



Volume 4. Issue 8

Returning Lost Objects – or Not

With the start of the second *perek*, we began learning about *hashavat aveidah* – returning a lost object. The *Mishnayot* discuss when an object is considered ownerless and may be kept, when an object must be taken and efforts made to identify the owner and when an object must be left and not touched. The *Mishnayot* also discuss what are considered identifying marks of a lost object and the obligations placed on the person who found the object while he is trying to locate its owner. The eighth *Mishnah* mentions an interesting exemption (2:8):

If he finds a bag, box or anything that he usually would not carry, he leaves it there.

The *Gemara* explains that, by way of example, that this refers to an *zaken* for whom it would be beneath his honour to retrieve such an object and is therefore allowed to leave it there.¹ The measure provided is if it were his own object, would he leave the object due to the potential slight on his *kavod*.

Who is this “*zaken*”? Why do we have such a novel exemption from a *Torah mitzvah* for the sake of “honour”?

The *Ritva* (*Shvuot* 30b) explains that this is referring to an elderly *chacham* who has more than just his own personal honour at stake; there is also *kavod ha'Torah*. He explains therefore if it was only an elderly respectable or wealthy gentleman, then the *mitzvah* of *hashavat aveidah* takes preference.²

The *Rambam* (*Gezeilah ve'Aveidah* 11:13) however rules that this exemption also applies to an elderly respectable gentleman (“*zaken mechubad*”).³ The *Shulchan Aruch* (263:3) uses the same language implying that by *hashavat aveidah* we have a unique exemption that applies if fulfilling the *mitzvah* conflicts with the personal *kavod*.

Is one nevertheless allowed to forgo his own *kavod* and return the lost object? The *Rambam* (11:17) rules that “someone who walks in the straight and good way should act beyond the strict law and nevertheless return the object...” In other words, even though the *Torah* does not demand the *zaken* to return the object, it is nevertheless a good and proper course to take.

The *Rosh* however writes that once the *Torah* exempts one from the *mitzvah* he is prohibited from degrading *kavod ha'Torah*. If he wants to act beyond the letter of the law, he must still leave the object and may volunteer to compensate his friend for the money he lost.

The *Beit Yosef* explains that *Rambam* may nevertheless feel that returning the object, even though it is beneath him, is not a slight on *kavod ha'Torah*. Quite the reverse! *Kavod shamayim* is indeed increased in that the person wants to assist his friend despite its appearing beneath him.

But what if *kavod ha'Torah* is not at stake? The *Orach Ha'Shulchan* explains that in such a case everyone would agree that the personal *kavod* may certainly be set aside.

When addressing the question of whether one can nonetheless return the lost object the *Rama* writes that “some argue that it is nonetheless forbidden to return [the object] since it is beneath his *kavod*...”. From a simple reading, the *Rama* does not appear to differentiate between personal *kavod* and *kavod ha'Torah*.⁴

One could suggest that perhaps the *Rama* rules that one may even be prohibited to forgo his personal *kavod*. Why?

The *Tosfot*, when explaining when *kavod ha'bri'ut* does or does not override *mitzvot* cites the case in *Gemara Brachot*. There the *Gemara* explains that if one finds himself wearing *kilayim* in the market place he must remove his clothing there and then because he is considered as actively transgressing the prohibition. The *Tosfot* explains if it was not considered as actively transgressing the prohibition then *kavod ha'bri'ut* would override the *mitzvah*. He explains, citing *Yevamot*, that “there is nothing more repulsive to *Hashem* than one walking naked in the market place”.

We can perhaps glean from this *Tosfot* that the *Rama* may hold that there are some situations, some matters of honour that are not subject to desires of the person. There are basic matters of self respect as a human being one cannot forgo.

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¹ The *Gemara* (30a) explains that this exemption is learnt from the word in *pasuk* “*v'hitalamta*”. The *Gemara* understands that even though ordinarily it is forbidden to ignore or pass by a lost object, there are indeed some situations where one is permitted to do so. That case is the one referred to is where it is beneath the honour of the *Zaken* to retrieve such an object.

² This is also the opinion of the *Ramban*.

³ This is also the opinion of the *Nimukei Yosef* (*Bava Metz'ia* 19b in the *Rif*)

⁴ The *Be'er Heitev* does associate the *Rama* with the *Rosh* and ties it *kavod ha'Torah*.

Revision Questions

בבא מציעא ב' ח' – ג' י'

- What should one do while trying to identify the owner of a lost object:
 - If he found a book? (ב' ח')
 - If he found clothing? (ב' ח')
 - If he found glassware? (ב' ח')
- What objects is one not required to take and find its owner? (ב' ח')
- When can one assume that an animal (that he found) is indeed lost? (ב' ט')
- Is there a limit to how many times that a person must return an animal that keeps running away from its owner? (ב' ט')
- Can a person claim compensation from the owner of the lost object for the time spent trying to return the object? (ב' ט')
- If a *Kohen* sees a lost object in a cemetery, is he obligated to enter the cemetery to retrieve the object and return it to its owner? (ב' י')
- Is someone obligated to help his friend unburden his animal if the friend sitting back and not getting involved? (ב' י')
- What are the exceptions to that rule? (Include all three opinions) (ב' י')
- What is the law if someone finds his own lost object and his father's, but can only retrieve one? (ב' י"א)
- What is the law if someone finds his father's lost object and his rebbe's, but can only retrieve one? (ב' י"א)
- If someone is entrusted with a collateral and it was stolen, is he responsible to pay the owner back? (ג' א')
- If the *ganav* was found, to whom is the *kefel* paid? (Include both scenarios.) (ג' א')
- If *Reuven* rent an animal, then lends it to *Shimon* and the animal naturally died, who pays who? (ג' ב')
- What is the law regarding a *gazlan* that said to two people "I stole \$100 from one of you, but I'm not sure who"? (ג' ג')
- What is the law if two people entrusted money with a third party, one \$100 and the other \$200, and each claim they were the one that entrusted \$200? (Include both opinions.) (ג' ד')
- Regarding the previous question, what if it was not money, but two utensils, one worth \$100 and the other worth \$200? (ג' ה')
- Explain the debate regarding what one should do if they were entrusted with fruit and the fruit began to spoil? (ג' ו')
- What should one do if they were entrusted with fruit and it go mixed with he own personal store? (ג' ז')
- Regarding the previous question, what if he was entrusted with wine? (ג' ח')
- If someone entrusted with an object moved it and while moving it, it broke, when is he obligated to pay back the owner? (ג' ט')
- Regarding the previous question, in what situation is he always obligated to pay the owner irrespective of his intentions? (ג' ט')
- What are the three examples the *Mishnah* gives where the custodian of a collateral did not provide enough protection for the collateral and is therefore responsible if the item was stolen? (ג' י')

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Between mincha & ma'ariv
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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
15 th July כ"ט תמוז	16 th July א' אב	17 th July ב' אב	18 th July ג' אב	19 th July ד' אב	20 th July ה' אב	21 st July ו' אב
Bava Metzia 3:11-12	Bava Metzia 4:1-2	Bava Metzia 4:3-4	Bava Metzia 4:5-6	Bava Metzia 4:7-8	Bava Metzia 4:9-10	Bava Metzia 4:11-12

