

Is Someone Who Failed to Perform the Mitzvah of Hashavas Aveidah Liable to Pay for The Loss He Caused?

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Question: Someone lost an item, which was worth a significant amount of money. His neighbor later revealed to him that he had seen the item on the street but didn't bother to pick it up. This individual wants to take his neighbor to a din Torah for causing him a loss by not performing the mitzvah of *hashavas aveidah*. Does he have a case?

Answer: The Shulchan Aruch (OC 443) says that if someone is a *shomer* on his friend's *chometz*, he should sell it before Pesach so that his friend doesn't suffer a loss. The Mishnah Berurah says that the obligation to sell the *chometz* is based on the mitzvah of *hashavas aveidah*. He says that if the *shomer* doesn't sell it, he is not liable because there is no source in halacha that someone is obligated to pay for not performing this mitzvah. Accordingly, a beis din would not take this case and make someone liable for not fulfilling the mitzvah of *hashavas aveidah*.

We do, however, find in the Ramban's Dinah D'Garmi that he gives *hashavas aveidah* as an example of something that is not a *din mamon*, so it does not fall under the category of *garmi*. This seems to indicate that although it is not *garmi*, it is a *grama*, which bears a *chiyuv b'yedei shomayim*. Accordingly, in such a case it would seem that the neighbor should offer his friend something to make amends for having caused him the loss, even though he is not liable in *dinei odom*.