

VOLUME I: NUMBER 26: LIABILITY OF A GABBAI (SYNAGOGUE OFFICER)

by Rabbi Aron Tendler

Question:

Money was collected in a synagogue for the purpose of purchasing new furnishings, and it was given to the Gabbai. The Gabbai evidently misplaced the money.

Is the Gabbai obligated to compensate the synagogue members for the money that is lost?

Answer:

There are many variables that must be taken into consideration when answering this question:

1. If the Gabbai is getting paid for his job, and part of his duty that he is paid for is collecting and dispensing synagogue funds, he would be obligated to replace the lost funds with his own personal money.
2. Even if the Gabbai is not getting paid for his job, if he has an understanding with the synagogue board that when necessary he may borrow synagogue funds for his personal use as long as the money is repaid when needed by the synagogue, he is still obligated to replace the lost funds personally.
3. If the Gabbai is not getting paid, and has no such agreement as mentioned above (B), then we must make the following distinction. If it is known that the money was lost as a result of the Gabbai's negligence, he would still be liable to pay for the lost money. If there is no indication that he was negligent, he is exempt from reimbursing the congregation. However, if the synagogue owes him money for some reason, they would be Halachically permitted to withhold this money to replace the lost money. It is more proper, however, that the congregation conduct themselves Lifnim M'Shuras HaDin (Beyond The Letter Of The Law) and not hold the Gabbai responsible at all in this case.

Sources:

The Shulchan Oruch (Choshen Mishpat 301:6) states: If a Gabbai Tzedakah (Charity Collector) collected money to be distributed to the poor, and due to his negligence it was lost or stolen, if the money was not designated for a certain specific poor person he is not obligated to replace this money.

The reason for this is because there is no one who has a claim on him. Although the money was given to the Gabbai with the understanding that he would care for it properly until the time that it will be distributed to the poor, he does not fall into the category of Shomer (watchman) on this money. This is because when the Torah tells us about the responsibilities of a Shomer, it states (Shemos 22:6) "When A Man Will Give His Friend An Article To Safeguard", and our Chazal infer from here "To Safeguard" - and not to distribute to others. Additionally, the poor have no claim on the Gabbai, because each poor person that may file a claim against the Gabbai can be told that he would not been one of the recipients of this money. It might have been given to another poor person. This is known as "Mommone She'ein Lo Tovaim" - money which has no claimants.

However, the Nesivos there (301:6) notes that if a community collected money for synagogue use and entrusted it to their Gabbai, this does not fall into the above category, and the Gabbai can be held responsible for the loss of this money. In this case, he was not given the money to distribute, since ultimately it will be used for the donors. (For example: They are depositing the money with him until he is ready to use the money to purchase the synagogue furnishings for them, not to distribute to a third party.) Consequently, in this case the Gabbai can be considered a Shomer on this money.

Therefore, if the Gabbai is being paid for collecting and dispensing community funds, or if he has permission to borrow community funds for his own needs if necessary - he is in the category of a Shomer Sochor (a paid watchman) who is liable for theft or loss, as is explained in the Nesivos (301:9). However, if he is not getting paid for this service in any way, then if the loss of the money came about due to his negligence, he is liable to pay just like any other Shomer. If the loss is not due to his negligence, he would not have to pay. This is because a Gabbai in this situation is actually classified as a Shomer Aveidah (watchman of a lost article), as stated in the Shitta Mikubetzes at the end of Perek HaChovel (8th Perek of Bava Kamma). There is disagreement among the Rishonim (as is discussed in the Shulchan Oruch, Choshen Mishpat 267:16) whether a Shomer Aveidah is like a Shomer Sochor who is responsible for loss and theft, or like a Shomer Chinnom (unpaid watchman) who is not held responsible for loss and theft. Consequently, we can not force the Gabbai to pay, because he can say "Kim Li!" (It is established to me!), i.e. "In my opinion those who hold that a Shomer Aveidah is like a Shomer Chinnom are correct, and therefore I am not obligated to pay!" [We will elaborate on this concept in next week's class]. If he is owed money by the congregation, the congregation can do the reverse, and say that they have a right to retain the money according to

those who are of opinion that a Shomer Aveidah is like a Shomer Sochor.

Shomer - There are four main categories of Shomrim (Watchmen) in Halacha, and each has a different degree of liability for the watched item, proportionate to the amount of benefit that the Shomer is permitted to derive from the item.

Shomer Chinom - An Unpaid Watchman. He is not getting paid for watching the item, nor is he permitted to derive personal benefit from this item. Therefore, although he would be liable if the item were to be damaged through his negligence, he would not be liable if, through no fault of his own, the item was lost or stolen.

Shomer Sochor - A Paid Watchman. Although he is not permitted to derive personal benefit from the item, since he is getting paid to watch it, his responsibility increases. Not only is he responsible for negligence, he is also responsible for loss and theft. However, he would not be held responsible for an "Oness", i.e. if the item would be damaged through a totally unforeseeable hazard. (In secular law this would be termed "an act of G-d.")

Soecher - A Renter. Someone who is paying for use of the item. He is permitted to derive personal benefit from the item, but must pay for this right. He has the exact same status as a Shomer Sochor.

Sho'el - A Borrower. Such a person has a right to use the item, and is not paying anything for that right. Therefore, he has the greatest amount of responsibility. Not only is he liable for negligence and theft or loss, he is also responsible for an "Oness." The only thing that a Sho'el would not be responsible for (nor would any of the other Shomrim for that matter) would be if the item would be damaged only because of normal wear-and-tear (Maysuh Machmas Melacha).

This week's class is based on a column by Rabbi Tzvi Shpitz, who is an Av Bet Din and Rosh Kollel in the Ramot neighborhood of Jerusalem. His column originally appears in Hebrew in Toda'ah, a weekly publication in Jerusalem. It has been translated and reprinted here with his permission and approval.

This class is translated and moderated by Rabbi Aaron Tendler of Yeshivas Ner Yisroel in Baltimore. Rabbi Tendler accepts full responsibility for the accuracy of the translation and will be happy to fax originals of the articles in Hebrew to anyone interested.

Feedback is appreciated! It can be sent to atendler@torah.org.

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***Please Note:* The purpose of this column is to make people aware of Choshen Mishpat situations that can arise at any time, and the Halachic concepts that may be used to resolve them. Each individual situation must be resolved by an objective, competent Bais Din (or Rabbinic Arbitrator) in the presence of all parties involved!**