

HASHAVAT AVEIDAH

**Found: \$18,000 Rolex at Times Square as the Ball Dropped
on Dec. 31, 11:59:50 PM. Can I Keep It?**

Hashavat aveidah, returning lost objects, is a mitzvah all of us encounter in the course of our lives, either as the “finder” or the “loser.” The basis for hashavat aveidah is Torah law given to the Jewish people at Mount Sinai over 3,000 years ago. These laws are unique; they differ from other legal systems since Judaism places a personal duty on anyone who is able, to rescue the lost property of others – a responsibility that does not exist in common law. Only Torah law requires the “finder” to initiate the process of retrieving the article. The demonstrated concern for another’s lost property defines the ethical tone of the mitzvah and shapes much of its practice.

This Gemara shiur addresses a range of practical cases, illustrating the basic parameters of hashavat aveidah. The shiur will culminate in the Times Square Rolex scenario, which will help illuminate the driving principle underlying the entire mitzvah.

**KEY
QUESTIONS**

- How does a finder determine whether he may keep an item he found or must return it?
- What are the underlying principles behind the rules?
- Does it make a difference **what** you find?
- Does it make a difference **where** you find it?

**CLASS
OUTLINE****Section I. Common Scenarios and Establishing the Parameters of Hashavat Aveidah**

Case 1. Finding \$50 in Starbucks – “Identifying Marks” and “Giving up Hope”

Case 2. Finding \$613 in a Public Park – More on Identifying Marks

Case 3. Finding a Parker Jotter in the Library – Location

Case 4. Someone Left the Ferrari Headlights On – Preventing Monetary Loss

Section II. Finding Objects on Private Property

Case 5. Finding a Pendant on a Front Lawn – Two Types of Private Property

Case 6. A Worker Finds a Diamond Ring in-between Floor Boards

Section III. Finding Objects the Owner is Highly Unlikely to Reclaim

Case 7. Finding a Soccer Ball at the Seashore – Washed-away Items

Case 8. Finding a Rolex in Times Square!

SECTION I Common Scenarios and Establishing the Parameters of Hashavat Aveidah

We will now explore the basic principles of hashavat aveidah that will determine: 1) if the finder is obligated to advertise a found object so the loser can locate the finder and reclaim his loss, or 2) if the finder is able to keep the object.

Case 1. *Steve is enjoying his coffee in a corner table at Starbucks. He is absorbed in reviewing last week's Gemara class when his napkin drops to the floor. Bending down to retrieve the napkin, he spots a \$50 bill under the empty chair across from him. He swiftly picks up the money (followed by the napkin), and wonders what he should do with the cash:*

- *Maybe the waitress dropped it and he should give it to her?*
- *Should he turn it in to the cashier?*
- *Should he leave it and hope the owner returns to find it?*
- *Can he keep it for himself?*

What do you think?

In halachah, the decision of whether to return a lost object or not is not left to personal choice. Rather, the Torah obligates us to return a lost object to its owner, and actually prohibits ignoring it.

Source 1. Devarim (Deuteronomy) 22: 1-3 – We have two mitzvahs: to return lost objects, and not to avoid returning lost objects.

If you see your brother's ox or sheep going astray, you must not ignore them. You must return them to your brother. If your brother is not near you, or if you do not know who [the owner is], you must bring [the animal] home and keep it until your brother identifies it, whereupon you must return it to him. You must do the same to a donkey, an article of clothing, or anything else that your brother loses and you find. You shall not ignore it.

לֹא תִרְאֶה אֶת שׁוֹר אָחִיךָ אוֹ אֶת שֵׂי נֶהְחִים
וְהִתְעַלְמָתָּ מֵהֶם הֲשִׁיבָם לְאָחִיךָ:
וְאִם לֹא קָרוֹב אָחִיךָ אֵלֶיךָ וְלֹא יָדַעְתָּ וְאִסְפָּתוּ
אֵל תוֹךְ בֵּיתְךָ וְהָיָה עִמָּךְ עַד דָּרַשׁ אָחִיךָ אוֹתוֹ
וְהִשְׁבֹּתוּ לוֹ:
וְכֵן תַּעֲשֶׂה לְחִמְרוֹ וְכֵן תַּעֲשֶׂה לְשִׁמְלָתוֹ וְכֵן
תַּעֲשֶׂה לְכָל אֲבֵדַת אָחִיךָ אֲשֶׁר תֵּאבֹד מִמֶּנּוּ
וּמִצְאָתָהּ לֹא תוֹכֵל לְהִתְעַלֵּם:

Thus, there is a concrete obligation – a Torah mitzvah – to return lost objects to their owner. Does it apply to everything one finds? The Mishnah teaches as follows:

Source 2. Mishnah, Bava Metziah 21a – A list of items a finder can keep.

These are found objects that belong to the finder ... scattered fruit, scattered money, sheaves of wheat in a public domain...

אלו מצויאות שלו... מצא פרות מפזרין,
מעות מפזרות, פריכות ברשות הרבים...

The Mishnah presents us with a list of found objects to which the obligation does not apply, leaving it to us to extrapolate to similar cases. The Gemara and later commentaries reveal the underlying concepts and principles behind the Mishnah's list.

Why can I keep these items if I find them? Rashi makes the following comment:

Source 3. Rashi, Talmud Bavli, Bava Metzia, 21a – Principles of *siman*, *ye'ush* and *hefker*.

Scattered Money (can be kept by the finder). [Why?] Since the money does not have any *siman*, clearly identifying features (that would enable the loser to reclaim his property), he will relinquish hope of ever regaining ownership (*ye'ush*), and the money becomes ownerless (*hefker*). This is the reason these objects may be kept.

מעוֹת מְפֻזְרוֹת - הוֹאִיל
וְאֵין לָהֶם סִמָּן נָכַר - אֵיךְ
וְשֵׁי מֵאֵשׁ, וְהוּוּ לְהוֹ
הַפְקֵר, וְנִדְהוּ טַעַם כּוֹלָם.

Rashi teaches that there are two criteria that enable a finder to keep a lost object:

- 1) The lost object does not have a unique identifying characteristic (סִמָּן - *siman*); and
- 2) The owner consciously despairs of ever finding the object (שְׂאִי - *ye'ush*).

Without the presence of a *siman*, the owner loses hope of ever retrieving the object, rendering the object ownerless (*hefker*). Conversely, if the lost object does have a good *siman* the owner will not give up hope of retrieving his lost object, because he will be able to describe it based on its identifying characteristic(s).

What if an object has no *siman*, but the owner did not yet give up hope of getting it back? The following passage from the Talmud questions why a finder may keep lost scattered money. It seems, poses the Gemara, that only one of the two conditions has been met:

Source 4. Bava Metzia 21b – Why scattered money can be kept – people know when they lose money.

The Mishnah states (above) that scattered money belongs to the finder. Why should that be the law – the loser was not aware that he dropped the money (and there is no *ye'ush*)?! Rather, the finder may keep the money since our Mishnah is in accordance with the principle of Rabbi Yitzchak, who said, "A person constantly checks that his money is secure."

מעוֹת מְפֻזְרוֹת - הֲרֵי אֵלּוּ שְׁלוֹ,
אֵמַאי ? הֲאֵלּוּ לֹא יָדַע דְּנָפַל מִיָּנִיהַ !
- הֲתָם נִמְי, כְּדָרְבֵי יִצְחָק, דְּאָמַר:
אָדָם עֲשׂוּי לְמַשְׁמֵשׁ בְּכִיסוֹ בְּכָל
שְׁעָה וְשְׁעָה, הֲכָא נִמְי - אָדָם עֲשׂוּי
לְמַשְׁמֵשׁ בְּכִיסוֹ בְּכָל שְׁעָה וְשְׁעָה.

Since it is assumed that a person frequently checks that he still has his money, the loser would have been aware that he dropped the \$50 and relinquished hope that he could retrieve the money. A single \$50 bill on the ground has no *siman* (and therefore the owner, aware that the bill has been lost, despairs of retrieving it). Therefore, Steve **can keep the money**, as codified in the Shulchan Aruch:

Source 5. Shulchan Aruch, Choshen Mishpat, Siman 262:6 – Final ruling: it is permissible to keep scattered money.

If someone finds scattered money...it belongs to the finder, for in all such cases we assume the owners became aware of their loss after it was dropped, and since there is no *siman*, the owner has relinquished hope of every finding it.

לְפִיכָף הַמוֹצֵא מְעוֹת מְפֻזְרוֹת... הֲרֵי
אֵלּוּ שְׁלוֹ, שֶׁבְּכָל אֵלּוּ מִסְתַּמָּא הֲרֵי
שׁוֹ הַבְּעָלִים בְּנִפְלְתָם וְכִינֵן שְׂאִין בָּהֶם
סִמָּן מִתֵּיאַשׁ.

Caution! If the person who picked up the money saw it actually fall from the owner, taking it (before the person has realized his loss) is considered theft!

Source 6. Bava Metzia 26b – Taking a “lost” object you know belongs to someone. . . is stealing!

And Rava said, “If one sees a coin fall from another person who has not yet given up hope of ever finding it, and he takes it with intention to steal it, he transgresses all three laws: ‘Don’t steal’ (Vayikra/Leviticus 19:13); ‘Surely return it;’ and ‘Don’t ignore.’”

ואמר רבא : ראה סלע שפלה, נטלה
לפני אדם על מנת לגזלה, עובר בקלן :
משום “לא תגזל”, ומשום “השב
תשיבם”, ומשום “לא תוכל להחלים”.

Nevertheless, even after the owner has relinquished hope of regaining his object, and it now halachically belongs to the finder, Sources 23 & 24 at the end of the class will clarify the “proper” course of action when you can identify the owner.

Case 2. *Joey is out jogging in downtown Boston on a spectacular autumn Sunday. As he whizzes past a public park with quacking ducks, he suddenly eyes a bunch of money paper-clipped together, blowing in the wind. The total amount is \$613 dollars! No one else is in the area. Steve picks up the money and isn’t sure what he should do. Should he:*

- Keep the money?
- Hold on to the money for a few days to see if anyone advertises losing it in the local e-classifieds, and if not, keep it?
- Donate the money to charity?

What should Joey do?

The answer seems to be straightforward.

Source 7. Mishnah, Bava Metzia 24b – Money in a wallet must be returned.

These are lost objects that a finder is obligated to publicize: fruit in a container, an empty container, money in a wallet, an empty wallet, a collection of fruit, a collection of money...

ואלו חייב להכריז : מצא פרות בקלי או כלי
פמות שהוא, מעות בפיס או כיס פמות שהוא,
צבורי פרות, צבורי מעות . . .

What is the common denominator between these lost objects that require them to be returned? Rashi explains they each have identifying characteristics (simanim), so the owner will not lose hope of retrieving them. Consequently, if someone found money either in a wallet or collected in some organized fashion, he must return it, because its owner won’t give up hope. The finder should announce his find, allowing the owner to seek out his lost object, which he’ll be able to reclaim by mentioning its siman. Money fastened by a money clip likewise qualifies as a good siman; it is not “scattered money.” So Joey should definitely advertise his find. Should someone respond to the advertisement and prove ownership by describing the unique identifying nature of the object (in this case, the amount of money [\$613] and the money clip), Joey would then return the money to the owner.

What if the owner is not sure of the exact amount of money he lost?

If he can describe a unique feature of the money clip or wallet, he can reclaim the container and all of its contents (Rabbi Tzvi Shpitz, Mishpetei Hatorah Bava Metzia, Summary of the Laws of Returning Lost Objects, Ch. 4, p. 34).

Case 3. Sarah enters the main entrance of the NYU library and sits in front of one of the twenty computer stations to research her paper on Jewish business ethics. Adjacent to the keyboard is a forgotten blue Parker Jotter. Sarah wonders what to do:

- Leave it alone and not deal with it?
- Keep it?
- Take the pen home, and post an ad on the NYU e-classifieds to try to find the owner?

What should Sarah do and why?

As we learned above in Source 1, we have a positive mitzvah to return a lost object, and a negative commandment not to ignore it. So if there is a way of getting it back to its owner, just leaving the Parker alone is not an option. On the other hand, perhaps it is permitted to keep it.

The halachah distinguishes between “good” identifying features and “poor” ones. Good identifying features are: something unique about the item itself (a scratch or marking); non-standard size or weight; a non-standard or unusual amount; wrapping; and location. Color alone, unless it is something original and unusual, is not considered a good indicator.

Source 8. Halachos of Other People’s Money, Rabbi Yisroel Pinchas Bodner, pp. 160-161 – When can one keep a pen that he found?

... For example, one finds a blue Parker pen, and posts a notice saying “Pen found in lobby.” A person comes to claim it saying he lost a pen, the color was blue, and the brand name was Parker. The claimant has not given an acceptable identification, since there are many pens in circulation of that color and brand name. Therefore one may not conclude that the pen found belongs to the claimant.

The Talmud addresses what is considered a **location** that qualifies as a siman:

Source 9. Mishnah, Bava Metzia 23b – Location can sometimes qualify as a siman.

Rav Bibi asked Rav Nachman the following question: Is location a legitimate identifying characteristic (*siman*) or not? He said to him, “We have learned this: ‘One who found [indistinguishable] barrels of wine, oil, grain, dried figs, or olives can keep them.’

If you think that location is a siman, he should have attempted to return them by announcing that he found a lost object in a certain location.” [Meaning, that source teaches that location is not a siman.] Rav Zevid replied, “[The reason he can keep them] is that we’re dealing here with the banks of the river” [i.e. where so many people unload things, location cannot serve as a siman.]

בְּעָא מִיִּינְיָהּ רַב בִּיבִי מִרַב נַחְמָן : מְקוֹם
הָיָה סִמָּן, אוֹ לֹא הָיָה סִמָּן ? אָמַר לֵיהּ :
תְּנִיחוּהָ, מְצָא חֲבִיזוֹת שֶׁל יַיִן וְשֶׁל שֶׁמֶן
וְשֶׁל תְּבוּאָה וְשֶׁל גְּרוּגְרוֹת וְשֶׁל זֵיתִים -
הָרִי אֵלָיו שְׁלוֹ. וְאִי סִלְקָא דְעֵתָךְ
דְּמְקוֹם הָיָה סִמָּן, לְכַרוֹז מְקוֹם ! -
אָמַר רַב זְבִיד : הֵכָא בְּמַאי עֲסָקִינָן -
בְּרִיקָתָא דְנַהֲרָא.

In the particular scenario discussed above, a location where objects are commonly found cannot serve as a siman. In contrast, an uncommon location would be a good siman:

Source 10. Rema, Shulchan Aruch Choshen Mishpat 262:9 – Ruling: a widely-used location like a river bank does not serve as a siman.

Note [by Rav Moshe Isserlis, the Rema]: A lost object's location serves as a siman. However, a location where everyone puts things, like barrels on the river bank, does not serve as an identifying characteristic (*siman*), for everyone unloads there.

הגה: שמקומן סימן, ומיהו במקום
 ום שהכל נותנין שם, כגון תביות
 בשפת הנהר, אינו סימן, שהכל פו
 רקין שם.

A location serves as a good siman unless many such items are commonly found there. Therefore, a person may not claim a lost pen by stating, "I lost a blue Parker Jotter pen in the library's main reference computer area," because many people leave similar pens there. But if Sarah found the Parker Jotter in the third floor stacks on the shelf with the books on Jewish ethics, she'd have to announce her find so the owner could reclaim it. That location could serve as a good siman, since it is not a common place for people to leave pens.

Therefore, in Case 3, Sarah **may, according to the letter of the law**, keep the Parker Jotter, a pen without clear identifying features that she found next to the entrance level computers.

However, Sarah must also keep in mind the spirit of the law of returning lost objects. The thrust of this mitzvah is clearly to try, as much as possible, to reunite the owners with their lost objects. The correct thing for Sarah to do is to bring the pen to the librarian's desk, where someone might look for a lost pen. [In Section III we will discuss situations where even though you can **halachically** keep an object, it is **proper** – "just and good" – to return it.]

The same Parker, if found in the stacks, would have to be advertised to locate the finder.

[**Note:** After an owner gives up hope of reclaiming his object, the finder is not legally required to return it; but when an owner does not yet know that he lost the object, we rule that this is not halachically defined as "giving up hope." The Gemara refers to this and related cases as *איש שנלא מדעת*, "giving up hope unknowingly." But, as we learned in Source 4 above, the Gemara (Bava Metzia 21b) teaches that with regard to money, *אדם עשוי למשמש בכיסו בכל שעה ושעה* – a person always checks his pocket for money, and it can therefore be assumed that by the time the money is found, the owner has consciously lost hope. That would likely apply to a pen, and therefore the finder can assume the owner knew about his loss but gave up hope anyway.]

Some objects we come across are not lost at all.

Although we have learned that according to Torah law it is forbidden to ignore lost property, this mitzvah only applies when the property was actually lost. Where the property is not lost, but rather was left somewhere intentionally (and it is not in immediate danger), it should not be touched. A finder has to do a bit of detective work every time he comes across an object, assessing whether it was **lost** and the mitzvah of returning lost objects kicks in, or was purposely **placed** there for a time (*דָּרַךְ הַנְּתָה*) and not lost at all.

If Sarah found a neatly stacked pile of books and papers on a library study table, **and a Parker Jotter was lying right next to them**, she should not touch it. They were probably left there by someone who was studying at the table and walked out for a short time but will come back soon to get them.

The Shulchan Aruch rules as follows:

Source 11. Shulchan Aruch Choshen Mishpat 260:9 – Don't touch something purposely placed there.

Anyone who found an object – whether or not it has an identifying characteristic – if he found it in a way that indicates that it was purposely placed there, it is forbidden to touch it, for perhaps the owner placed it there until he returns for it.

כל המוצא אבידה, בין שיש בה סימן
בין שאין בה סימן, אם מצאה דרך
הנחה אסור ליגע בה, שמא בעליה
הניחה שם עד שיתזרו לה.

Do not touch an object that seems to have been placed there purposely by the owner. You'll either cause him to lose it – if it has no siman – because he won't be able to claim it, or you'll trouble him to search after it, if it has a siman.

What if it is unclear whether the item was dropped or forgotten, or left intentionally? The Shulchan Aruch above writes later that it should not be picked up. Thus, if the pen Sarah found was not right next to the stack of books but a foot and a half away on the other side of the table, and she was unsure whether it rolled away (from where the owner purposely put it) or was forgotten there by someone, she still should not touch it.

Case 4. Stu was power-walking down 93rd Street to his office and passed an orange Ferrari, whose headlights were left on, parked in front of Sammy's Kosher Sushi Bar. His roommate Steve had told him about his Gemara class, where they discussed the mitzvah of returning lost objects. But Stu wasn't sure if the principle also applied to saving someone from any type of financial loss. He has a dilemma: he might be able to save the car owner's battery from dying, but he risks running late for an important meeting.

What should Stu do?

- Go into SKSB and tell the owner that there is an orange Ferrari parked out front with the lights left on?
- Go from table to table inside the restaurant, asking all the customers if they left their lights on (and would they mind if he takes the car for a quick spin and then shuts them off)?
- Just continue on his way so he can make his meeting?

Source 12. Aruch Hashulchan, Choshen Mishpat 259:17 – One must try to prevent any type of loss to another person.

It is written [Devarim 22:3], "Anything else that your brother loses" (Source 1 above). The Sages explain that this comes to expand the scope of returning lost objects. We are also obligated to prevent loss to another's real estate. For instance, when one sees water overflowing and approaching his friend's property, he is obligated to try to save the loss by building a barrier against the water. Hashavat aveidah also means trying to prevent all types of loss that may occur to another. If it is within one's ability to prevent a loss, he is obligated to prevent it...

בתיב: "לכל אבדת אחיד", ונדרשו
חו"ל "ב"מ"א. [לרבות אבדת קרקע
שחייב להשיב גם כן, כגון שרצה שטף
מים באים לשדה חבירו חייב לגדור
בפניהם כדי להציל וכן בכל עניני
הפסד שיכול להיות אצל חבירו
וביכולתו למנוע ההזק, חייב למנוע...

Stu is clearly obligated to help out the Ferrari owner: The Torah obligates us to return lost property, and by the same token we stand obligated to save others from incurring a financial loss of any type. Since the lights are draining the battery, Stu should make the effort to find and inform the owner.

KEY
THEMES
OF
SECTION I

- The Torah obligates returning lost objects and prohibits ignoring them.
 - If the owner has given up hope of ever finding a lost object, the finder can keep it; but if he has not given up hope, the finder must publicize his find, so the owner can reclaim it.
 - Money with no siman (identifying mark) can be kept, but being found in a wallet or collected in a particular manner is considered a siman.
 - Other items that don't have an identifying mark can also be kept if their owners will quickly realize their loss, e.g. a pen.
 - Location is also considered a siman, providing that it is not a place where it is common to find such similar objects.
 - The finder must also make sure that the object was not purposely left there by the owner. If circumstances indicate that it was (or might have been), the object should not be touched.
 - Hashavat aveidah (returning lost objects) also requires preventing others from incurring any type of financial loss.
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SECTION II Finding Objects on Private Property

We have learned how the principles of siman, ye'ush, and hefker determine whether or not an object needs to be returned if found on public property. This includes areas such as a street, or even a privately owned store like Starbucks, which is busy enough to receive the status of a public area regarding lost objects. However, common sense seems to dictate that whatever is found on private property belongs to the property owner. Do the laws of returning lost objects apply if someone finds a seemingly lost object on private property?

Case 5. Marcy is walking along busy Scenic Avenue as she passes the Rosenfeld's front yard, where she spots an inexpensive costume pendant, mostly concealed by the grass. Coincidentally, Marcy's friend Sarah was Skyping her last night about a pen she found at the library while researching a paper on Jewish Business Ethics. Marcy learned that if you find something in a public place, you need to ascertain if you can keep the object or must try to find the owner. But what about when you find something on private property – what do you do then?

- *Can Marcy take the pendant for herself?*
- *Should she pick up the pendant and knock on the Rosenfeld's door and ask if it belongs to them?*

What do you think?

Let's first apply what we've learned about returning lost objects.

Did the owner give up hope of ever reclaiming the pendant?

Probably yes. It seems to lack any identifying characteristics an owner might use to reclaim it. It accidentally fell in the grass and wasn't placed in any special location. It's cheap, plain, probably mass-produced, the kind of object someone would not bother ever trying to retrieve. We can also assume that the loss has been noticed by the owner, and he has thus consciously relinquished hope of finding the pendant.

But it's on the Rosenfeld's private property; does that make a difference? It might. Let's look at a Mishnah discussing a field owner who sees people entering his field, running after a lost animal:

Source 13. Mishnah and Gemara: Bava Metzia 11a – Acquiring lost objects on one's own property.

Mishnah: [A field owner] saw others running after a lost object, [e.g.] after a deer with a broken leg, after chicks that can't yet fly, and said, "Let my field acquire it on my behalf," [the field owner] acquires it. But if the deer was running normally or the chicks could already fly and he said, "Let my field acquire it on my behalf," he has said nothing (i.e., his words are legally insignificant).

Gemara: Rav Yehuda said in the name of Shmuel, "This [rule of the Mishnah, (that if he declared, 'Let my field acquire it...' he acquires it)] is effective, providing that he is standing at the side of his field." [Asks the Gemara:] should his field not acquire it on his behalf? Didn't Rabbi Yossi son of Rabbi Chanina say, "A person's courtyard (i.e., property) acquires even without his knowledge"? [Answers the Gemara:] This only applies to a protected field, but an unprotected field only acquires on his behalf if he is standing next to it. Otherwise it does not.

משנה: רָאָה אוֹתָן רְצִין אַחַר מְצִיאָהּ, אַחַר צְבִי שְׁבוּר, אַחַר גּוֹזְלוֹת שֶׁלֹּא פָּרְחוּ, וְאָמַר זָכָתָה לִי שְׂדֵי, זָכָתָה לוֹ. הֲיֵה צְבִי כִּן פְּדִיכּוֹ, אוֹ שֶׁהָיוּ גּוֹזְלוֹת מִפְּרִיחִין, וְאָמַר זָכָתָה לִי שְׂדֵי, לֹא אָמַר כְּלוּם.

גמרא: אָמַר רַב יְהוּדָה אָמַר שְׂמוּאֵל וְהוּא שְׁעוּמַד בְּצַד שְׂדֵהוּ. וְתַקְנִי לִיה שְׂדֵהוּ דְאָמַר רַבִּי יוֹסִי בְּרַבִּי חַנִּינָא חֲצָרוֹ שֶׁל אָדָם קוֹנָה לוֹ שֶׁלֹּא מִדַּעְתּוֹ. הֲנִי מִלִּי בְּחֲצִיר הַמְשַׁתְּמָרֵת, אֲבָל חֲצִיר שְׂאִינָה מְשַׁתְּמָרֵת - אִי עוֹמֵד בְּצַד שְׂדֵהוּ אֵין, אִי לֹא לֹא.

When a lost object without a siman (that therefore does not need to be returned) is found inside one's courtyard (property), his courtyard can acquire it on his behalf. This is referred to as *kinyan chatzer*.

Our Gemara teaches us that there are two types of private property:

A. **Protected** private property, a *chatzer ha-mishtameret* – for instance, a fenced-in field or yard, or the inside of someone's house – automatically acquires lost objects on behalf of its owner.

B. **Unprotected** private property, a *chatzer she-einah mishtameret* – like an open field or yard – can only acquire an object if the owner stands next to the property.

We're coming closer to answering Marcy's question. The Rosenfeld's yard is open to the sidewalk on a busy street (Scenic Avenue) and is therefore classified as unprotected private property. The Rosenfeld family only acquires lost objects that fall in their yard when they are standing next to it, but otherwise not.

So can Marcy keep it? We still haven't addressed one possibility – that the Rosenfelds themselves lost it. After all, it's on their yard. The following Mishnah relates to objects found in privately owned property that is frequented by many people.

Source 14. Mishnah Bava Metzia 2:4 – Finding a lost object in a privately owned store.

If one found a lost object in a store, he can keep it.

מְצָא בַחֲנוּת, הָרִי אֵלוֹ שְׁלוֹ.

Source 15. Rashi's Commentary on that Mishnah - Bava Metzia 26b – Why can he keep it?

If one found a lost object in a store, he can keep it.

This is referring to an object without a siman. [The reason he can keep it is] that the one who lost it gives up hope because everyone enters there.

(ד) מְצָא בַחֲנוּת הָרִי אֵלוֹ שְׁלוֹ - בְּדָבָר שְׂאִין בוֹ סִמָּן קָאִי. דִּהוּא דְנִפְל מִינֵיהּ מִינְאֵשׁ, שֶׁהַכֹּל נִכְנָסִים לְשָׁם:

The Shulchan Aruch (Choshen Mishpat 260:5) rules according to this Mishnah.

Since the object has no siman, and it is found in a place frequented by many people, the Rosenfeld's yard –

at least near the sidewalk – is similar to a store. It is also private property frequented by many. There is no reason to think that the pendant belongs to the Rosenfelds any more than any passersby.

Marcy can keep it.

Incidentally, remember Steve in Starbucks? He was able to keep the \$50 bill even though the Starbucks store is privately owned, because hundreds, if not thousands of people frequent the restaurant: it has no siman and the owner gave up hope; it could have come from any customer, not just the owners; and the store itself doesn't acquire it on behalf of the property's owner.

Case 6. Benji took a job with a contractor during his summer break from Cambridge. He was assisting in the renovation of an 18th century London mansion on a sprawling estate that has been sold many times, over the past 200 years. Benji was directed to tear up an old wooden floor in a room that served as the guest quarters for the past fifty years, to lay a new marble floor. As he neared completion and pried apart the last few boards, he found wedged between the last board and the wall – an aged, but stunning diamond ring! Benji was torn about what he should do:

- Give the ring to the mansion owner?
- Give it to his boss?
- Keep it?

What do you think Benji should do?

Let's first examine the obvious assumption that if you "find" any object in someone's private home, it should belong to the homeowner. Is there any possibility otherwise? The following source is a good place to start:

Source 16. Bava Metzia 25b-26a – Finding an object in a pile of rubble or in an ancient wall; finding ancient treasures.

Mishnah:

If he found [a lost object] in a pile of rubble or an ancient wall, he can keep it.

If he found it in a new wall: from half the width of the wall and outward he can keep it; From half the width of the wall and inward it belongs to the homeowner.

Gemara:

[In the case of something found in an ancient wall] a Tannaitic source says, "Because he (the finder) can say that it belonged to the Emorites (people who lived in Israel before the Jews entered in the times of Joshua)."

Q. Emorites hide things in walls and Jews don't?!

A. You needn't be bothered by that difficulty – the Mishnah is referring to a situation where the found object was extremely rusty.

משנה

מָצָא בְּגֵל וּבְכֶתֶל יִשֶּׁן הָרִי אֵלּוּ שָׁלוּ.

מָצָא בְּכֶתֶל חֲדָשׁ, מִחֲצִי וְלַחוּץ - שָׁלוּ, מִחֲצִי וְלַפְּנִים - שָׁל בְּעַל הַבַּיִת ...

גְּמָרָא

תָּנָא : מִפְּנֵי שֶׁיְכוּל לֹאמַר לוֹ שֶׁל אֱמֹרִיִּים הֵן.

אִטוּ אֱמֹרִיִּים מְצֹנְעֵי יִשְׂרָאֵל לֹא מְצֹנְעֵי ?

לֹא צְרִיכָא, דְּשִׁתִּיף טַפֵּי :

The Mishnah and Gemara teach us that the finder can keep an object he found on someone else's premises if it was very old, predating the occupancy of the current landlord.

There are two factors that prevent a finder from keeping a found object:

- A. The owner lost it, but didn't yet give up hope of reclaiming, due to the presence of an identifying mark;
- B. The owner intentionally left it there and will return later; the object is not lost at all, and therefore should not be touched.

A very rusty metal found in an ancient wall can be kept by the finder, however, because neither of the above qualifications apply:

- A. It was lost so many generations ago that any attempts to retrieve it have been exhausted, and the owner has certainly lost hope of retrieval.
- B. Because it's so old, it is clear that the owner didn't leave it there intentionally, planning to come back and get it.

But Tosafot points out an apparent difficulty with this ruling. The Gemara seems to relate only to whether or not the mitzvah of returning the lost object applies to the finder of the old rusty object. It seems to ignore the possibility that the object is not for his taking for a different reason: Perhaps the ancient object belongs to the homeowner, because it was located on his property when he purchased the house.

Source 17. Tosafot Bava Metzia 26a, s.v. “D’shatich (it was extremely rusty)” – Doesn’t the owner of the house acquire whatever is within his property?

If you ask, “Shouldn’t the owner of the courtyard acquire that which is in the rubble on his own property? Shouldn’t the same go for the wall?”

נאם תאמר: וְלִיקְנֵי לִיָּה חֲצֵרוֹ לְבַעַל הַגֵּל אוֹ לְבַעַל הַכֶּתֶל?

The basis of Tosafot's question is found in the Mishnah and Gemara we learned above (Case 5) about one's field acquiring a lost object on his behalf. There we distinguished between two types of property, protected and unprotected.

As we learned above, a person's home – classified as a protected courtyard – can acquire an item even without a homeowner's knowledge! So if the diamond ring was dropped by a guest, one would have assumed that the current owner of the mansion takes possession through the principle of kinyan chatzer. One also might have assumed that even a rusty old object found in an ancient wall should be automatically acquired by the owner of the property. But the Mishnah and Gemara assume that's not the case, and Tosafot explains why:

Source 18. Tosafot, De-shatich, Bava Metzia 26a – Limitations on kinyan chatzer

We can respond that one's courtyard doesn't enable him to acquire what he might never find at all – for instance, something hidden in the width of his wall...

נִישׁ לֹאמֵר דְּאֵין חֲצֵר קוֹנֶה בְּדָבָר שֶׁיִּכּוֹל לִהְיוֹת שְׁלֵא יִמְצְאוּנוּ לְעוֹלָם בְּמֹו הַכָּא שֶׁהִיא מִצְּנֵעַ בְּעֵבֵי הַכֶּתֶל.

Now, applying these principles to Benji's case, because the homeowner might never have found the diamond ring, the property does not acquire it on his behalf, and it thus would belong to Benji, the finder. The ring was unearthed in a totally unexpected way during renovations, and in the natural course of things, the owner would never have come across it. Kinyan chatzer cannot acquire such objects for the homeowner.

Another commentator, the Mordechai, addresses the same question as Tosafot, and is even more lenient about the circumstances under which the ring can be kept by the finder.

Source 19. Mordechai, Bava Metzia, Siman 260 – Property only automatically acquires things normally found there.

We only say that a person's property acquires an object if the object is commonly and regularly found there, as in the case (Source 13 above) of the first chapter of Bava Metzia, when one who saw people running after a lost object, or a deer etc. [into his field]. For in a field it is common to find deer and pigeons. But his field cannot automatically acquire things not commonly found there, like money or other moveable objects.

לא אמריןן חצרו של אדם קונה לו אלא
במידי דשכיח ורגיל למצוא, כי הדין
דפרק קמא דבבא מציעא: ראה אותן רצין
אחר המציאה אחר צבי וכו' ושה תמיד
מצויין שם צבאים ורגולות, אבל דברים
שאיןם מצויים כגון מעות ושאר מטלטלין,
לא זכההו לו שהו עב"ל.

Therefore, both the Mordechai and Tosafot would agree that Benji can keep the diamond ring. Not only is finding a diamond ring in the home uncommon (which would have been enough for the Mordechai to permit it to the finder), but in our case the homeowner would never have come across it under normal circumstances (so Tosafot also agrees). If the ring had been found in some corner of the house, and not beneath the floor boards, Tosafot and the Mordechai might disagree. In summary:

Source 20. Halachas of Other People's Money, Rabbi Yisroel Pinchos Bodner, pp. 196- 202 – Halachic conclusions: private property automatically acquiring for its owner.

When an item falls in private property such as in a private home – as soon as it lands on the property, it automatically comes into the jurisdiction of the property owner, even if he was unaware that it was in his property. Therefore, if an item with a siman was lost or forgotten in a private home, it is the responsibility (and mitzvah) of the property owner to try to return it to its owner.

Exception: Items that might never be discovered by the property owner do not automatically come into his jurisdiction or ownership. For example, a visitor dropped a ring in someone's house, and it rolled into a crevice. Years later a worker opened a floorboard and discovered the ring. The original ring owner had long since given up hope and thus relinquished his ownership. The ring did not come into the jurisdiction or possession of the property owner because it was something that he might never uncover. Therefore the ring was hefker (ownerless), and may be kept by the worker. If the ring found by the worker had been hidden there by the owner it would not have become hefker.

KEY
THEMES
OF
SECTION II

- Under most circumstances a property owner can keep objects without a siman found in his property. Protected property – like a home or fenced-in yard – automatically acquires on his behalf. This is referred to as kinyan chatzer.
- Open property – such as an unfenced field or yard – only acquires objects on his behalf if the owner stands next to it.
- But, says Tosafot, even protected property cannot acquire something the owner would never have come across during normal life. The Mordechai goes further and says that it can only acquire objects that are commonly found there.

SECTION III Finding Objects the Owner is Highly Unlikely to Reclaim

Must lost objects be returned in all circumstances? Are there any cases in which even objects with clear identifying features may be kept?

As we will see, there are a number of exceptions.

Case 7. *Asher is down at Sunset Beach enjoying a winter sunset and sees a soccer ball being cast about by the waves at the edge of the shoreline. He rescues the ball from being swept out to sea and then notices a name and phone number written on it. Asher, who has studied and reviewed the following Gemara several times, realizes he now has a dilemma:*

Source 21. Bava Metzia 22b – Keeping lost objects swept away by a flooded river.

Rabbi Yochanan quoted Rabbi Yishmael son of Yehotzadak as saying: How do we know that a lost object swept away by a flooded river is permissible to keep? It is written, "Thus you should do to his [lost] donkey, and thus you should do to his [lost] clothing, and thus you should do to anything your brother lost and you found" (Devarim 22:3). This [mitzvah of returning lost objects] only applies if the object is lost to the owner but accessible to others. This excludes that which is lost to the owner but not accessible to others (an object swept away by a flooded river).

אמר רבי יוחנן משום רבי ישמעאל בן
יהוּצָדָק: מניין לְאַבִּידָה שְׁשׂוּטָפָה נָהַר שֶׁהִיא
מוֹתֶרֶת - דְּכֹתִיב, "וְכֵן תַּעֲשֶׂה לְחֹמְרוֹ וְכֵן
תַּעֲשֶׂה לְשִׁמְלֹתָו וְכֵן תַּעֲשֶׂה לְכָל אֲבֵדֹת אֲחִיךָ
אֲשֶׁר תֵּאבֹד מִמֶּנּוּ וּמִצְאָתָהּ" (דְּבָרִים כ"ב)
מִי שֶׁאַבְיָדָה הֵימְנוּ וּמִצְוִיָּה אֵצֶל כָּל אָדָם,
יִצְאָתָה זֶה שֶׁאַבְיָדָה מִמֶּנּוּ, וְאִינָה מִצְוִיָּה אֵצֶל
כָּל אָדָם.

On the one hand, Asher thus appears to be entitled to keep the ball. Yet on the other hand, the name and number of the owner is clearly marked.

What should he do: keep it, or call the owner to come get the ball? To answer this let's see one of the next lines in the Gemara:

Source 22. Bava Metzia 22b – Even with a siman, an object swept away by a flooded river can be kept.

The swept-away object is permitted **whether or not it has a siman**. . . . מה היתירא - בין דאית בה סימן ובין דלית
בה סימן שרא.

Even though the ball has a name written on it – the clearest imaginable siman – this source, at least, implies that Asher can keep the beach ball. Should he call the number on the ball? Let's see our final case and its relevant sources for the resolution:

Case 8. *Roni was making his way home the night of December 31st from his weekly Gemara & Pizza class, totally absorbed in mentally reviewing the animated debates. He found himself walking across Times Square at 11:59 PM and 50 seconds, as the ball was dropping and the mass of people crowded around him were mesmerized by its descent. People were pushing in all directions. As he was moved to his right by the pressing crowd, he stepped on something metallic on the asphalt street, looked down (as everyone else was looking up) and found a Rolex watch! Roni was in a quandary. (He found out the next day that it is worth \$18,000!). What should Roni do?*

- Try to find the owner?
- Keep the Rolex and sell it at Sotheby's?

What do you say?

The key concept underlying our whole shiur – ye'ush – applies here as well. It is legitimate for a finder to assume that any owner would give up hope of ever finding a watch among the millions of people there on midnight of January 1st. Based on this, even if the owner of the Rolex would present the serial number of his watch, the finder could keep it – halachically. **However, there's another crucial component to deciding whether or not to return this watch.**

Let's now see the Rema's important addition to the halachic ruling:

Source 23. Shulchan Aruch and Rema, Choshen Mishpat 259:7 – Objects swept away by flood can be kept; but it's considered “just and good” to return them.

One who salvages something taken by a lion or bear, by high tide (washing away everything in its path), or by a flooded river (when a river widens, overflows its banks and spreads), he can keep it, even if the original owner is standing and screaming [that it's his]. Note: It is nevertheless good and just to return it.

המציל מהארי והדוב וזוטו של ים (פי' לשון ים החוזר לאחוריו עשר או ט"ו פרסאות ושומך כל מה שמוצא בדרך חזרתו וכן עושה בכל יום) ושל וליתו של נהר (פי' כשהנהר גדל ויוצא על גדותיו ופושט, רש"י), הרי אלו שלו אפילו הבעל עומד וצווח. הגה: מקל מקום טוב וישר להחזיר.

The Rema here alludes to a biblical verse communicating a fundamental approach to morality, to all of our behavior: Be just and good.

Source 24. Devarim 6:18 – Do that which is just and good.

You should do that which is just and good in the eyes of God.

ועשית הישר והטוב בעיני ה' :

Even though halachically the finder is technically permitted to keep the Rolex, he must think twice about keeping it if he has a way to trace the owner. Keeping it is **legal**, but is it **“just and good”**? If the Rolex owner would track down his Rolex and is now standing in front of Roni, is it right for Roni to say, “Legally I'm allowed to assume that an owner would give up hope of ever finding this watch so I'm keeping it, even though I know it's you who lost it”?

Writes the Rema: **“The basic ethic of hashavat aveidah is that it is good and just to return the watch”** (See also Shulchan Aruch Choshen Mishpat 259:5). This principle would apply to Asher and the soccer ball above in Case 7, and any other lost object that could be announced by the finder and reclaimed through simanim by the loser. The overarching ethics of hashavat aveidah are further explained as a way to benefit society and help us to refine our character:

Source 25. Rabbi Aharon of Barcelona, Sefer Ha-Chinuch, Mitzvah 538 – The mitzvah to return lost objects is of great social value.

The reason behind this mitzvah is obvious for it is beneficial to everyone, as well as the social order. Everyone forgets things and people's animals are always running away here and there. With this mitzvah, the animals and possessions of our people will be well guarded wherever they happen to be in our land, as if they were in the hands of their actual owners. All the laws of God are just and bring joy to the heart.

שורש מצוה זו ידוע, פי יש בזה תועלת הכל וישוב המדינה. שהשכחה בכל היא מצויה, גם בהמתם וכל חיתם ברחיים תמיד הנה נהנה, ועם המצוה הזאת שהיא בעמנו יקרו נשמרות הבהמות והכלים בכל מקום שיהיו בארצנו הקדושה כאילו הן תחת יד הבעלים, וכל פקודת ה' ישרים משמחי לב.

Source 26. Raibag, Devarim 22:3 – This mitzvah helps us acquire good character traits.

[This mitzvah] teaches us to act with righteousness, יש בְּזָהּ הַקְנָאת מְנַהֵג אֶל הַיֵּשֶׁר וְהַחֲנִינִיהַ.
sensitivity and mercy.

And hashavat aveidah really makes a difference, as the following recent incident illustrates...

"I worked on bus no. 7, and when I reached the terminal, I made a routine check," Ben Simon, a driver of the "Kavim" Company, recounted. "During the check, I discovered a black bag on one of the benches. I opened it and found a thick envelope which contained 15,000 shekels (\$4,000) in cash, a credit card, ID card and personal documents.

"I know that in our company there is a Lost Items Department and clear procedures regarding lost items of passengers on our buses. Not for one moment did I think of taking the money for myself," he said. "It was clear that I had to invest every effort to locate the owner of the bag, and return it to her as quickly as possible. In the ID I could see where the lady lived, and in the next rounds of the bus, I was already on the way to her."

Half an hour later, Ben Simon arrived with the bus at Kaminsky's home – a widow and pensioner, mother of two and grandmother and great-grandmother of 8. He noticed her sitting at the entrance to her home and weeping bitterly.

"I came out and handed her the bag, and I turned her into a happy woman," related Ben Simon, for whom Kaminsky could not find the words to thank. "Suddenly, the bus stopped, and the driver came down from it like an angel from Heaven, and gave me the bag with all the money," she related and added: "I got a gift for Rosh Hashana. I am overjoyed that the driver chose to look for me to return the loss. May there be many more like him. I have no words to thank him and the Kavim Company for their devoted care." Yisrael Hayom, September 12, 2012.

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KEY
THEMES
OF
SECTION III

- Even items with identifying marks are permitted if they were swept away by a flood or high tide.
- Nonetheless, it is considered correct to return them if the identity of the owner is known.
- The mitzvah of returning lost objects is good for society and for refining our character.

**CLASS
SUMMARY****How does a finder determine whether he may keep an item he found or must return it?**

- The finder must check whether there is some identifying characteristic by which the owner can reclaim his object. Examples we have seen are: location, specific number, special container, and, of course, name and phone number.
- The finder must also make sure that the object wasn't purposely left there by the owner. If circumstances indicate that it was or might have been, the object should not be touched.
- A finder also has to determine whether a lost object might have already been acquired by someone else. For instance, something found on private property is often automatically acquired by the owner.
- Sometimes, a found object can be kept even if it has an identifying characteristic. Something washed away by a flood could be kept by a finder even though it has a siman. However, we saw that it is proper ("just and good") to return something even in those types of situations if you know who the owner really is.

What are the underlying principles behind the rules?

- If an owner who lost an object gives up hope (ye'ush) of ever being able to reclaim his object, he loses his connection with it and the finder can keep it.
- The main cause for giving up hope is that the lost object has no identifying characteristic (siman) he can use to claim it as his.
- An owner will also give up hope in extreme situations – an object lost in a flood, an object lost at a mass gathering place where he knows people won't give it back – even if it has a siman on it.

Does it make a difference *what* you find?

- It definitely does. Mishnayot in Baba Metzia 21a and 24b list examples of items one must return and those one need not.
- Objects that are not unique – the \$50 bill in Starbucks, the pendant on the lawn, the Parker Jotter – can be kept (as long as they are the type of item the owner notices when it's missing).
- Objects with identifying marks – like the \$613 in a money clip – must be returned.
- Hashavat aveidah also requires preventing others from incurring any type of financial loss – such as if car lights were left on, or water threatens flooding someone's property.

Does it make a difference *where* you find it?

- Yes. Something found in a unique location – not one where many people lose things – should be announced, because the owner can claim his object based on a unique location. An example would be a pen found on a certain book shelf of the library.
- Objects found on protected private property most likely were automatically acquired by the owner (through kinyan chatzer).
- One exception would be where the owner wouldn't possibly find the object in the course of normal life (Tosafot's approach), such as the diamond ring under the floor boards of an old house.
- Objects found in open, unprotected property – e.g. the front yard of a house on a busy street – would only be acquired by the owner if he stood on or by the side of his property.
- Even in protected private property, if it is frequented by many people – such as a store or restaurant – a finder can keep the object (if, of course, it has no siman), because the owner doesn't automatically acquire everything that falls there.

**RECOM-
MENDED
ADDITIONAL
READING**

Halachos of Other People's Money, by Rabbi Yisroel Pinchas Bodner, has an extensive section on returning lost objects on pp. 137-202. This book is a good source for further investigation of the practical sides of this mitzvah. He deals with such questions as:

- How long do I have to wait for the owner to claim his lost object? (And the concept of *עד שיבא אגיהו*.)
- How should someone who finds a lost object publicize his find?
- What if I find a bike and it gets damaged while in my possession – am I liable?
- How much trouble do I have to go to in order to return something?

\$500 million (!) of precious silver and gold coins from an early 19th Century sunken Spanish ship were found by Odyssey Marine Exploration, an American exploration company in 2007. The Spanish government, however, had not relinquished hope, and, in a high profile legal battle, retrieved the treasure in 2012.

http://en.wikipedia.org/wiki/Black_Swan_Project

“A Remote Chance of Returning a Lost Object,” by Rabbi Daniel Mann

<http://e.veshiva.org.il/midrash/shiur.asp?id=19188>

“Mystery in the Coatroom and Other Lost Stories or Some Practical Aspects of Hashavas Aveidah,” by Rabbi Yirmiyahu Kaganoff

<http://rabbikaganoff.com/archives/1638>

“Returning Lost Objects,” by Rabbi Shraga Simmons

http://www.aish.com/tp/b/sw/Returning_Lost_Objects.html

“Mitzva Minute – Returning Lost Objects,” on Chabad.org

http://www.chabad.org/library/article_cdo/aid/1058268/jewish/Returning-Lost-Objects.htm

“Hashavas Aveidah - Returning Lost Objects,” by Rabbi Doniel Neustadt

<http://www.torah.org/advanced/weekly-halacha/5764/kiseitzei.html>