the habits the Gemara ascribes to them are common, "but where all these are not present, we need not keep cash underground, and one may put it wherever he puts the rest of his money. For the money entrusted to his care is not better than his own, and he may therefore put it in a place he considers secure, and he has no duty beyond that." [4]
- Rabeinu Tam says that Shmuel's rule applies only where the houses are "weak" and isolated in the fields, unlike those in our time. [5]
- The Bais Yosef asserts that today it is well known that people do not generally protect cash by burying it underground, and anyone who gives something to another for safekeeping does so with the understanding that he will protect it in the way that people commonly do, and as long as the custodian does so, he has no liability. [6]

In light of the above, an unpaid custodian of cash would not be liable for its theft if he safeguarded it in the normal manner. A fundamental distinction between an unpaid and a paid custodian, however, is that while the former is only liable for theft if it can be attributed to his negligence, the latter (a *shomer sachar*) is generally liable for theft even in the absence of negligence. [7] But while Chazal do not articulate any distinctions between different circumstances of theft, there is a dispute among the *Rishonim* whether a paid custodian's liability for theft is indeed absolute: Some rule that it is (at least if the custodian did not remain in physical proximity to the object), and that applies even where he did everything possible to prevent theft, like by burying cash deep enough (one hundred *amos*) underground that it can only be stolen by digging a tunnel. [8] Others maintain that even a paid *shomer* is not liable for theft that is considered a great *oness* (an event caused by circumstances beyond his control). [9]

Many Sephardi *Acharonim* rule that this debate about the extent of a paid custodian's liability for theft notwithstanding, there is certainly no liability where it is generally understood that the *shomer* will not remain in physical proximity to the object but just store it in a secure location. In such a case, it was understood that the *shomer* will act in the customary manner, so he cannot be held liable for theft if he did so. [10] But other *Acharonim* reject this. [11]

Therefore, if GardaWorld was negligent in safeguarding its customers' cash and did not do so in the normal manner, it would certainly be liable for the theft. Even if it was not negligent, it might still be liable under the rule that

a *shomer sachar* is generally liable for theft, although according to some opinions, not if it had done everything possible to secure the cash and the theft is deemed a great *oness*, or if it acted in accordance with industry standards.

[1]Richard Winton. In one of L.A.'s largest cash heists, burglars steal as much as \$30 million in elaborate operation.

<https://www.latimes.com/california/story/2024-04-03/sylmar-burglary-money-storage-facility-30-million>.

[2]Hilchos *She'eilah Ufikadon* 4:1-2.

[3]Bava Metzia 42a.

[4]Chidushei HaRamban *ibid.*; Piskei HaRosh *ibid.* *perek* 3 *siman* 21; Tur C.M. *siman* 291. (The *Rishonim* attribute this ruling to one of two sages of Barcelona of nearly a millennium ago: R' Yitzchok ben Reuven of Barcelona or R' Yehudah ben Barzilai of Barcelona (author of *Sefer Ha'itim*). The Bais Yosef *ibid.* argues that the Rambam seems to consider Shmuel's rule as binding in all eras, although in Shulchan Aruch *ibid.* *se'if* 18 he codifies the view of the other *Rishonim* and does not acknowledge any dissenting view.

[5]Mordechai *ibid.* end of *siman* 280 (cited in Bais Yosef *ibid.* and Hagahos Sma *ibid.* *s.k.* 24).

[6]Bais Yosef *ibid.* The Bais Yosef declares that even the Rambam would accept this argument.

[7]Mishnah Bava Metzia 7:8.

[8]Tosfos Bava Kamma 57a s.v. *Kegon*; Piskei HaRosh *ibid.* *perek* 6 *siman* 5; Tur C.M. *siman* 303. The Shulchan Aruch (*ibid.* *se'if* 2) cites this view as "*yeish omrim*" (but does not explicitly cite an alternative view).

[9]Hagahos Mordechai *ibid.* *siman* 206. The Shach (*ibid.* *s.k.* 4) rules accordingly.

Cf. Bais Yosef *ibid.*; Shu"t Maharashdam C.M. *siman* 134; Shu"t Kerem Shlomo (Amarillo) *siman* 85 (by the author's son, R' Moshe Amarillo) s.v. *Umeiatah asurah na ve'er'eh*.

[10]Shu"t Maharshach *cheilek* 4 *siman* 26; Shu"t Bnei Aharon end of *siman* 102 s.v. *Va'adayin libi homeh li*; Shu"t Ginas Vradim C.M. *klal* 1 *siman* 1 (by R' Moshe (Maharam) ibn Chabib) s.v. *Ve'od yeish ta'am acheir liftor*; *Ibid.* end of *siman* 2 (by the author, R' Avraham Halevi)...*Achein yeish ta'am hagun*; Machanei Efraim, Hilchos *Shomrim* end of *siman* 17; Shu"t Kerem Chemer *cheilek* 1 C.M. *siman* 130 (cited in Pa'amonei Zahav *siman* 303 *se'if* 2), and cf. Maharashdam *ibid.*

[11]Parach Shoshan C.M. *klal* 1 *siman* 2 s.v. *Od kasav ta'am shlishi*, and cf. Kerem Shlomo *ibid.* s.v. *Hata'am ha'echad*.

Cf. Pis'chei Choshen, Hilchos *Pikadon Ushe'eilah perek* 3 *he'arah* 27; Ma'asei Uman (Mark) *perek* 3 *se'ipim* 1-4 and *he'aros* 4-12, and *biurim siman* 5.