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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

Rabbi Shimon ben Elazar

The *Gemora* relates an incident: A silver cup was stolen from the host of Mar Zutra the Pious. Mar Zutra saw a certain student wash his hands and dry them on his friend’s garment. He said: Someone who is not concerned for his friend’s property is a prime suspect on the thievery. He was bound to a post until he eventually confessed to the crime.

The *Gemora* cites a *Baraisa*: Rabbi Shimon ben Elazar admits that new vessels which the owner’s eyes have sufficiently noted have to be announced. And the following are new vessels which the owner’s eyes have not sufficiently noted are not required to be announced: such as — rods (*badei*) of needles, spinning forks, and strings of axes. All these objects mentioned above are permitted for the finder to keep only if they are found individually, but if found two by two, they must be announced.

What are *badei*? Branches (of a tree). And why are they called *badei*? Because an object on which things hang is called ‘*ba*,’ — as is stated there (regarding the willow branch used on Hoshanah Rabbah): One leaf on one branch [‘*bad*’].

And Rabbi Shimon ben Elazar also said: If one rescues anything from a lion, a bear, a leopard, a hyena, or from the tide of the sea, or from the flood of a river, or if one finds anything on the highway, or in a big public square, or in any place where many people are commonly found, it belongs to the finder because the owner has given it up from recovering them.

They inquired: Did Rabbi Shimon ben Elazar state his *halachah* (that one may keep a lost object when he finds it in

any place where many people are commonly found) only in a place where the majority of the people are Canaanites (for one is not obligated to return a Canaanite’s lost object, and even if it belongs to a Jew, he would have given up hope of recovering it), or did he state his *halachah* even in a place where the majority of the people are Jews?

And if you will say that he stated his *halachah* even in a place where the majority of the people are Jews, do the Rabbis disagree with him on this, or not?

And if you will say that the Rabbis do disagree with him on this, do they disagree only in a place where the majority of the people are Jews, or do they disagree even in a place where the majority of the people are Canaanites?

And if you will say that they disagree even in a place where the majority of the people are Canaanites, does the *halachah* follow Rabbi Shimon ben Elazar, or not?

And if you will say that the *halachah* follow Rabbi Shimon ben Elazar, is that only in a place where the majority of the people are Canaanites, or even in a place where the majority of the people are Jews?

The *Gemora* tries resolving the inquiry from the following *Baraisa*: If one finds coins in a Synagogue or Study Hall, or in any place where large numbers of people are commonly found, he may keep them, for the owner has given up hope of recovering them. Now who is the *Tanna* who takes into account the many people in the area? It is Rabbi Shimon ben Elazar, and this proves that he states his *halachah* even in a place where the majority of the people are Jews!



The *Gemora* disagrees with the proof, for the *Baraisa* is speaking about a case of scattered coins (*which do not have any identifying marks on them – and therefore they do not have to be announced*).

The *Gemora* asks: If so, why does the *Baraisa* find it necessary to state that they were in a public place?

The *Gemora* answers: The *Baraisa* is referring to coins in a bundle (*which can be identified*), but we are dealing with an assembly house of Canaanites. – But how can this be applied to Study Halls? — [The reference is to] our Study Halls in which Canaanites stay (as guards). Now that you have arrived at this conclusion [the reference to] ‘Synagogues’ [can] also [be explained as meaning] our Synagogues in which Canaanites stay (*and therefore it is no proof that Rabbi Shimon ben Elazar maintains his halachah even in a place where the majority of the people are Jews*).

The *Gemora* again tries resolving the inquiry from the following *Mishnah*: If one finds a lost object (*in a city*), the *halachah* is that if the majority of the people are Jews, it must be announced, but if the majority of the people are Canaanites, it does not need to be announced. Now who is the *Tanna* who takes into account the many people in the area? It is Rabbi Shimon ben Elazar, and this proves that he states his *halachah* only in a place where the majority of the people are Canaanites, but not where the majority are Jews!

The *Gemora* disagrees with the proof: This is the view of the Rabbis.

The *Gemora* notes that you then can conclude that the Rabbis agree with Rabbi Shimon ben Elazar’s opinion in the case where the majority of the people are Canaanites.

The *Gemora* offers another explanation to the *Mishnah*: The *Mishnah* represents the view of Rabbi Shimon ben Elazar, and his *halachah* applies also to a case where the majority of the people are Jews, but here we deal with a case where the money was hidden (*and is not regarded as being lost at all*).

The *Gemora* asks: But if it was hidden, why does the finder have it? Did we not learn in a *Mishnah*: If one finds a vessel in a garbage heap, the *halachah* is as follows: if the vessel is covered, he may not touch it (*for it is not regarded as being lost*); but if it is uncovered, he must take it and announce it!?

The *Gemora* answers: It is as Rav Pappa explained: It is referring to a garbage heap which is not regularly cleared away (*and the owner of the object plans on returning at a later date to retrieve his object*), and which the owner unexpectedly decided to clear away (*and now there is no sense leaving the object there*); so here also, it is referring to a garbage heap that is not regularly cleared away, and that the owner unexpectedly decided to clear away.

Alternatively, I can say (*to explain the Mishnah*) that it is following the opinion of the Rabbis, for the *Mishnah* did not state that the finder may keep the object; rather, it said: He is not required to announce it - meaning that he designates a place for it and when a Jew comes and provides an identification mark in it, he receives it.

The *Gemora* again tries resolving the inquiry from that which Rav Assi said: If one finds a barrel of wine in a town where the majority of people are Canaanites, he is permitted to keep it with respect to a found object, but he is forbidden to derive any benefit from it (*as it might be yayin nesech – for the Canaanite might have poured some of it as a libation for idolatry*). If a Jew comes and provides an identification mark in it, the finder is permitted to drink it.

Now this is obviously in accordance with the view of Rabbi Shimon ben Elazar. It therefore follows that Rabbi Shimon ben Elazar says his *halachah* only where the majority are Canaanites, but not where the majority are Jews!

The *Gemora* disagrees with the proof: In truth I will tell you that Rabbi Shimon ben Elazar says this also where the majority are Jews, but Rav Assi agrees with him in the one case (*where the majority of the people are Canaanites*), but



differs from him in the other case (*where the majority of the people are Jews*).

The *Gemora* asks: But if the finder is forbidden to derive any benefit from the wine, what purpose is there by permitting him to keep it?

Rav Ashi answered: In regard to the vessel.

A certain man once found four *zuz* that had been tied up in a cloth and thrown into the Biran River. Rav Yehudah told him to go and announce it.

The *Gemora* asks: But isn't this like retrieving an object from the tide of the sea (*where the ruling is that the finder can keep it*)?

The *Gemora* answers: The Biran River is different, for since it contains obstacles, the owner does not give up hope.

The *Gemora* asks: But doesn't the majority of people there consist of Canaanites? It must be concluded that the *halachah* is not in accordance with Rabbi Shimon ben Elazar even where the majority of people are Canaanites!

The *Gemora* disagrees with the proof: The Biran River is different, for it is the Jews who dam it up and it is Jews who dredge it: As Jews dam it up, it may be assumed that it fell from a Jew, and as the Jews dredge it, the loser does not give up hope regarding them. (24a1 – 24b2)

Rav Yehudah once followed Mar Shmuel into a street of cereal vendors, and he asked him: What is the *halachah* if one found a purse here? Mar Shmuel answered: It would belong to the finder. What if a Jew came and provided an identification mark? Mar Shmuel answered: He would be obligated to return it. Rav Yehudah asked: Those rulings seem to be contradictory! Mar Shmuel answered: He should go beyond the letter of the law.

This is like the father of Shmuel who found some donkeys in a desert, and he returned them to their owner after a year of twelve months. It was because he went beyond the letter of the law. (24b2)

Rava once followed Rav Nachman into a street of leather workers, and some say it was a street of scholars, and he asked him: What is the *halachah* if one found a purse here? Rav Nachman answered: It would belong to the finder. What if a Jew came and provided its identification mark? Rav Nachman answered: It would still belong to the finder. Rava asked: But he keeps protesting that he has not despaired!? He answered: It is as if one protested against his house collapsing or against his ship sinking in the sea. (24b2)

There was once a vulture that seized a piece of meat in the market and dropped it among the palm trees belonging to Bar Marion. When he appeared before Abaye, he said to him: Go and take it for yourself. Now, the majority of people there consisted of Jews. It must be concluded then that the *halachah* is in accordance with Rabbi Shimon ben Elazar even where the majority of people are Jews!

The *Gemora* disagrees with the proof, for a vulture is different since it is like the tide of the sea (*where the owner despairs of ever recovering the meat*).

The *Gemora* asks: But didn't Rav say that meat which has disappeared from sight is forbidden to be eaten (*since it might have been switched for non-kosher meat*)?

The *Gemora* answers: Bar Marion stood by and watched it (*since the time the vulture took it from the Jewish market*). (24b3)

Rav Chanina once found a slaughtered goat between Tiberias and Tzipori, and it was permitted to him. Rabbi Ami said: He was permitted to keep it according to Rabbi Shimon ben Elazar, and as regards to the method of slaughter, it was deemed proper according to Rabbi Chanania the son of Rabbi Yosi HaGelili. For it was taught in a *Baraisa*: If one lost



his goats or chickens and subsequently found them slaughtered, Rabbi Yehudah forbids them, and Rabbi Chanania the son of Rabbi Yosi HaGelili permits them to be eaten.

Rebbe said: The words of Rabbi Yehudah seem correct in a case where the lost goats or chickens were found in a garbage heap, while the words of Rabbi Chanania the son of Rabbi Yosi HaGelili seem correct when they were found in a house (for we then can assume that they were slaughtered correctly).

Now, seeing that they were permitted in regard to the method of slaughter, the majority of people must have consisted of Jews. It must be concluded that the *halachah* is according to Rabbi Shimon ben Elazar even where the majority of people are Jews!

Rava replied: That was a case where the majority of the residents were Canaanites, and the majority of the slaughterers were Jews.

Rabbi Ami once found some slaughtered pigeons between Tiberias and Tzipori. When he appeared before Rav Assi, and some say, before Rabbi Yochanan, and others said that it was in the *Beis Medrash*, he was told: Go and take them for yourself.

Rabbi Yitzchak Nafcha once found some balls of string which were used for making nets. When he appeared before Rabbi Yochanan, and some say that it was in the *Beis Medrash*, he was told: Go and take them for yourself. (24b3 – 24b4)

INSIGHTS TO THE DAF

Majority of Jews

And Rabbi Shimon ben Elazar also said: If one rescues anything from a lion, a bear, a leopard, a hyena, or from the tide of the sea, or from the flood of a river, or if one finds anything on the highway, or in a big public square, or in any

place where many people are commonly found, it belongs to the finder because the owner has given it up from recovering them.

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Tosfos explains that since it was found in a place where there are many people, there are certainly dishonest people amongst them who will not be concerned about the *mitzvah* of returning a lost article; therefore, the owner will despair of recovering it.

The Raavad explains that it is because the minority of Canaanites that reside in the area are regarded as significant, and we may assume that it fell from them. And even if it fell from a Jew, the Jew will despair from recovering it, for he will assume that a Canaanite will find it and keep it for himself.

Tosfos asks: Why are these reasons necessary? Could we not apply the principle that we do not follow the majority with respect to monetary law? Let the finder say that perhaps it fell from a Canaanite, and it cannot be taken away from him, for he is a *muchzak* (he is presently holding it, and there is no proof against him)!?

Tosfos answers that this principle applies in cases only where the money came into his hands with permission; however, in our case, the owner had no knowledge that it entered his possession – the finder's *chazakah* is not stronger than the majority.



QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: What should one do if he sees food laying in the street?

A: One opinion holds that he cannot pass it by and he must pick it up, and another opinion holds that he can leave it there.

Q: Is the location of a lost object regarded as a *siman*?

A: It is a *machlokes*.

Q: Regarding which three matters may a *Talmid Chacham* deviate from the truth?

A: If he learned a certain tractate; if he had conjugal relations; if he had a good host.

DAILY MASHAL

Returning lost items to talmidei chachamim in our era

The finder of an article without identifiable characteristics (*simanim*) does not have to advertise it. Still, if he found it in a place frequented by talmidei chachamim, he must advertise it as Torah scholars are trusted to claim their property by visual identification (*tevi'as 'ayin*). In Rashi's opinion (Gittin 27b, s.v. "Letzurba miderabanan") a talmid chacham has a special sense to distinguish fine differences that average people fail to notice (see Tiferes Ya'akov, *ibid*). According to Tosfos (*ibid*, s.v. "Vedavka"), anyone can correctly identify his property. Our sages ruled that only talmidei chachamim may use this ability to claim their articles as we can trust them not to misuse their right to accept lost items without first declaring *simanim*.

A talmid chacham who wants to exercise the right of *tevi'as 'ayin* must meet some conditions, including that he has never strayed from the truth. Our sugya lists exceptions to this rule, such that he may deny having learnt a certain

tractate out of humility. The Derishah (Tur, C.M., end of Chap. 262) remarks that our sugya omits the fact that a talmid chacham is allowed to lie to keep peace as in such instances he must do so whereas the present discussion concerns matters of mere permission to stray from the truth (see Rashi, who holds that it is proper for a talmid chacham to lie in the cases mentioned therein).

In an important comment, Ben Yehoyada asserts that when allowed to lie, one mustn't do so with a crude or complete fabrication but, rather, reply ambiguously. In a similar vein, HaRav Shmuel Wosner (Responsa Shevet HaLevi, V, 2) answered someone who wanted to stray from telling the truth out of shame, ruling that he may distract his interlocutor from the truth without explicitly lying.

Talmidei chachamim in our era: Remo rules that every talmid chacham is assumed to tell the truth. Hence, a talmid chacham claiming a lost item by *tevi'as 'ayin* does not have to prove to the finder that he has never lied. If a finder refuses to surrender an article upon a claim of *tevi'as 'ayin*, he must clearly prove that the talmid chacham once lied. Remo's pupil, Rabbi Yehoshua Falk Katz, author of the Sema (S.K. 6), doubts if we may apply the Talmudic assumption to every talmid chacham in our era. Shevus Ya'akov (Responsa I, 167) emphasizes that people customarily follow Remo's decision despite Sema's opinion as, after all, they are not robbing the finder of something that always belonged to him. However, there is no excuse to deprive a talmid chacham.