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Bava Metzia Daf 21

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### **Lost and Found**

The Torah mandates that one return a lost item to its owner. This obligation is limited to items which the owner has a chance of recovering, due to some identifying sign. The *Mishna* lists lost items that one may keep, due to their having no identifying sign, and lost items that one must announce, to fulfill the obligation to return the lost item to its owner.

The *Mishna* begins with the list of lost items that one may keep:

1. Scattered produce
2. Scattered coins
3. Bundles of grain, when found in the street
4. Pressed dried figs, in a standard round container
5. Bakery loaves of bread
6. Fish, hanging off a string
7. Meat slices
8. Standard bundles of wool
9. Bundles of linen
10. Purple strips of wool

Rabbi Yehudah says that any item that is out of the ordinary must be announced. Therefore, if one finds a container of pressed dried figs, but in it is a piece of clay, or a loaf of bread, containing embedded coins, he must announce the item. Rabbi Shimon ben Elozar says

that if one finds new utensils, he need not announce them.

### **Scattered Produce**

Rabbi Yitzchak defines scattered produce as a *kav* of produce that is spread in an area of 4 square *amos*. The *Gemora* explains that Rabbi Yitzchak says the *Mishna* is discussing a case where one left some grain in the threshing floor. If he left a *kav* over an area of 4 square *amos*, the produce is not significant enough to warrant the effort to collect it, and he therefore relinquishes it. In a standard case of lost fruit, if they seem to have been purposely left, one may never take them, while if they look lost, one may always take them, independent of the amount.

The *Gemora* questions whether the small amount of produce or the work involved in gathering it from this area is the reason for one to relinquish it. The cases where this question is relevant are:

1. Half a *kav* in 2 *amos* : less work, but less produce
2. 2 *kavs* in 8 *amos* : more work, but more produce
3. A *kav* of sesame in 4 *amos* : more work, but more valuable produce
4. A *kav* of pomegranates or dates : less work, but less valuable produce

All are left unresolved with a *taiku*.

### **Realizing the Loss**

A fundamental concept of returning a lost item is *ye'ush* – the lost item's owner despairing of retrieving it. When an item has no identifying sign, we assume that the owner despairs of retrieving it.

The *Gemora* cites a dispute between Abaye and Rava about whether *ye'ush shelo midaas*, *ye'ush* that has not yet occurred but will occur later, is effective. Abaye says that *ye'ush* is only effective once the owner realizes he lost his item, and consciously despairs of retrieving it. Rava says that even before the owner realizes he lost an item, his future *ye'ush* is effective once the item is lost. The *Gemora* clarifies that even Rava agrees that if someone found and took an item with an identifying sign – which one would normally not despair of retrieving – even if the owner later despairs of finding it, the finder may not keep the item, since he took it when it was prohibited. Only *ye'ush* that is technically missing knowledge is effective, but not *ye'ush* which may not occur. Abaye also agrees that if an item is swept away by the sea or a river, even if it has a sign, the finder may keep it, since it is lost from everyone. The only dispute of Abaye and Rava is a case of an item with no identifying sign (*which the owner will despair of retrieving*), but which the owner hasn't realized he lost.

The *Gemora* cites the cases of our *Mishna* which seem to indicate that *ye'ush* is effective before the owner is aware, and deflects each proof:

1. Scattered produce may be taken, even though the owner may not be aware of their loss. The *Gemora* deflects this by citing Rabbi Yitzchak, who limits the *Mishna* to a case of conscious abandonment in the field
2. Scattered coins may be taken, even though the owner may not have realized their loss. The

*Gemora* applies Rabbi Yitzchak's statement that a person constantly checks his pockets, and will therefore immediately realize his loss of the coins

3. Loaves of bread and pressed dried figs are heavy, so one will immediately realize they are lost
4. Purple strips of wool are expensive, so Rabbi Yitzchak's statement of one checking his pockets applies

[See *Gra 21b:1* for a discussion of the cases the *Gemora* did not cite.]

The *Gemora* then brings other sources to try to prove Abaye or Rava's position.

The *braisa* says that if one finds coins in a *shul* or *Beis Medrash*, or any place of congregation, he may keep them. Rabbi Yitzchak says that one constantly checks his pockets, so the owner will immediately realize his loss.

The *Mishna* in *Pe'ah* says that when *nemushos* pass through a field, anyone may take produce left over from the *leket* (*dropped sheaves*), which must be left for the poor. [Rabbi Yochanan identifies *nemushos* as *old poor people who walk slowly and thoroughly inspect the land, while Raish Lakish identifies them as the second pass of poor people*]. Once these pass through the field, the poor of the town despair of finding much produce there, and therefore anyone may take the remaining produce. However, the poor of other towns don't know when this happens, so they can't consciously despair, yet we allow people to take the produce, indicating that unconscious despair is sufficient. The *Gemora* deflects this by saying that the poor of other towns despair at the outset, since the poor of this town will collect the gifts.



By: Rabbi Yechezkel Khayyat

### **Scattered Produce**

The *Mishna* says that if one finds dried figs on the road, even adjacent to a field of drying figs, or figs on the road under an overhanging fig tree, they are considered ownerless. He may therefore take them, and they are not obligating in any tithes. However, similar situations with olives or carob are not considered ownerless. Abaye can explain that the first two cases are ones where the owner consciously has despaired of his fruit: dried figs are valuable, so one constantly checks them, and one knows that figs constantly fall off a tree, and therefore relinquishes them a priori. However, he does not know about the olives and carob that fell off, and therefore does not consciously relinquish them, and therefore one may not take them. We assume that once the owner discovers any fallen fruit, he will relinquish them, so the end of the *Mishna* therefore seems to disprove Rava. The *Gemora* explains that the owner will not relinquish his olives and carobs, since people can see that the fruit came from the overhanging tree, and will not take them. Figs that fall from a tree get dirty, and therefore the owner will relinquish them.

The *braisa* says that if an item is transferred from one person to another as a result of theft, robbery, or a strong river, the recipient may keep the item. While the original owner sees a river or robber taking his item and can relinquish it, a thief takes the item without his knowledge, but the *braisa* still gives possession of the item to the recipient. This seems to prove Rava's position. Rav Pappa explains that the thief in this *braisa* is an armed robber, so the owner does know about the theft. He is still considered a thief since he is not brazen enough to rob without the security of a weapon.

The *Gemora* asked what amount of produce is considered scattered, and Rabbi Yitzchak answered that the limit is a *kav* of produce in an area of 4 square *amos*. The *Gemora* then proceeds to challenge the premise of the discussion, saying that if the produce was purposely placed, any amount should not be taken, and if the produce was dropped, any amount should be taken. The *Gemora* explains that Rabbi Yitzchak was discussing a case of one leaving leftover produce after threshing, and not a standard case of lost produce.

Tosfos (21a v'kama) explains that Rabbi Yitzchak was the one who asked the question, and therefore the *Gemora* challenges the premise of the question itself. Rabbi Yitzchak did not understand the *Mishna* as a case of produce that was left by accident, since he holds like Abaye on the issue of *yeush shelo midaas*. Therefore, if the scattered produce was a standard lost item, the finder could not take it, since the owner may not have realized the loss and despaired.

The Rambam (Gezeila v'aveida 15:8), however, rules that if scattered produce was dropped, the finder may keep it.

The Tur (HM 262) challenges this ruling, since we follow Abaye, and therefore should not allow the finder to take the scattered produce.

The Ramban explains that Rabbi Yitzchak felt compelled to limit the case of the *Mishna* to the leftover grain on the threshing floor, only before the *Gemora* deflected the later cases of the *Mishna* with the statement that one immediately realizes the loss of heavy items. Once the *Gemora* introduced the concept that one immediately realizes the loss of a heavy item,

### **INSIGHTS TO THE DAF**

this will allow us to apply the *Mishna's* statement of scattered produce to a standard lost item as well.

### **Two Halves make a Whole?**

The *Gemora* questioned how to apply Rabbi Yitzchak's measure to other situations. The first set of cases are different measures – instead of one *kav* in 4 *amos*, there are  $\frac{1}{2}$  a *kav* in 2 *amos*, or 2 *kavs* in 8 *amos*. Tosfos (21a chatzi) asks why the *Gemora* considered these different than the case of 1 *kav* in 4 *amos*. If Rabbi Yitzchak is indicating that the grain owner does not consider the cost of collecting produce over 4 *amos* in order to earn 1 *kav* to be worthwhile, the same cost benefit ratio applies to half that amount or double that amount. Tosfos points out that a *kav* in 4 *amos* is just two subareas, each one of  $\frac{1}{2}$  a *kav* in 2 *amos*. If one would consider it worth the effort to collect the  $\frac{1}{2}$  *kav* in 2 *amos*, he would do the same for a *kav* in 4 *amos*. Tosfos offers two answers:

1. Psychologically, one is overwhelmed by a large job more than by a smaller job, even when proportionally the cost benefit ratio is the same. When one sees a manageable area of 2 *amos*, he will consider the job easily done, and worthwhile, and therefore do it. When he sees a larger absolute area of 4 *amos* – even with proportionally the same benefit for the work in terms of produce – he will consider the job too large, and abandon it. [*One may take a lesson for heavenly matters, that the key to accomplishing large tasks is to isolate them into smaller steps, so as not to become overwhelmed and discouraged.*]
2. The areas discussed are always in square *amos*. Therefore, the case of  $\frac{1}{2}$  a *kav* is in 2 square *amos*, which is only a quarter of 4 square *amos*. The *Gemora* was asking whether the smaller area compensates for the less produce.

### **Taiku in Lost and Found**

The *Gemora* leaves the further scenarios of Rabbi Yitzchak's case unresolved as a *taiku*. A *taiku* is considered a bona fide doubt in *halachah*, and the general rules of doubtful situations apply.

The Rishonim disagree on how to deal with such a doubt regarding a lost item. Rosh says that one should be stringent, and take the item and announce its loss to find the owner. The Rambam (Gezeila v'aveida 15:12) rules that one should treat the doubt with passivity. The finder should not take the item, since it may not be a lost item, or it may be an item that he can keep.

The Noda Be'yehudah explains that the Rosh does not consider a finder to be in possession of the lost item, and therefore the standard rules of doubt applies, and the finder must be stringent. However, the Rambam considers the finder to be in possession of the item once he took it, and therefore, he need not announce it, since in monetary *halachah*, one who tries to remove an item from its current possession has the burden of proof. The finder can maintain that he is allowed to keep it, and the owner must prove otherwise. The Noda Be'yehudah maintains that even the Rambam does not allow the finder who took the item to use it. He must keep it in escrow until Eliyahu Hanavi comes.

### **Yeush Shelo Midaas**

The Raavad suggests that the dispute of Abaye and Rava is simply a dispute over *bereirah* – retroactively applying a clarification. Since we know the owner will despair on discovering his loss, Rava says *bereirah* allows us to consider him despaired now, while Abaye hold that *bereirah* is not effective, and the despair can only take effect at the time of discovery.



The Ritva disagrees, and says that Rava considers the item despised, even if the owner never does despair. The situation of an item for which there truly is no hope of recovery is sufficient, even if the owner never reaches this realization. See Chidushei Rabbi Shimon Shkop (BM 20) for further discussion of the mechanism of *yeush* and why Abaye requires it to be actualized to be effective.

### **How Important**

The *Gemora* explicitly discussed, according to Abaye, why five out of the ten items in the *Mishna* are taken by the finder. The *Gemora* omitted:

1. Bundles of grain, when found in the street
2. Fish, hanging off a string
3. Meat slices
4. Standard bundles of wool
5. Bundles of linen

The Rosh (siman 2) says that fish and meat are important items (like coins), since they are food, and we assume their owner is constantly checking for them. Bundles of linen and wool are expensive items, and one will also constantly check them. Our text of the *Gemora* says that loaves of bread and pressed figs are heavy, and their owner therefore immediately realizes their loss.

The Gra suggests the Rosh had a text in our *Gemora* that explained that loaves of bread and pressed figs are *important*. The Rosh understood this to be due to their being food items, and applied this to meat and fish. The Rosh then applied the concept of money, with its intrinsic value, to the bundles of wool and linen. The Gra explains, based on Tosfos (21a krichos) that bundles of grain are a case where we assume the owner placed them there on purpose and forgot them there, and will realize his loss immediately.

## **DAILY MASHAL**

All or nothing

We have learnt in our sugya that an owner of a kav of fruit (according to Chazon Ish, 2.4 liters or, according to Rav Chayim Noeh, 1.38 liters) that have scattered within four square cubits abandons hope of gathering them and anyone may claim them. However, the Gemara then raises the question of half a kav within 2 square cubits.

At first thought, the proportion between the cases is identical, both as to the amount of fruit and their manner of being scattered. What could be the difference? Tosfos (s.v. "Chatzi") explain that a person may make an effort to gather half a kav whereas a large amount is troublesome to gather. Still, we may wonder: If so, why may the finder take the entire kav scattered in four cubits? Why do we assume that the owner of the fruit would not bother to gather half of the amount lying within only two cubits?

HaGaon Rav Chayim Berman wisely remarks that the question shows a deep comprehension of human nature. Someone who sees a tremendous chore before him starts to feel lazy or even does not begin. This tendency may also trouble a person who decides to finish Shas in the Daf HaYomi program. He may suddenly ask himself, "Finish the whole Shas? Now that's really too much!" He thus gets discouraged and eventually may not even finish one tractate. "The wise", however, "have their eyes in their heads". He must make up his mind to learn one tractate first. He thus succeeds in gathering half a kav and, with HaShem's help, proves the blessing "Taste and see that HaShem is good" (Tehillim 34:9), earning renewed strength to finish the whole Shas.