

OVERVIEW of the Daf

1) Determining ownership

R' Ashi rules that ownership of a knife is determined by its handle and ownership of a purse is determined by its straps.

This ruling is unsuccessfully challenged from the Mishnah.

A Baraisa is cited that elaborates on the halachos of an object found in a wall.

The novelty of this ruling is explained.

2) Finding a lost object in a rented home

The Gemara suggests that when a lost object is found in a rented home one should assume it belongs to the last person who lived there rather than allow the finder to keep the object as recommended by the Mishnah.

Reish Lakish in the name of Bar Kappara suggests one explanation but it is rejected by the Gemara.

R' Menashya bar Yaakov offers a revised resolution to the Gemara's question.

R' Nachman in the name of Rabbah bar Avuha presents a resolution that resolves the challenge to Bar Kappara's interpretation.

Another ruling from R' Nachman is cited that is consistent with R' Nachman's previous explanation.

Two versions of Rava's qualification to this ruling are presented.

The Gemara presents three rulings from Rava that

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REVIEW and Remember

1. How do we determine ownership of a knife found in a wall?

2. What is the significance of the fact that marketplaces in Yerushalayim are swept every day?

3. How many transgressions are violated if someone sees a friend drop a coin and the finder takes it before the owner has יאוש and the finder's intention is to steal the coin?

4. Why do coins found on the table of a money changer belong to the finder?

Distinctive INSIGHT

Why doesn't the store owner acquire the money left in his store?

מצא בחנות הרי אלו שלו

The Mishnah rules that if money is found in a store, the finder may keep it for himself. The owner is assumed to be aware that he lost his money, and he has given up hope of finding it, and the store owner does not automatically become the owner of the money on the floor of his establishment. Earlier (26a), Tosafos asks why, in fact, does the store owner not acquire the money in his store with the power of חצר? Several answers to this question are proposed by the Rishonim.

Tosafos answers that the acquisition of חצר is not effective without the owner's knowledge when the object is one which he might never find. The money in this case consists of small coins which might never be noticed. This is similar to objects contained within the old walls of one's house, where the owner of the house might never have found them, and he is therefore not deemed to be their owner merely due to the object's being in his wall.

Rosh explains that the store in our Mishnah is not a secure area for its owner (חצר שאינה משתמרת). In this case, even with the owner standing within his store he cannot acquire the coins, because the store is open to the public, and he cannot control them or stop them from taking the coins for themselves. An owner standing next to an unsecured field only serves to guard it when his being there can have an effect, which is not the case in the store.

Rambam also explains that the store is an unsecured area, and his standing there does not help unless the owner declares that he wishes his property to acquire the coins for him. Rashba notes that this view is subject to the argument between Tosafos and Rambam earlier whether it is necessary for an owner to declare "My yard shall acquire for me!" in reference to the Mishnah (11a) where an animal is running across one's yard. Tosafos there says that making this declaration is not needed, while (according to Gr"a) Rambam disagrees.

Rashba, Ran, Nimukei Yosef and Ra'aved explain that the owner of the store does not acquire the coins in his store because in this case when the original owner placed the coins down he did not plan on leaving them there. When he later forgot them, never to return, the situation is one of יאוש שלא מדעת, which results in the store owner's being unable to acquire them באיסורא אתא לידיה. ■

HALACHAH Highlight

Finding a hidden treasure

אם היה משכירו לאחרים אפילו בתוך הבית הרי אלו שלו

If he rented the house to others even if the lost item is found in the house it belongs to the finder

There was once a person who purchased a home and some years later decided to do additional construction. When they began to dig up the yard they discovered jars filled with gold coins. The buyer wanted to keep the coins for himself and the seller claimed that had he been aware that the property contained this treasure he never would have sold the property and the original sale should be considered a mistaken sale—מקח טעות. The question was sent to the author of Teshuvos M'Lamed L'Ho'il for a ruling. Teshuvos M'Lamed L'Ho'il¹ answered that the seller has no legal claim to the money, not all of it or even some of it. Not only in a case where he already sold the property has he relinquished his rights to the buried treasure but there are also even circumstances where he remains the owner of the property and nonetheless cannot claim ownership of the treasure that is discovered. If the seller hired workers to dig up his property and the excavator discovered the buried treasure, the excavator has the legal right to keep the contents of the buried treasure. The reason is that the homeowner never took legal possession of the treasure; therefore, it remains ownerless property that anyone can take. That said, in our case where the seller sold the property

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relate to one who finds a lost coin.

3) **MISHNAH:** The Mishnah discusses the halachos of what to do with a lost object that was found in a store or amongst merchandise.

4) Coins found by a moneychanger

R' Elazar rules that even coins found on a money-changer's table belong to the finder.

This ruling is challenged from the Mishnah but dismissed.

Rava offers two possible sources for R' Elazar's ruling. ■

there is no reason the seller should be able to claim מקח טעות and nullify the sale. He further elaborates on this halacha and concludes that there is not even an obligation of piety—מדת חסידות—to give the treasure to the seller.

Towards the end of his response Teshuvos M'Lamed L'Ho'il recounts that after writing his response he saw that Teshuvos Beis Efraim addressed a similar case in which Shimon a tenant found a treasure in the property he was leasing from Reuven. Teshuvos Beis Efraim ruled that the hidden treasure belongs to Shimon and Teshuvos M'lamed L'Ho'il commented that if Shimon may keep the hidden treasure if he was merely a tenant certainly when he purchased the property Shimon will be permitted to keep the treasure for himself. ■

1. שו"ת מלמד להועיל חו"מ סי' נ"ז

2. שו"ת בית אפרים חו"מ סי' מ"ד ■

STORIES Off the Daf

Surprise winnings

דשתיך טפי

A certain Israeli drink company once made a special contest to promote sales. On the underside of each bottle cap was sometimes inscribed that the purchaser had won an expensive prize. A certain person attended a friend's simchah at a local hall and found a winning cap while taking a drink from a nearly empty bottle. But he wondered if he was entitled to the prize or if it should go to the baal

hasimchah who had paid for the entire affair and all the food. For that matter, it was possible that the owner of the hall should receive the prize since the bottles started with him and he was in charge of the cleaning up and could theoretically have one of his staff check each bottle before it was thrown away!

A rav consulted with Rav Chaim Kanievsky, zt"l, on behalf of the finder of the winning bottle cap, regarding this matter. He answered, "It seems clear that even if the simchah was in the baal hasimchah's own home, the prize would still belong to the man who attended the affair and found the

cap while drinking. Although the guest cannot take the bottle home for his own enjoyment, yet the drinks were served for the pleasure of the guests in attendance. This is similar to Tosafos in Bava Metzia 26 where we find that even one's courtyard does not acquire on behalf of the owner what could have remained hidden forever there.

"Similarly, in our case, although people know that there is a sweepstakes type contest, they usually do not check bottle caps. Indeed most religious people never give such incentives a moment's thought!"¹ ■

1. דרך שיחה ע' ד"ש