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Bava Metzia Daf 27

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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

Now, the “garment” too was included in all these (in the verse): why then was it singled out? [It is] to compare (all types of lost objects) to it; to say to you: just as a “garment” is distinguished in that it bears identification marks and it has claimants, so must everything be announced, if it bears identification marks and it has claimants.

The Gemora asks: What is meant by “in all these”?

Rava said: It is included in the general phrase: *with every lost article of your brother*.

Rava said: Why should the Merciful One write *ox, donkey, lamb* and *garment*? They are all necessary, for had the Merciful One written “garment” alone, I would have said: That is only if there are witnesses on the object itself, or the object itself bears marks of identification, but in the case of a donkey, if there are witnesses as to its saddle or if its saddle bears marks of identification, I might think that it is not returned to him. Therefore the Merciful One wrote “donkey” to show that even the donkey [too is returned] in virtue of the identification of its saddle. For what purpose did the Merciful One write “ox” and “lamb”? “Ox” - that even the shearing of its tail, and “lamb” - that even its shearings [must be returned].

The Gemora asks: Then the Merciful One should have written “ox” to show that even the shearing of its tail [must be returned], and (we should infer that) even more so the shearings of a lamb (as they are more substantial)?

Rather, said Rava, “donkey” mentioned in connection with a pit, according to Rabbi Yehudah's view<sup>1</sup>, and ‘lamb’ in connection with a lost article, according to all views, are [unanswerable] difficulties.

The Gemora asks: But why not assume that it comes [to teach] that the dung [(of a lost animal) must be returned]?

The Gemora answers: The ownership of dung is renounced.

The Gemora asks: But perhaps its purpose is to teach the law of identification marks? For it has been inquired of us whether identification marks are Biblically valid [as a means of proving ownership] or only by Rabbinical Law; therefore Scripture wrote “lamb” to show that it must be returned even on the strength of identification marks, thus proving that these are Biblically valid.

The Gemora answers: They said: since the Tanna refers to identification marks in connection with “garment,” for he taught: just as a “garment” is distinguished in that it bears identification marks and it has claimants, so must everything be announced, if it bears identification marks and it has claimants, it follows that the purpose of “lamb” is not to teach the validity of identification marks.

The Gemora cites a braisa: [And so shall you do with any lost article] *which shall be lost to him*: this excludes a lost article worth less than a perutah. Rabbi Yehudah said: *And you have*

<sup>1</sup> The Rabbis maintain that the maker of the pit is not responsible for damages to a man or utensils,

interpreting, ‘ox,’ but not man, ‘donkey,’ but not utensils. R’ Yehudah, however, maintains that he is responsible for utensils: hence the difficulty, why mention ‘donkey?’



*found it*; this excludes a lost article worth less than a perutah.

The Gemora asks: What is the difference between them?

Abaye said: They differ as to the texts from which the law is derived: one master (the Tanna Kamma) deduces it from: *which shall be lost to him*; the other (R' Yehudah), from: *and you have found it*.

The Gemora asks: Now, he who derives it from *which shall be lost to him*, how does he employ *and you have found it*?

The Gemora answers: He requires it for Rabbanai's teaching, for Rabbanai said: *And you have found it* implies - even if it has come into his possession (one is still not obligated to return a lost article to a gentile).

The Gemora asks: Now, he who deduces it from *and you have found it* how does he utilize *which shall be lost to him*?

The Gemora answers: He needs it for Rabbi Yochanan's teaching, for Rabbi Yochanan said in the name of Rabbi Shimon ben Yochai: From where do we know that a lost article swept away by a river is permitted [to the finder]? From the verse: *And so shall you do with all the lost things of your brother which shall be lost to him and you have found it*: this implies that which is lost to him but is available to others in general, thus excluding that which is lost to him and is not available to others.

The Gemora asks: And the other, from where does he infer Rabbanai's teaching?

The Gemora answers: He derives it from: *and you have found it*.

The Gemora asks: And the other, from where does he know Rabbi Yochanan's teaching?

The Gemora answers: *From* [that which shall be lost] *to him*.

The Gemora asks: And the other (how does he employ the phrase "from him")?

The Gemora answers: In his opinion, "*from him*" has no particular significance.

Rava said: They (the Tanna Kamma and R' Yehudah) differ in respect of [a lost object] worth a perutah (at the time it was lost), which [subsequently] depreciated (i.e., when it was found, it was worth less than a perutah). According to the view that it is derived from *which shall be lost to him*, there is (an obligation to return it, as it was worth a perutah when it was lost); but according to the one who deduces it from *and you have found it*, there is not (an obligation to return it, as it was not worth a perutah when it was found).

The Gemora asks: Now, he who emphasizes *which shall be lost* surely *and you have found it* must also be applicable, which is not [the case here, as it was not worth a perutah at that time]!?

The Gemora concedes the point and explains the argument differently: Rather, they differ in respect of [a lost object worth less than] a perutah (at the time it was lost), which [subsequently] appreciated (i.e., when it was found, it was worth more than a perutah). According to the view that it is derived from *and you have found it*, there is (an obligation to return it, as it was worth a perutah when it was found); but according to the one who deduces it from *which shall be lost*, there is not (an obligation to return it, as it was not worth a perutah when it was lost).

The Gemora asks: Now, he who emphasizes *and you have found it* surely *which shall be lost* must also be applicable, which is not [the case here, as it was not worth a perutah at that time]!?

The Gemora concedes the point and explains the argument differently: Rather, they differ in respect of [an article worth] a perutah (when it was lost), which depreciated and then



rose in value again (and was worth a perutah when it was found). According to the view that it is derived from *which shall be lost to him*, there is (an obligation to return it, as it was worth a perutah when it was lost); but according to the one who deduces it from *and you have found it*, it must have had the value of a 'find' from the time of being lost until found.

The scholars inquired: Are identification marks [legally valid] by Biblical Law or merely by Rabbinical Law? What is the practical difference? In respect of returning a woman's divorce on the strength of identification marks: should you say that they are Biblically [valid], we return it; but if only by Rabbinical Law, the Rabbis enacted this measure for civil matters only, not for prohibitory law?<sup>2</sup>

Come and hear (from our Mishna): Now, the "garment" too was included in all these (in the verse): why then was it singled out? [It is] to compare (all types of lost objects) to it; to say to you: just as a "garment" is distinguished in that it bears identification marks and it has claimants, so must everything be announced, if it bears identification marks and it has claimants. [Thus it is explicitly stated that the validity of identification marks is deduced from Scripture; it is obviously Biblical in nature.]

The Gemora rejects the proof: The Tanna really desires [to teach] that there must be a claimant; identification marks are mentioned only incidentally.

Come and hear: [Therefore Scripture wrote *donkey* to show that even the donkey [too is returned] in virtue of the identification marks of its saddle!

The Gemora rejects this proof as well: You can say: in virtue of the witnesses [attesting to the ownership] of its saddle.

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<sup>2</sup> It is a general principle that the Rabbis could freely enact measures affecting civil matters, since they had the power to abrogate individual rights of property under certain conditions, but they could not nullify prohibitions. Therefore, if identification marks are Scripturally valid,

Come and hear: *And it [the article found] shall remain with you until your brother seeks it out [and You shall return it to him]:* Now, would it then have occurred to you that he should return it to him before he seeks it out? Rather, it means as follows: examine him [the claimant], whether he is a fraud or not a fraud. Surely that is by means of identification marks!

The Gemora rejects this proof as well: No; it is by means of witnesses.

Come and hear: Testimony (regarding the identity of a corpse) may be given only on proof [afforded by] the face with the nose, even if the body and the garment bear identification marks. This proves that identification marks are not Biblically valid (as they do not permit the wife to remarry)!

The Gemora rejects this proof: You can say as follows: In respect to the body, [the proposed identification marks were] that it was short or long; while those of his garments [are rejected] because we are concerned about the possibility of borrowing.

The Gemora asks: But if we are concerned about the possibility of borrowing, why is a donkey returned because of the identification of the saddle?

The Gemora answers: You can say: People do not borrow a saddle, because it would abrade the donkey's skin.

Alternatively, the garments [were identified] through being white or red (and as there are many such garments, color alone would not suffice as an identifying mark).

The Gemora asks: Then what of that which was taught in a braisa: If (an agent lost a bill of divorce and then) he found it

the divorce is returned to the messenger, who proceeds to divorce the woman with it. But if they have no Scriptural force, the Rabbis could not institute a measure to release her from her marriage bonds which was not sanctioned by the Bible.



tied up in a purse, moneybag, or to a signet ring, or if he found it amongst his [household] utensils, even a long time afterwards, it is valid. Now should you think that we are concerned about the possibility of borrowing - if he found it tied up in his purse [etc.], why is it valid? Let us be concerned for borrowing!?

The Gemora answers: You can say: A purse, moneybag, and signet ring are not lent: a purse and a moneybag, because people are superstitious about it; a signet ring, because one can commit forgery with it.

The Gemora suggests: Shall we say that this is disputed by Tannaim? For it was taught in a braisa: Testimony (regarding a corpse) may not be given on the strength of a wart; but Elozar ben Mehavai said: Testimony may be so given. Surely then they differ in this: The Tanna Kamma holds that identification marks are [only] Rabbinically valid, while Elozar ben Mehavai holds that they are Biblically valid!?

Rava said: All may agree that they are Biblically valid; they differ here as to whether a wart is to be found on one's contemporary. One master maintains that a wart is [generally] found on a person's contemporary, while the other holds that it is not.

Alternatively, all agree that it is not; they differ here as to whether identification marks are liable to change after death. One master maintains: Identification marks are liable to change after death, while the other holds that they are not.

Alternatively, all agree that a wart is not liable to change after death, and identification marks are valid only by Rabbinical Law; they differ here as to whether a wart is a perfect mark of identification. One master maintains that a wart is a perfect mark of identification, while the other holds that it is not.

Rava said: If you should resolve that identification marks are not Biblically valid, why do we return a lost article in reliance on these marks?

The Gemora answers: It is because one who finds a lost article is pleased that it should be returned on the strength of identification marks, so that should he lose anything, it will likewise be returned to him through marks of identification.

Rav Safra said to Rava: Can then one confer a benefit upon himself with money that does not belong to him!

Rather, the reason is this: The loser himself is pleased to offer identification marks and take it back. He knows full well that he has no witnesses; therefore he argues to himself, "Everyone does not know its perfect identification marks, but I can state its perfect identification marks and take it back."

The Gemora asks: But what of that which we learned in a Mishna: Rabban Shimon ben Gamliel said: If it was one man who had borrowed from three, he [the finder] must return [them] to the debtor; if three had borrowed from one, he must return them to the creditor. Is then the debtor pleased that it [the promissory note] is returned to the creditor?

The Gemora answers: In that instance, he replied to him, it is a matter of logic. If it was one man who had borrowed from three, he must return [them] to the debtor, because they are to be found [together] in the debtor's possession, but not in the creditor's; hence the debtor must have dropped it. If three had borrowed from one, it must be returned to the creditor, because they are to be found in the creditor's possession, but not in the debtor's.

The Gemora asks: But what of that which we learned in a Mishna: If one finds a roll of notes or a bundle of notes he must surrender [them]; here too, [is then the reason] because the debtor is pleased that they should be returned to the creditor!?



Rather, said Rava, identification marks are Biblically valid, because it is written: *And it shall be with you until your brother seek after it.* Now, would it then have occurred to you that he should return it to him before he sought it! Rather, it means as follows: examine him [the claimant], whether he is a fraud or not a fraud. Surely that is by means of identification marks! That indeed proves it.

Rava said: Should you resolve that identification marks are Biblically valid . . . The Gemora interrupts: Should you resolve!? But he has proved that they are Biblically valid!? That is because it can be explained as was answered [above].

### DAILY MASHAL

#### Brothers Sent Specifically the “Coat of many Colors”

It is written [Breishis 37:32]: And they sent the coat of many colors, and they brought it to their father; and said: “This have we found. Know now whether it is your son's coat or not.”

The question is asked: Why did the brothers feel the necessity to destroy specifically his fine woolen coat; this was a very special garment and valuable? Why didn't they rip one of Yosef's other garments and send it to their father?

The simple answer would be that Yaakov would not recognize Yosef's other garments; it was the special garment that he gave to Yosef that he would indeed recognize.

Rabbi Aharon Kroll offers another answer based on our Gemora. The Mishna had stated: One may only testify to the identity of a dead man on the basis of the face with the nose, even though there are identifying marks on his body and on his garments. The Gemora explains that we cannot rely on the identifying marks of his garments because we are concerned that the clothes may be borrowed.

Accordingly, one may ask: How could Yaakov be certain that Yosef was killed based on the blood found on Yosef's clothing; perhaps someone had borrowed Yosef's garments?

The Be'er Heitev (E”H, 17, 71) cites from the Ra’anach that if it is customary for only one person in the community to wear a certain garment, we do not take “borrowing” into consideration.

The Keli Yakar explains that the k'sones p'donkeyim that Yaakov gave to Yosef represented the firstborn right that Yaakov took away from Reuven and granted to Yosef. The service in the Beis HaMikdosh required that the Kohen would wear special clothing, and Yosef was given this garment as a sign of honor and glory. This coat was obviously worn only by Yosef, and he would never lend it out.

This explains why the brothers sent to their father Yaakov the fine woolen coat of many colors, and not any other of Yosef's garments. Yaakov would recognize that this was Yosef's coat, and only he would be wearing it. This was a clear indicator that Yosef was indeed devoured.

### QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF to refresh your memory

- Q: If a knife is found in a wall, who does it belong to?  
A: If the handle is facing the outside, it belongs to the finder; otherwise, it belongs to the owner of the house.  
Q: If someone saw money falling from one of two people, must he return it?  
A: Yes.  
Q: If one picks up a lost article before the owner was meya'esh with the intent of returning it, is he allowed to acquire it for himself after the owner gives up hope?  
A: No.

### OUR READERS RESPOND

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?

Answers from our Readers:

1. **Charles:** I think the money belongs to the homeowner because he himself hid the money and forgot about it, causing him to give up hope of finding it. He thought that the money was lost; however, in reality he forgot about it. Perhaps this situation is comparable to the Mishna in Peah re: shik'chak, where one leaves the bundle in a specific place and then forgets about it. The Mishna rules that it is not shik'chah.
2. **Howard:** It seems to me that having given up hope makes the money ownerless even though it is found in private property.
3. **Benjamin:** I think it belongs to the homeowner because he hid it.
4. **Yitzchak:** As soon as he saw them, he was koneh them now with chatzer. Maybe the bills in the air are not "sofo lanuach" because the electrician was catching them, but maybe inside a house is better, like we find other places "baisa kman dmalya." On second thought, here it is different because it was already previously his and y'i'ush birshus doesn't work. Is that a machlokes rishonim?
5. **Our response:** The electrician apparently had a right to it as the abandonment (yeiush) of an utterly lost item allows anyone to take it even if it is somewhere in the

owner's home (Or Sameach, Hilchos Gezeilah vaAveidah, 16). Our sugya defines something so well hidden that its owner can't find it as a lost article. The dollars in the chandelier are regarded as lost by the owner, such that his yeiush avails the finder. Still, the beis din ruled that an old chandelier is not like an old wall and commanded the electrician to return the money. It is reasonable to assume that something hidden in an old wall will no longer be seen by anyone and is therefore considered utterly lost. A homeowner, though, sometimes replaces a chandelier, albeit seldom, and we cannot assume that he would never discover things hidden there. According to most poskim, the owner's yeiush was thus invalid as he had not lost the dollars at all (Piskei Din Yerushalayim, Dinei Mamonos uVerurei Yahadus, VI, p. 79).

The homeowner acquired the money by kinyan chatzer: The beis din added that even were the yeiush effective, the electrician must return the dollars as when they fell on the floor, the owner acquired them by kinyan chatzer. Moreover, the owner also acquired the bills that the electrician caught in midair as the space above one's premises acquires objects by the same principle (see *ibid*, that, according to Ketzos HaChoshen, the yeiush was valid but the principle of kinyan chatzer decrees that the money be returned).