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Bava Metzia Daf 26

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Lost in the Wall

The *Mishna* had stated: If one found an object in a new wall, if it is in the outer half of the wall (*towards the public domain*) it belongs to the finder. If it is in the inner half (*toward the house*), it belongs to the owner of the house.

Rav Ashi says: A knife is judged based on where the handle is, and a purse is judged based on the location of the strings. [*For example, if the handle or purse strings are toward the public domain, it belongs to the finder.*]

The *Gemora* asks: Why, then, does our *Mishna* say we judge by which half it is in? We should judge by the handle or strings!

The *Gemora* answers: Our *Mishna* is talking about a bunch of feathers (*i.e. pillow stuffing*) and a metal bar (*both of which do not have a distinctive handle*).

The *braisa* states: If the wall was full of the object, they (*the finder and homeowner*) split it.

The *Gemora* asks: This is obvious!?

The *Gemora* answers: The case of the *braisa* is where the wall is on a slant. One might think that the item was originally placed on the higher part and only later spilled to the lower part, meaning that the one who gets the half in the higher part should really get everything. This is why the *braisa* must say that they still split evenly. (26a)

Found Money

The *Mishna* had stated: If he rented it (a house) to others, even in the house, it (that which he finds) is his.

The *Gemora* asks: Why should he be able to keep it? Why don't we say it should belong to the last tenant? Doesn't the *Mishna* say: Money that was found in front of animal merchants (*in Yerushalayim*) is *ma'aser sheini* money. If it is found on the Temple Mount, it is regular money. If the money is found in other markets in Yerushalayim, during the year it is considered regular money, while during the festivals, it is considered *ma'aser sheini* money. [*People used to primarily spend ma'aser sheini money on korbanos shelamim, and during the festivals it was commonly used to buy everything with ma'aser sheini money.*]

Rabbi Shamaya bar Zeira explained: What is the reason for this law? The markets of Yerushalayim were swept every day. [*Therefore, money found there was from that day. If it is the festival season, it is therefore from ma'aser sheini, not from before the festival when the regular money was used.*] This implies that we say that the money from the earlier days was taken away, and the money found now was dropped recently. Here, as well, we should assume that any money found is from the last tenants!?

Rish Lakish answers in the name of Bar Kapara: The case is where he made it (the house) an inn for three Jews (*and*



the fellow who lost the money wouldn't know which one of the three found it, causing him to despair).

The *Gemora* asks: Does this imply that the law is like Rabbi Shimon ben Elozar, that even when a lost object (*with a siman*) is found in an area where there are mostly Jews that the owner is assumed to have despaired? [*We rule like the Rabbis that we assume such people do not despair of recovering it!*]

Rather, Rav Menashya bar Yaakov says: The case is where he made it an inn for three idolaters.

Rav Nachman says in the name of Rabbah bar Avuha: It could even have been an inn for three Jews. Why do we say the person despaired? The one who it fell from says (to himself) as follows, "Nobody else was with me in this house except for those two. I asked them to return it to me many times, and they did not do so. Why would they return it now? If they wanted to return it, they would have done so. The fact that they did not do so demonstrates that they (*or at least one of them*) wanted to steal it" (and that is why he despairs of recovering it).

Rav Nachman is basing himself on a previous statement. He says: If someone saw a *sela* (*large coin*) fall from between two people, he must return it. The one who it fell from does not despair of it. He thinks as follows, "Being that nobody else was with me except for that fellow. I will bring him to court and say to him, 'You took it from me' (and I will make him swear that he did not steal it and eventually he will admit)." However, if there were three people there, he (the finder) is not obligated to return it (even if it has an identifying mark). What is the reason? The person who it fell from has despaired of recovering it. He says, "Let us see; there were two other people with me. If I take one of them to court, he will deny taking it, and if I take the other one to court, he will deny taking it." [*He will not be able to force either one of them*

to take an oath, for he does not have a definite claim; he therefore despairs of ever recovering it.]

Rava says: That which you said that if it fell from three people he is not obligated to return it, that was said only if the object (which was found) did not have in it a *perutah* for each person in the group (*i.e., it was worth less than three perutot*). However, if the object did have a *perutah* in it for each one (*i.e., it was worth at least three perutot*), he is obligated to return it. What is the reason? He says: It is possible that they are partners (in it), and therefore he does not despair of recovering it. [*If there is not a perutah per person, there is no obligation to return a lost object when its value is less than a perutah. If they are partners and the value is more than three perutot, the partner who dropped it is not meya'esh, as he thinks that his other partner picked it up and is not returning it to him, for he wants to bother him.*]

There is an alternate version: Rava said: Even if it is only worth two *perutos* one is obligated to return it. What is the reason? They might be partners, and one might have given his portion to his friend. (26a – 26b)

The Sin of not Returning Lost Objects

Rava says: If someone saw a *sela* fall down, and he, before the owner despaired of recovering it, took it with intent to steal it, he transgresses all possible prohibitions (*directly associated with returning lost objects*). He transgresses, "Do not steal," "You shall surely return," and "You cannot look away." Even if he would afterwards return the object to the person after he had despaired of recovering it, he is merely giving him a gift and is still considered as having sinned. If he, before the owner despaired of recovering it, took it in order to return it, but after the person had despaired of recovering it, he changed his mind and intended to steal it, he transgresses "You shall surely return." If he waited until the owner had despaired of recovering it and then picked up the lost

object (*but had not picked it up at all previously, he merely knew where it was located*), he only transgresses, “You cannot turn away.”

Rava says: If someone saw a *zuz* (*coin*) fall from his friend into the sand, and he retrieved it and took it, he is not obligated to return it. Why? This is because the person who it fell from, even if he is seen taking a sifter and sifting the sand, is only doing so because he thinks, “Just as I lost something here, I’m sure someone else lost something as well, so I will probably find something.” (26b)

Mishna

If one found something in a store, it is his. If he found it in between the box and the store owner, it belongs to the store owner. If he found it before the money changer, it is his. If he found it between the money changer and his table, it belongs to the money changer. If someone buys fruit from his friend or his friend sends him fruit (to his house), and he finds money in it, the money belongs to him. If the money was tied in a bundle (and there is an identifying mark on it; either thru the knot or the amount), he should take it and announce it. (26b)

Coins by a Moneychanger

Rabbi Elozar says: This (halachah that the finder keeps the money that was found before the money changer) is even if it was sitting on the table.

The *Gemora* asks a question from our *Mishna*. The *Mishna* states: If he found the money before the money changer, it is his. This implies that if it was on the table, it belongs to the money changer. However, the end of the *Mishna* states that if he found the money between the money changer and the table, it belongs to the money changer. This implies that if it was on the table he may keep it! It is therefore clear, the *Gemora* concludes, that we cannot deduce the answer to this question based on these

deductions from our *Mishna* (*as they contradict each other*).

The *Gemora* asks: How did Rabbi Elozar figure out this law?

Rava answers: He had difficulty understanding the *Mishna*. Why did the *Mishna* say that if he found the money between the money changer and the table, it belongs to the money changer? Why didn’t it say that the money was on the table? Alternatively, it should have said, “If he found it on the table,” similar to the first part of the *Mishna* which stated that if he found it in a store, it is his. It must be, he concluded, that even if he found it on the table, he may keep it. (26b)

INSIGHTS TO THE DAF

Chatzer

The *Gemora* states that if one finds an old rusty object in a wall, he can assume it was there prior to the Jews conquering *Eretz Yisroel* and therefore the finder can keep it.

Tosfos asks: Why doesn’t the wall function as a *chatzer* for the owner to acquire the object that was in it, since a *kinyan chatzer* doesn’t need awareness of the owner to acquire (*it works as a shli’ach to acquire a zechus even without the owner knowing*)?

Tosfos answers that a *chatzer* can acquire only something that would definitely have been found by the owner, but it does not have the ability to acquire something which may have never been found.

The Shita Mikubetzes answers *Tosfos* question that a *chatzer* can acquire without the owner’s knowledge only when the owner owned it (the *chatzer*) prior to the object coming into it, but in this case, where the object was

already in the *chatzer* at the time it was acquired, there isn't any *kinyan chatzer*.

The Ketzos HaChoshen (198:2) uses this to explain the Shach who says that *chatzer* can acquire only when it is owned or rented prior to the object entering, but if the object was already in the *chatzer*, one cannot acquire the object simultaneously with acquiring the *chatzer*.

However, it would seem that the Shach goes beyond the novelty of the Shita Mikubetzes. The Shach is discussing a case where the owner of the *chatzer* is well aware of the object and interested in acquiring it through his *chatzer*, yet he insists that the *chatzer* cannot function to acquire an object that was already there when he acquired it. But in our case, the owner is not aware of the object. Had the owner been aware of the object it is very possible that the Shita Mikubetzes would agree that he can acquire the object that was already in the *chatzer* when he purchases it.

The reason that the Shita would make a distinction whether or not the owner is aware of the object is that his logic for not allowing *kinyan chatzer* to function on an object already in the *chatzer* is an issue with *da'as* - intent. Meaning, whenever a person does not have *da'as* on at the time he acquires it, he isn't *koneh* - just that normally a person who owns a *chatzer* has ordinary *da'as* to acquire an object that would come into the *chatzer* afterward, but his *da'as* is not on objects that are already in the *chatzer* that he is unaware of. Therefore, if he is aware of the object, the *kinyan chatzer* has the ability to enable him to acquire even objects that were there prior to acquiring the *chatzer*.

Returning and not Looking Away

Rava says that if one takes a lost article prior to *yi'ush* with the intent of returning it, and then decides after *yi'ush* to

keep it for himself, he is in violation of "You shall surely return."

Rashi understands that he is in violation only of "You shall surely return," because the prohibition of stealing only applies at the time that one grabs it (*as Rashi writes in many places*), and the prohibition of "You cannot look away" applies only at the time that one ignores the object by not picking it up. Rashi understands that the prohibition of "You cannot look away" applies only until the object is picked up, but once the object is picked up for the purpose of returning it, the only prohibition left to be in violation of is "You shall surely return."

The Ba'al Hameor disagrees and holds that just as "You shall surely return" applies until the object is returned to the owner, so too "You cannot look away" applies until the object is returned.

Tosfos cites a *braisa* in Kiddushin (34a) that supports Rashi, which compels *Tosfos* to revise the text in the *Gemora* clearly like Rashi – He transgresses nothing except "You shall surely return."

The *braisa* in Kiddushin lists the positive commandment of "You shall surely return" as a *mitzvah* that is not time bound, thereby obligating women. The question is: Would women not anyway be obligated due to the negative prohibition of "You cannot look away"?

Tosfos therefore holds that there must be a case where the *mitzvah* of "You shall surely return" applies and the prohibition of "You cannot look away" doesn't apply, such as our case, where the object is taken for the purpose of returning and then the finder fails to return it.

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: What is the *halachah* if one found produce, where a portion of the produce was in the vessel and a portion was lying on the ground?

A: He must announce everything.

Q: What is the *halachah* if one found something without an identifying mark next to something with an identifying mark?

A: He is required to announce it (*everything*). If the owner of the object with the identifying mark claims it and takes his object (*but he says that the money is not his*), the finder acquires the objects without the identifying mark on it.

Q: If one finds young tied pigeons that hop from place to place, what should he do?

A: He should not touch them.

DAILY MASHAL

Gold Coins and Chandeliers

HaGaon Rabbi Tzvi Hofmann zt"l (5603-81) headed the Rabbi Azriel Hildesheimer Rabbinical Seminary in Berlin. Two acquaintances once came to him with a tale of hidden treasure that threatened their friendship. One of them sold the other a house and when the buyer made renovations he discovered a huge horde of ancient gold coins under the floor. Everyone heard about the find and the former owner of the house quickly demanded the treasure. His claim, though, was immediately rejected: As our sugya explains, even one who finds something hidden in a pile of stones in another's house may take it for himself if it was obviously not hidden by the

homeowner or his ancestors (Responsa Melamed Leho'il, III, 57).

An electrician who came to work for a wealthy man became a participant in an incident he would never forget. The owner of the house asked him to replace an old electric chandelier with a new one and was observing him as he perched on a ladder. When the electrician dismantled the old chandelier, thousands of \$100 bills showered down while the shocked owner of the house muttered, "Oy, I forgot I hid the dollars in the chandelier and I already gave up hope of finding them." The electrician heard him, gingerly spread his arms to catch the dollars and continued to gather as many bills as he could from the floor while the elderly owner of the house stood dumfounded. When they came to beis din, the electrician claimed that he clearly heard the owner of the homeowner declare that he had abandoned hope of finding the money.

What is the law in this case?