

חייב שמירה של שומר שכר

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The Gemara brings a מח' אמוראים as to the extent of responsibility for a שומר שכר. Rabba holds that while a שומר שכר is חייב for גניבה ואבידה, he does have פטור called, "נטר כדנטרי אנשי". If the *shomer* watched it in a reasonable way that the average person does, he will be פטור even in situations of גניבה ואבידה when he would otherwise be held responsible. R. Chisda & Rabba bar Avuha disagree and hold that since the owner is paying him to be *shomer* the object, that requires him to go the extra mile and perform a higher-level *shemira*. The Gemara cites a few examples which highlight this *machlokes*: If the *shomer* took the animals to graze by the river, and an animal slipped and fell in, becoming lost, Rabba would say the *shomer* did nothing out of the norm and is therefore not responsible, whereas R. Chisda and Rabba bar Avuha would say that he is responsible because it was not an *ones*. Similarly, if the *shomer* took a nap when that was the normal thing to do, and something happened to the animal, or if he went into the city when people normally do, leaving the object behind and then something happened to it. The Gemara does say that everyone agrees the guards of a city are responsible for the extra-level *shemira* because they are expected to be extra vigilant in that capacity.

The connection to this week's *parsha* is a Beraisa brought by the Gemara to prove a *shomer sachar* must go the extra mile. The Gemara says the extent which such a *shomer* must go is, "הייתי ביום אכלני חרב וקרח בלילה..." (בראשית לא, מ). This is a higher level than נטר כדנטרי אנשי, and this higher level of *shemira* is what Yaakov Avinu did when he watched Lavan's flock. Rabba's reply is that Yaakov was merely informing Lavan he went above and beyond the call of duty, in order to impress upon him how careful and *medakdek* he was. However, we *pasken* like R. Chisda & Rabba bar Avuha and a *shomer sachar* is responsible for extra-level *shemira*.

Tosafos in נט דף ג"ק brings the Ri who holds that even though a *shomer sachar* is פטור באונסין, he is חייב for a באונס. The reason for this is because the Torah was מחייב a *shomer sachar* in גניבה, which is קרוב לאונס. Therefore, whenever that גניבה is even an אונס, he is חייב with the exception of ליסטים מזויין (being held up by robbers) because that scenario has a special *gezeiras hakasuv*. Rashba as well holds this way as well. He says that if a *shomer sachar* buries the money in his charge deep into the ground and it is stolen, or he builds an iron wall and it is breached, or if he gets sick—the *shomer* is חייב in each case despite the אונסין. Rashba says he is only פטור if he was there watching it, like our *posuk* describing Yaakov's *shemira*. There are Rishonim who argue with this, Tosafos in ב"מ amongst others. Yet, the מחבר brings the more חמור *shita* of the Ri as a "יש אומרים", that a *shomer sachar* is indeed חייב for באונס.

R. Meir Simcha m'Dvinsk, on Shas, expounds upon this and explains that the חייב of a *shomer sachar* is to be present, watching the item(s) in his charge. If he is not there, he runs the risk of being responsible to pay. Taking payment for his *shemira* requires him to stay put and guard those objects. He is *medayek* this in the Rambam, because all of the examples of אונס cases brought by Rambam are when the *shomer* was present but could not prevent the problem. I think this is even *meduyak* in Yaakov Avinu's own *lashon* in the *pasuk*. By saying, "ביום... אכלני חרב וקרח בלילה..." he is saying, "I was there the whole time with them, day and night." In *Meshech Chochma*, R. Meir Simcha is *medayek* in the *pesukim* by *shomrim*. By *shomer chinam* the *posuk* says not to be פושע, which means to keep it in a safe place, and describes the scenario as, "יגונב מבית האיש"—taken from his house. By *shomer sachar*, גניבה is described as, "אם גונב יגנב מעמו"—if the item was stolen from him. The former must only keep it in a מקום משומר, while the latter must be יושב ומשמר על גביו.

This is why, *zugt* R. Meir Simcha, Acharonim say that a *shomer chinam* cannot retract his *shemira* within the time frame set originally, while a *shomer sachar* can. A *shomer sachar* has the *din* of פועל because he is מחויב

to do something, namely, to be near the object. A *shomer chinam* does not have to do anything, he must only put the object in a safe and secure place.

In מס' ב"ב דף ח א, the Gemara brings a *posuk*, (דניאל יב, ג) "ומצדיקי הרבים ככוכבים לעולם ועד" to describe מלמדי תינוקות - those who teach children. Who is the quintessential מלמד תינוקות? R. Shmuel bar Shilas, whose devotion to his *talmidim* is recorded many times in Shas.

As an aside, I once heard *b'shem* R. Simcha Wasserman that the comparison to a star alludes to a shooting star. The phenomenon of a shooting star is that we see the particles of light even after it has already disintegrated, just that it is so far away that by the time the light travels to where we can see it, the star is already gone. So too, the effect of a מלמד תינוקות can be felt well after his *petirah*.

The Gemara continues and relates that Rav once encountered R. Shmuel bar Shilas in a garden, away from his *talmidim*. Rav asked him, "have you left your responsibilities?" Which Rashi explains, "that you usually teach them with *emuna* and teach & sit by them constantly." The Gemara in other places discusses that *melamdin* are שכירי יום, day workers, and their חיוב is also to stay by their charges constantly. R. Shmuel bar Shilas answered, "it has been thirteen years since I have seen them, and they have never left my thoughts." I still care about them, I still think about them.

I think what he is saying that even though he was unable to be with them physically, he was still accomplishing by keeping them at the forefront of his mind the whole time. Being the archetypal *mechanech* that he was, keeping his mind on them created a *kurva*. We find by various *halachos* that a person's *da'as* can make a major *nafka mina* at times. One example is *kinyan shevisa* on Shabbos- making a place his personal area merely through his *da'as* to be *koneh shevisa* there; another is the *kavana* we have in *davening* to face the *Makom Hamikdash* makes it as if he is actually standing there (where *tefilos* go up to *Shomayim*). Therefore, R. Shmuel bar Shilas can be near his *talmidim* through his *da'as*.

I think the same is true for *talmidim* towards their *rebbeim*. Even if they are not physically in the *yeshiva*, they can maintain their *kesharim* by thinking of their *rebbeim* and what they would do in certain situations. Keeping that *da'as* on the *yeshiva* and *rebbeim* creates that *keshar* in absentia. Most people have to be away from their *gemara* most of the day, but they can maintain their *da'as* upon it. Thinking throughout the day of what they learned early in the morning, or waiting to get back to their *sugya* when they are able to. This maintains that *keshar* to the Torah throughout the entire day, even if one cannot actively learn the whole day through.