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HaRav Yishai Natan

FOUND & LOST

Someone forgot his nice watch in the bet kenesset, and it had been sitting there for a few days. I asked around to see if anyone knew who it belonged to, and someone told me who the owner was. I was afraid the watch might get taken, so I brought it home. I texted the owner and told him that I had his watch. He replied that he would come pick it up sometime soon. A week passed, and when he finally came to get it, I went to my study and opened the drawer where I remembered putting it, but the watch was not there. I searched everywhere, asked my family, and even called guests who had been in my house to see if someone had taken it by mistake. No one knows where it is.

Am I obligated to pay for the missing watch?

A Shomer Who Cannot Find the Item

When you took the watch home, you became a *shomer* responsible for guarding it. *Maran* writes in *Shulhan Aruch (Hoshen Mishpat* 291:7) that if the owner comes to collect his item and the *shomer* says, "I do not remember where I put it," the *shomer* is considered negligent and is *hayav* to pay. The *Netivot HaMishpat* goes even further and considers him a *mazik*. Since he placed the item somewhere that only he knew about and now does not remember where it is, he is viewed as having actively caused the loss.[1]

Your case, however, appears to be different. If you truly had no memory of where you placed the watch, you could be *hayav*, either as a *shomer* or a *mazik*. Here, you remember putting it in your study. You are only second-guessing yourself because it is no longer there. Therefore, this does not seem to fall under the case discussed by *Maran*.[2]

Was It Properly Guarded?

If you were negligent in guarding the watch, you would be *hayav*. However, keeping it inside your locked home, in your study, in your drawer, seems to be a normal and reasonable way to guard it. The fact that guests sometimes enter your home would not automatically make this negligent. This is a normal place where you would keep your own valuable belongings, even when guests are present. Therefore, the watch appears to have been properly guarded.

Shomer Hinam or *Shomer Sachar*?

Since you are not getting paid, one might think you are considered a *shomer hinam*, an unpaid guardian, who is only *hayav* for negligence. However, the *Gemara* (*Bava Kama* 56b) records a *mahloket* regarding someone who finds a lost object. *Rabbah* holds that he is only a *shomer hinam* and is *hayav* only for negligence. *Rav Yosef* holds that he becomes a *shomer sachar*, a paid guardian, and is therefore *hayav* if the item is

1 One practical difference would be *ba'alav imo*: an exemption that could make a *shomer patur* would not help if he is considered a *mazik*.
2 See *Meiri (Bava Metzia* 42a); *Talmid HaRashba (Shitat HaKadmonim, Bava Metzia* 42a); and *Ba'al HaItur (80, Pikadon*, 71b).

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MEAT FOR MILK

Q: May I cook *pareve* noodles in a meat pot if I plan on eating them afterward with cheese?

A: The *Gemara (Hullin* 111b) rules that fish that absorbed meat flavor from a meat dish may still be eaten with dairy. This is called *noten ta'am bar noten ta'am dehetera* — the meat gave flavor into the utensil, and the utensil then gave that secondary flavor into the fish. The *Rishonim* disagree how far this leniency goes, but our question is whether one may intentionally create this situation *lechat'hilah.*

There seems to be a contradiction in *Maran*. In the *Bedek HaBayit* (Y.D. 95), *Maran* quotes *Rabbeinu Yeruham*, who says that although vegetables cooked in a dairy pot may afterward be eaten with meat, one should not intentionally cook them in that pot for this purpose. *Maran* rejects this and writes, *"ve'ein devarav nir'in"* — his words do not appear correct. This strongly implies that Maran permits doing so *lechat'hilah.*

However, in *Shulhan Aruch* (Y.D. 95:1), *Maran* writes only that fish that were already cooked in a meat pot may be eaten with *kutah*, a dairy food. His wording describes a case that already

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Parasha and Halacha

PARASHAT VAYERA

HILCHOT HACHNASAT ORHIM

In Parashat Vayera, Avraham Avinu teaches us *hachnasat orhim*, welcoming travelers through his four-sided tent. The Gemara (*Shabbat* 127a) says hospitality is greater than receiving the *Shechinah*, and its reward continues into *Olam Habah*. The *Ishah HaShunamit* was rewarded with a son after hosting Elisha, illustrating the special merit of also honoring *talmidei hachamim*. Although *Shulhan Aruch* has no dedicated section for this mitzva, *Ahavat Hesed (helek 3)* and Rav Haim Palagi's *Kaf HaHaim* (*siman* 5) discuss its details. **Who qualifies?** The *Maharil* (*minhagim* p. 626) emphasizes only honoring wealthy, respected guests, fulfills this mitzvah citing Avraham's lavish meal. The *Minhat Yaakov* counters that Avraham welcomed seemingly ordinary travelers. The *Shelah* and *Ahavat Hesed* include rich, but poor guests are even better. Hosting

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Excerpted and adapted from a shiur by HaRav Yishai Natan. To print and listen to the full shiur, visit www.theshc.org.

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lost or stolen.

Maran[3] rules like *Rav Yosef*, while the *Rama* rules like *Rabbah*. We do not say *kim li* against *Maran*, so you cannot simply follow the *Rama* to exempt yourself.[4] Therefore, according to *Maran*, you would be a *shomer sachar* and *hayav* since the watch is considered lost or stolen.

Perutah DeRav Yosef

There is, however, an important reason to say that you may still be *patur*. One explanation for *Rav Yosef's* opinion is known as *perutah deRav Yosef*. While someone is busy taking care of a lost object, he is performing a *mitzvah*. If a poor person asks him for *tzedakah* at that moment, he is exempt from giving even a *perutah*. Since the finder receives this small financial benefit, he is considered a *shomer sachar*.[5]

Some *Poskim* say that this benefit only applies when the lost object actually requires care.[6] For example, if the item is a *beged*, the finder may need to unfold it and air it out occasionally so that it does not become damaged. A regular battery-powered watch, however, does not require this type of care. Therefore, according to these *Poskim*, the finder never receives the benefit of *perutah deRav Yosef*. According to this approach, even *Maran* could agree that you are only a *shomer hinam* and would be *patur*.

The *Gemara* gives another explanation for *Rav Yosef*: since the Torah commands the finder to guard the lost object, that responsibility itself makes him a *shomer sachar*. According to this explanation, you would still be *hayav*. However, it is unclear which reason *Maran* follows, since he does not bring the reasoning of the *Gemara*. Additionally, the *Sema* (ibid.) only brings the first explanation of *perutah deRav Yosef*, giving more room to be lenient.

You Already Notified the Owner

There is an additional reason to say that you are *patur*. Once you informed the owner that you had his watch, it became his responsibility to come pick it up.7 Since he did not come immediately, your special obligation as a *shomer aveidah* ended. You then became just a regular *shomer hinam*, who is only *hayav* for negligence.[8]

Conclusion

The way you guarded the watch does not appear to be negligent. You remember placing it in your study inside your locked home, which is a normal way to guard a valuable item. Although *Maran* generally considers someone who finds a lost object a *shomer sachar*, there are two strong reasons to be lenient here. First, a regular battery-powered watch does not require ongoing care, so the reasoning of *perutah deRav Yosef* may not apply. Second, once you informed the owner that you had his watch and he said he would pick it up, you became a regular *shomer hinam*. Therefore, since you were not negligent, you are *patur* from paying. However, you should still continue looking for the watch in case you did misplace it.

3 *Shulhan Aruch, Hoshen Mishpat* 267:16.

4 Furthermore, *Maran* writes in the *Bet Yosef* that most of the *Rishonim*, including the *Rosh*, rule like *Rav Yosef*. Although the *Tur* and *Rama* understood that the *Rosh* ruled like *Rabbah, Maran* understood the *Rosh* differently.

5 *Rabbah* disagrees because it is uncommon for a poor person to arrive at the exact time the finder is busy caring for the object (*Sema* 267:16).

6 *Noda BiYehudah* (*Mahadura Tinyana, Hoshen Mishpat* 54) and see *Sema* (267:16).

7 *Pit'hei Hoshen, Aveidah*, 7:2.

8 However, if the owner was unable to come pick it up, you would retain your status as a *shomer sachar* until he was able to collect it.

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happened, implying that one may not cook them this way *lechat'hilah*. This led to a disagreement among Sephardic *poskim*.

The *Ben Ish Hai* (Year 2, Korah 13) and *Kaf HaHaim* (Y.D. 95:1-3) are *mahmir*, and hold that *Maran* retracted from his leniency in *Bedek HaBayit* and ruled stringently in *Shulhan Aruch*. One should not intentionally cook *pareve* food in a clean *ben yomo* meat pot when he plans to eat it with dairy. If it was already cooked there, it may be eaten with dairy. However, if the pot is *eino ben yomo*, it is permitted even *lechat'hilah*.

Rav Ovadia Yosef (*Yabia Omer*, YD 9:4) and *Rav Yitzhak Yosef* (*Yalkut Yosef, Issur VeHeter*, vol. 3, p. 420) are lenient based on the *Bedek HaBayit*. The wording in the *Shulhan Aruch* is just the words of the *Gemara* and is not meant to be implied that it is only permitted bedieved. Therefore, they permit a Sephardi to *lechat'hilah* cook *pareve* food in a clean *ben yomo* meat pot intending to eat it afterward with dairy.

Hacham Ben Tzion Abba Shaul (*Ohr LeTzion*, vol. 5, 25:1) permits using a *ben yomo* meat pot for this purpose only when another pot is unavailable. Otherwise, one should use an *eino ben yomo* pot.

For Ashkenazim, the *Rema* (Y.D. 95:2) is stricter. If *pareve* food was cooked in a *ben yomo* meat pot, one should not eat it with dairy, although if it was already mixed with dairy, it is permitted. If the pot was *eino ben yomo*, it is permitted to eat it with dairy, however, it is not permitted to cook *lechat'hilah* with intention to eat with dairy (*Badei haShulhan* 95:33).

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children that their parents went away, or someone boarding in your home is a great opportunity for this mitzvah. **What about inviting a neighbor?** The *Rema* (O.H. 333:1) excludes ordinary friends from the special Shabbat allowance to clear stored *muktzeh* items for guests. *Kaf HaHaim* (333:11) cites the definition of guests as visitors from another city. The *Minhat Yaakov,* cited in *Pit'hei Teshuvah* (Y.D. 69:11), challenges applying such restrictions broadly. Certainly, sheltering a neighbor locked out of his home provides genuine hospitality. Actively inviting guests, as Avraham did, may add significance; some distinguish uninvited guests. **Can a ride count?** *Ma'aseh Ish* (5:138) reports that the *Hazon Ish* said yes. Rav Haim Kanievsky reportedly said only giving food and sleep fulfills the mitzvah. A report from the *Steipler* includes providing food during the ride. Even someone without money or a home can participate by **arranging food** and lodging for travelers (*Kaf HaHaim,* Palagi, siman 5). Yet hosting people who bring harmful influences or ***lashon hara*** can create serious problems. Rav Haim Palagi stresses that lodging may matter more than food, as the *Ishah HaShunamit* first prepared a bed for Elisha. He also emphasizes the **wife's willingness,** avoiding embarrassing Torah questions, **anger**, or complaints that make guests feel suspected or burdensome. Serve warmly, according to your means, and **personally** help, as Avraham did. But also be ***mehanech*** the kids like Avraham educated Yishmael. Hospitality also has ***hiddur mitzvah***: comfortable accommodations, thoughtful attention, and a pleasant expression matter more than an impressive menu. A host should **first ask** whether the traveler needs food or rest, before making small talk. Finally, the Gemara (*Berachot* 46a) says that *Hazal* make a *takanah* that the guest should lead *Birkat HaMazon* to bless his host - called The ***Birkat HaOreach***. That's when one person would say the whole *Birkat HaMazon* for everyone. Today when everyone recites it individually, *Aruch HaShulchan* (201:3) writes each guest has the *hiyuv* to say *Birkat HaOreach*, while the *Kaf HaHaim* (201:18-19) says each may say it, but does not infer it is a *hiyuv*.

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