YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

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This week’s shiurim are dedicated in loving memory
of Yehuda Nattan Yudkowsky *z”l* whose yahrzeit is 17 Cheshvan

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**Shiur #03: Does a *Shomer Sakhar* Require an Actual Salary?**

The simple definition of a *shomer sakhar* is a paid or salaried watchman. In exchange for the salary he is paid by the owner of the item, he willingly accepts extra contractual responsibilities toward the item. Several *gemarot* in Shas may indicate that a person can be considered a *shomer sakhar* simply because he drew **benefit** from the item even without receiving an actual **salary**.

The gemara in *Bava Metzia* (43a) discusses a money changer (*shulchani*) who receives a deposit of money which isn’t fastened together but rather delivered in an open container. This mode of delivery indicates that he may utilize the money until the owner returns. Some opinions actually define this money changer’s status as a full-fledged *sho'el*, borrower, who would be liable for any loss of the money. Rav Nachman, however, claims that his liability is similar to that of a *shomer sakhar* – he pays for theft and loss but is exempt from paying for accidental damages. Since he received benefit from the money, he is obligated to the same extent as a *shomer sakhar*. Does this indicate that a *shomer sakhar* does not require actual salary to achieve his designation?

Perhaps the *shulchani would be considered a shomer sakhar* even if in general actual sakhar is demanded. In this instance, the *shulchani*’s ability to use the deposited money assures that he will have liquidity if a discounted item is put up for sale. Thus, as the gemara asserts, he **is** receiving a **salary** in addition to the *base* salary he receives for his money-changing services. In addition to the actual salary for his financial services he is receiving a sub-salary in the form of cash liquidity; this secondary **salary** renders him a *shomer sakhar*. He consequently also provides the servicesof a *shomer sakhar* in exchange for this secondary salary. Thus, we may not be able to prove from this gemara that a person can be considered a *shomer sakhar* simply because he derives benefit, even if he does not receive any salary.

We can employ a similar logic to explain an additional example of a *shomer sakhar* who doesn’t **appear** to receive a salary to watch an item. The Mishna in *Bava Metzia* (80b) describes an *uman* (craftsman) who repairs objects as a *shomer sakhar*. If the item is damaged or stolen while at his shop, he must provide restitution as a *shomer sakhar*. In this instance as well, the *uman* is receiving a primary salary (his payment for the repair) and a secondary salary which obligates him to provide the professional services of a watchman. The benefit he gains from the ability to withhold the repaired item in his shop to encourage payment of his primary salary is considered a sub-salary. This additional benefit is correlated with his regular salary, conferring the status of *shomer sakhar* upon him.

Unlike these two *gemarot*, the gemara in *Bava Metzia* (81a) addresses a *sho'el* who finishes the term of his borrowing. Upon announcing the conclusion of utility and subsequent willingness to return the item, he terminates the *sho'el*’s usual obligation to pay for accidental damages. However, the gemara claims that the *sho’el* maintains the liabilities of a *shomer sakhar* until the item is physically returned. Since he received benefit from this borrowed item, he must cover thefts and loss similar to the obligation of a *shomer sakhar*. It does appear that even **benefit** in the absence of a salary for services, is sufficient to transform the former *sho’el* into a *shomer sakhar*, since he has received no primary or secondary salary.

Alternatively, this ex-*sho’el* may not be considered an actual *shomer* *sakhar*, despite the similarity of their responsibilities. Instead, the gemara may be asserting that declaring formal termination of *sho'el* status doesn’t eliminate all *sho”el* obligations, but rather reduces them until the object is fully physically returned. After announcing the conclusion of use, certain levels of liability are suspended while minimal levels of compensation for theft and loss remain. The ex-*sho’el* still maintains residual levels of *sho'el* liabilities that *resemble* the liability levels of *shomer sakhar*. However, his status is that of a residual *sho'el* rather than a *shomer sakhar*. The *former* *sho’el* cannot be considered an actual *shomer sakhar* since there is no tangible salary.

A second instance of a residual *sho'el* may emerge from Tosafot's comments surrounding an interesting gemara in *Ketuvot* (34b). The gemara discusses the rights and liabilities of the inheritors of a *sho'el,* awarding them rights of use but not encumbering them with liabilities to pay.[[1]](#footnote-1) Tosafot comment that, although the inheritors are exempt from the comprehensive liability of a *sho'el*, they are required to cover theft and loss, just like a *shomer sakhar.* Once again, we would not intuitively define each of these inheritors as a *shomer sakhar* since they do not receive salary to watch. Instead, their liabilities may **resemble** those of a *shomer sakhar*, while they may, in actuality, reflect the residual liabilities of a *sho'el*. Limited liabilities can be passed from original *sho'el* to his inheritors even though comprehensive liability cannot. In the cases of the ex-*sho’el* and the inheritors of a *sho”el* there may be residual *sho'el* obligations that mimic the liability levels of a *shomer sakhar*, but do not actually define the subject as a *shomer sakhar*.

In contrast, the gemara in *Bava Kama* (56b) doesinitially appearto award *shomer sakhar* status to an unsalaried volunteer simply because he receives benefit. The gemara discusses a *shomer aveida*, one who retrieves a lost item. According to Rav Yosef, the finder is considered a *shomer sakhar* until he can restore the item to the owner. If a poor person were to approach him for charity while the object in his possession, the *shomer aveida* would be exempt from the usual obligation to give *tzedaka*. Watching the lost item is a mitzva (*hashev teshiveim*) and the rule of *osek b'mitzva patur min ha-mitzva* (a person involved in a prior mitzva is exempted from performing a newly emergent mitzva) would spare him the expense of giving *tzedaka* to the poor person. The *shomer aveida* only receives indirect financial benefit from guarding the lost item, but is still considered a *shomer sakhar*. Hence, this seems to be an example of a *shomer sakhar* who doesn’t receive any salary.

Even though this position may reflect a *shomer sakhar* without salary there are alternate options in this gemara. First, Raba disagrees with Rav Yosef and contends that the *shomer aveida* is merely a *shomer chinam* and not a *shomer sakhar.* Further, the gemara subsequently suggests that Rav Yosef’s position may reflect an external imposition by divine decree without regard to salary. The Torah disregards the usual prerequisite of salary in the case of *shomer aveida*, turning him into a *shomer sakhar* as a unique exception. Therefore, we cannot verifiably claim that *shomer aveida* for Rav Yosef is a real *shomer sakhar* without salary.

Two additional *gemarot* that discuss the identity of a *sokher*, or renter, provide a final case study on the necessity for a *shomer sakhar* to receive salary. The Tannaim debate whether a *sokher* pays as a *shomer chinam* (only for gross negligence) or as a *shomer sakhar* (for thefts and loss as well). According to Rebbi Meir - who considers a *sokher* to be a *shomer sakhar* - we might conclude that a *shomer sakhar* does not require an actual salary. His status of *shomer sakhar* may indicate that mere benefit is sufficient even in the absence of a formal salary.

However, we might counter that a renter or *sokher* is not considered an actual *shomer sakhar* at all because he doesn’t receive a salary. The Torah instead creates a **new** category whose responsibilities resemble the liabilities of a *shomer sakhar*. The Torah even embeds the mention of a *sokher* within the section which discusses a *sho'el* and doesn’t tether him to a *shomer sakhar* (Shemot 22:14). When Rebbi Meir described him as "like a *shomer sakhar"* (*ke-shomer sakhar*), he never intended to award him status as an actual *shomer sakhar* since he doesn’t receive a salary. Instead, Rebbi Meir was merely describing a *new* category described by the Torah that mimics the liability patterns of a *shomer sakhar*.

In conclusion, every Talmudic example that seems to indicate that *shomer sakhar* can exist without salary is explainable by other factors. Salary may therefore be intrinsic to the definition of *shomer sakhar*.

1. This assumes the death occurred prior to the conclusion of the loan agreement. [↑](#footnote-ref-1)