

Is a Shomer Liable if He Forgets Where He Hid an Item For Safekeeping?

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Question: My neighbor went away for the summer and before he left, he told me that he has a valuable silver *leichter* that he is afraid to leave at home. He asked if I could watch it for him until he gets back. I agreed and then hid it in a safe place. I hid it so well that I forgot where I put it. When he asked for it back, I couldn't find it. He is demanding that I either give him back his *leichter* or pay him the value. I told him that I need two weeks to look for it. Can I have that time to look?

Answer: You are a *Shomer Chinam* on the *leichter* and are liable for negligence.

The Gemara and Shulchan Aruch clearly say that a *Shomer* who doesn't know where he put the item that he is entrusted to watch is liable to pay; however, there is a *machlokes* Acharonim why he is liable. Some say that he is *chayav* because he is considered negligent. The Nesivos, however, says that he is liable because he is a *mazik*. When someone physically breaks an item, he is called a *mazik* because he made it inaccessible to its owner. So too, if someone can't find an item he was entrusted with, he is a *mazik* because he caused it to be unusable for the owner. According to the Nesivos, even in a case where a *Shomer* would be *patur* (such as *baalav imo*), this man would be *chayav* because he is a *mazik*.

Having said this, you would be liable to pay immediately and you are not given two weeks to find the *leichter*. If it does turn up after you pay, that would lead to another discussion about what to do then.