

Shomrim Part II

By Rabbi Chaim Weg - Rosh Kollel Zichron Gershon L'Dayanus

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

HOW MUCH PAYMENT MAKES SOMEONE A SHOMER SACHAR:

As we said in Part 1 of this series, a *Shomer Sachar* is paid to watch an object and, therefore, has more liability than a *Shomer Chinam*.

How much does one have to be paid to become a *Shomer Sachar*?

The Shach states that as long as a person is paid the value of a *perutah*, that is enough to make him a *Shomer Sachar*. The Rema says that even if he is not given the money as a payment, but is presented with it as a gift, that is sufficient to make the guardian a *Shomer Sachar*. As we explained, the Torah evaluates a person's mind and determines that once he receives any sort of compensation, the amount of responsibility expected of him goes up. Thus, even if he is given something as a gift or a show of appreciation for watching the item, the greater level of responsibility is to be expected of him.

The Rema also speaks about a middleman who takes merchandise from one party in order to sell it to customers. The agreement was that he will sell the merchandise for at least a \$100 and give that amount to the one he got the merchandise from, with him keeping any profit he can make above that amount. He says that the middleman has the status of a *Shomer Sachar* on the merchandise in his possession. Since he has the potential of making a profit, even though this is not certain as he may not find a buyer for more than \$100, a higher level of liability is placed upon him.

THE SHOMER SACHAR'S LEVEL OF SHEMIRAH:

There is a *machlokes* in the Gemara in Bava Metziah whether a *Shomer Sachar* is permitted to sleep at times when people normally sleep. The Gemara also discusses whether a shepherd who is paid to watch other people's sheep is permitted to go back to the city at times when self-employed shepherds generally have a break. Another discussion there is a case where a shepherd is herding sheep over a bridge and one of them pushes another into the water and kills it. The gemara concludes that he is liable because he should have taken hold of them as they crossed the bridge. From the entire discussion, the Nesivos Hamishpat derives a fundamental difference between that of a *Shomer Chinam*

and a *Shomer Sachar*. While the unpaid guardian merely has to put the items in a safe location, the *Shomer Sachar's* job is to physically sit with them and guard them.

A *Shomer Sachar* actually has an additional obligation of *shemirah* that a *Shomer Chinam* does not have. The halacha is that a *Shomer Chinam* has to store an object he is watching behind a door that can withstand a "*ruach metzuyah*", a normal wind. A *Shomer Sachar* has to lock it behind a stronger door that can withstand a "*ruach she'iano metzuyah*", an unusually powerful wind. In other words, he has to think about all possibilities and take all possible precautions. If he falls short of either obligation, he is required to pay for any damage or loss.

IS AN EMPLOYEE A SHOMER SACHAR?

The Pischei Teshuva discusses a case where an employer entrusts an item with his employee. The employee is paid by his boss to do his job, but not specifically to watch this item. He posits that even though the employee is not specifically paid to watch this object, since he is watching it for someone who pays him, that is enough to make him a *Shomer Sachar*.

AN UNPREVENTABLE THEFT:

There is a *machlokes* amongst the Rishonim regarding a *Shomer Sachar's* liability when an object is stolen in a way that he could not have prevented. An example of this is if a *Shomer Sachar* did everything that could be expected of him by storing the object he is watching behind an iron wall that cannot be penetrated by thieves, but the thieves were so adept at their job that they tunneled under the ground and stole the object.

Another example is if a *Shomer Sachar* is watching an object and begins to feel unwell or faints and is no longer able to protect it. Once he is incapacitated, the item is stolen. In such an instance, he performed all of his duties to the fullest extent that he could have, but the item in his care was still stolen. In most cases of theft, there is some negligence on the *Shomer's* part, but in these cases, the *Shomer Sachar* was not negligent at all.

Tosafos says that the *Shomer* would be exempt in such a case because he did perform all of his duties. The Shach rules like Tosafos. However, the Shulchan Aruch cites an

