

He begins by taking us to בבא מציעא מב. where Shmuel tells us: “There is no acceptable method for safeguarding money other than to bury it in the ground.” Rashi explains that if the deposit was not guarded in this way, the שומר is considered to have acted negligently and therefore even if he is a שומר חנם, he is liable for theft. Tosafos appears to disagree because he shows us that with regards to a שומר שָׂכָר, even if he were to hide the פְּקֻדוֹן in a one hundred *amos* excavated hole, he would still be liable for its theft. As Tosafos tells us regarding a שומר שָׂכָר: שומר אונס אלא לסטים מזדיין: no theft is considered accidental unless perpetrated by armed thieves. Rosh is even more emphatic as he quotes Yerushalmi שומר שְׂמִיָּרָה is mentioned for the שבועות פרק ח' “R’ Abahu said in the name of R’ Yochanan, שְׂמִיָּרָה is mentioned for the שומר חנם and שְׂמִיָּרָה is mentioned for the שומר שָׂכָר, but שְׂמִיָּרָה mentioned for the שומר חנם is not like שְׂמִיָּרָה mentioned for the שומר שָׂכָר. ...for the שומר חנם, if he guarded it sufficiently, he is not liable. For a שומר שָׂכָר, even if he built a wall of iron around (the פְּקֻדוֹן), we determine his liability only relative to his body i.e., if he was not literally with the פְּקֻדוֹן at the time of the theft, he is liable.’ Rosh, as Tosafos, concludes that שומר שָׂכָר פטור אלא לסטים מזדיין there is no theft for which a שומר שָׂכָר is exonerated from except for one done by armed thieves. There are Rishonim who disagree with this position. From where did Tosafos and Rosh derive these extreme opinions? Rav Meir Simcha believes that it is from the Torah telling us that the פְּקֻדוֹן was stolen from שומר חנם’s בית but with regards to the שומר שָׂכָר, it was

stolen **מעמו**. According to Rav Meir Simcha, if one is not being paid to watch an item, it is sufficient to keep it in his home, in a commonly accepted safe place. If one is being paid to guard something, he must always be with it, otherwise he is liable for its theft. Rav Yehuda Kupperman, in his **הגהות** on the Meshech Chochmah adds that R' Achai Gaon in **כ' שאילתא** is saying exactly this: **וְאִי לְנִטּוּרִי בְּאֶגְרָא אֲשֶׁלִּימוּ לִיה, אִף עַל גַּב דְּאֻקְמָא בְּדוּכְתָּא דְּנִטְרִי וְתָא, וְנִיגְבֶּתָא...** i.e., if he was a paid guardian, even if he kept (the פקדון) in a protected area, he is still liable for its theft as **he has to be with it** and protect it **by day and by night**. Exactly as the underpaid Yaakov Aveinu told Lavan: **מִיָּדִי.../...from me you would exact it, whether it was stolen by day or stolen by night. This is how I was: By day scorching heat consumed me, and frost by night; my sleep drifted from my eyes.**” A שומר שכר is an around the clock job. **מעמו**.

Rav Meir Simcha uses this to lend support and give approval to what, as he puts it, the *Acharonim* write regarding the question of whether a שומר can prematurely resign his watch. He is referring to the Machne Efraim (Rav Efraim Navon, 1677-1731) who answers that in **בא** Rav says that (if he gives his employer ample notice of his leaving) a worker can withdraw from his employment, even in the middle of the working day. The Machne Efraim tells us that a שומר שכר attains the status of a פועל who can leave. A שומר חנם does not. Why so? Because the שומר שכר's responsibility is so extensive-he uses Rav Achai Gaon's words, **דְּצָרִיךְ לְמִיתֵב בְּהֶדָּה וְלְנִטּוּרִי יִמָּא וְלִילִי**; he is therefore very comfortable applying Rav's rule to him. Not so with the שומר חנם who is clearly not a פועל and so, cannot just leave. According to Rav Meir Simcha, once again, **מעמו** versus האיש.

Rav Meir Simcha ends this piece by telling us to look at the **בג** where the *Mechaber* discusses the שומר שכר's duties and we see how he blends the opinions of Tosafos and Rosh, consistent with Rav Meir Simcha's **הַזְבֵּר**: “...even if he watched it very appropriately, and he placed the coins one hundred amos beneath the ground... even if he put an iron wall to protect it and even if had he been there, he could *not* have prevented it from being stolen, nevertheless, since he was not present when the theft occurred, he is liable... He is only acquitted if armed thieves stole it.” **מעמו**.

As mentioned many times, one of the intentions of our author in writing his sefer was to find Scriptural sources for **הַזְבֵּר** **ל**. This was a *mesorah* from the Beis Midrash of the GRA. He clearly took his “job” very seriously as he did not limit this to the **הַזְבֵּר** of the Talmud per se but even applied it to Rishonim and Acharonim!

לזכר נשמת אבי מורי ר' ישראל מנחם בן ר' שלום ז"ל
 לזכר נשמת אמי מורתי רחל בת ר' אלחנן אביגדור ע"ה
 לזכר נשמת חמי מורי ר' יעקב נתן בן ר' ישראל שלמה ז"ל
 ולזכר נשמת הרב יהודה בן ר' אברהם שמחה (קופרמן) זצ"ל
 מחבר הגהות על ספר משך חכמה