

OVERVIEW of the Daf

1) Receipts (cont.)

The Gemara presents one last unsuccessful challenge to Rav's halacha that a receipt that is found in the possession of the lender is meaningless.

Two of the rulings mentioned in the earlier Baraisa are explained.

הדרן עלך שנים אוחזין

2) **MISHNAH:** The Mishnah presents a list of lost objects that a finder could keep for himself.

3) Scattered produce

R' Yitzchok elaborates on what quantity of fruit scattered over what size area allows the finder to keep the fruit for himself.

This ruling is challenged and R' Ukva bar Chama adds further details to justify R' Yitzchok's explanation.

R' Yirmiyah presents four questions that relate to applying the proportions presented by R' Yitzchok.

The four questions are left unresolved.

4) Abandonment without awareness – יאוש שלא מדעת

Abaye and Rava disagree whether abandonment without awareness constitutes abandonment.

The Gemara presents two cases in which Abaye and Rava agree and then identifies the exact case in which they disagree.

Numerous unsuccessful attempts are made to support Rava's position.

A Baraisa is cited that seems to refute Rava's position.

R' Avahu explains why that Baraisa does not refute Rava's position.

This resolution is unsuccessfully challenged. ■

REVIEW and Remember

1. Why is a finder permitted to keep scattered money?

2. What is the central issue of R' Yirmiyah's four inquiries?

3. Explain יאוש שלא מדעת.

4. What is the implication of the principle that a person is in the habit of checking his wallet?

Distinctive INSIGHT

A kav of sesame, a kav of dates, a kav of pomegranates

קב שושמין בארבע אמות מהו

Our text of the Gemara features an inquiry of R' Yirmiyah regarding the halacha of a kav of sesame seeds scattered over an area of four amos. The Gemara reviews the two sides of the issue, calculating whether the need to return other fruits is due to their value or due to the relative amount of work needed to gather the pieces. After presenting the question of sesame seeds, the Gemara continues to inquire regarding a kav of dates or pomegranates scattered over an area of four amos. Once again, the issue is analyzed, dealing with the value and toil factors necessary to collect these specimens.

The Vilna Gaon explains that the text of the question of the Gemara according to Rambam (הל' גזילה ואבידה ט"ו"ב) was "A kav of sesame, dates and pomegranates scattered over four amos." In other words, the question is if a kav combination of all these fruits was scattered over an area of four amos, must it be returned, or will the owner abandon it?

According to our version of the Gemara, Rashi explains that sesame are more valuable than wheat, so although a person would give up and not bother to gather a kav of wheat, he would still come and collect sesame. On the other hand, sesame seeds are smaller than wheat kernels, and if a person would not come back to collect wheat, the bother to collect sesame is worse, so the owner would abandon his ownership over them rather than come back. The next inquiry of the Gemara analyzes dates and pomegranates, which are less valuable than wheat, but the effort to gather them is much less, so it might be worthwhile for the owner to come back to collect them.

Nachlas Dovid explains that according to the text of Rambam, the question of the Gemara is understood based upon a premise of Tosafos (ד"ה חצי קב, answer #1) that a person will not bother to gather half the fruit that is scattered unless he plans to finish collecting everything. The question is where we have a sampling of three types of fruit, will the person return to collect it, knowing that he will only complete the job over time. He will have to collect one fruit today, another tomorrow, and so on.

Dibros Moshe explains that the question is not regarding any three species, but specifically a combination where one type is easy to gather, and the other two are harder to collect. The question is whether the person will begin to collect due to there being some easily collectable pieces, and he will even finish and collect the difficult pieces as well, or will the person give up before starting, realizing that some items scattered are too hard to collect. ■

HALACHAH Highlight

Who is the presumed owner of a lost object?

Let the matters stand unresolved

R' Yirmiyah raises four questions related to the issue of fruit that is scattered and the questions remain unresolved. Poskim disagree about how one should conduct himself in the event that he faces one of these four circumstances. Rosh¹ maintains that in cases of doubt the finder should take the item and announce that he found a lost item so that it could be returned. Rambam² holds that in cases of doubt it is better for the finder not to take the object altogether but in the event that he took the item he is not obligated to give notice that he found a lost object.

The son of the Noda B'yehudah³ draws an interesting conclusion from this discussion. He states that one who finds a lost object does not become the default owner of that object (אינו מוחזק). He draws this conclusion by asking a simple question. If one finds fruit scattered in one of the unresolved ways described in the Gemara why is the finder obligated to announce that he found a lost item? Shouldn't he be able to successfully claim that since he now has posses-

תיקו

sion of the item he can keep it and if someone claims that he is the rightful owner, he should bear the burden of proof to that assertion (המוציא מחבירו עליו הראיה)? Furthermore, the principle that one who finds a lost object is not considered the default owner of that object is true, not only according to Rosh but also even according to Rambam. It is obvious that Rosh, who maintains that one who finds scattered fruit in one of the unresolved ways described in the Gemara must announce that he found lost fruit, holds that the finder is not the presumed owner of the fruit since he must make an effort to find the rightful owner. Even Rambam who says that one should not take these lost items but if he did is not required to announce that he found these lost objects may also subscribe to this position. When he writes that one is not obligated to announce that he found the lost items it does not necessarily mean that he is the presumed owner; it could also mean that he is obligated to hold onto those items until Eliyahu HaNavi identifies for him the rightful owner which is in consonance with the assertion that the finder of a lost object does not become the default owner of that item. ■

1. רא"ש פ"ב סי' א'
2. רמב"ם פט"ו מהל' גזילה הי"ב
3. שו"ת נודע ביהודה מהדור"ת אה"ע סי' ס' ■

STORIES Off the Daf

Finding a siman

אלו מציאות שלא

Today's daf discusses what lost objects must be returned and what the finder may keep.

Although a certain milkman who lived not long ago, Rav Betzalel Hachalban, זת"ל, was very poor, it seemed that he hardly noticed. Even as he did his work he was always absolutely immersed in Torah. In addition to knowing Shas, gemara, Rashi, and Tosafos by heart, he possessed profound yiras shomayim. A certain talmid chacham once found Reb Betzalel clearly preoccupied with a deep question while he held a sack of money in his hands.

"What's on your mind?" he asked

Reb Betzalel.

The milkman answered, "I am considering whether the mitzvah of hashavas aveidah of a large sum of money is one big mitzvah or a separate mitzvah per perutah returned. If the latter is true, I stand to fulfill thousands of mitzvos with this one deed..."

The talmid chacham pointed out another option. "Perhaps you are not obligated to return the money at all. I don't see any clear siman."

Rav Betzalel was appalled at this possibility. "But according to my calculation, I can fulfill many thousands of mitzvos when I return this aveidah. I will return it regardless. How can I possibly enjoy money that some poor unfortunate lost and mourns? If you are correct, I will lose out on so many mitzvos and gain absolutely nothing!"

"But if you are not obligated to re-

turn it, why not keep it?" asked the talmid chacham. "After all, you are so poor."

"How am I poor? I have bread to eat in the morning and at night, and I even dip my bread in salt water. Is that the life of a truly poor man?"

"But you could have butter with your bread!"

Rav Betzalel was horrified. "What kind of taste would butter have if it was bought with money that is causing another Jew pain?"

When the talmid chacham understood how much this meant to Reb Bezalel he took a completely different track. "But maybe we can find some kind of siman after all..."¹ ■

1. פירוש המשניות לרמב"ם נדרים פ"ד מ"ד

