

HASHAVAS AVEIDAH - RETURNING LOST OBJECTS

by Rabbi Doniel Neustadt

In this week's parshah, the Torah speaks about the important mitzvah of returning lost objects to their owner. This prompts us to review and update some of the laws of hashavas aveidah. Many of the rulings in the Talmud and Shulchan Aruch concern objects and situations which were common in the olden days, such as returning fruit that fell from a tree or an animal that evaded its owner. In this review, we will attempt to apply the halachos to modern-day cases and situations. First, however, we must explain the basic rules.

THE BASIC OBLIGATION

One who finds an object that has been lost⁽¹⁾ by a Jew is obligated to return it to its owner. If the finder picks up the item and then decides to keep it for himself, he transgresses two negative commandments and one positive one.

One may not ignore his obligation and simply walk away from the lost item. If he does so, he transgresses a negative commandment.

Men and women are equally obligated in this mitzvah.⁽²⁾

The lost object must be worth more than a perutah⁽³⁾ in order for the mitzvah to apply. If an odd glove, shoe, or rubber is found, one is still obligated to return it even though it is worthless by itself, since it has value to the owner who has its mate.⁽⁴⁾

There is no obligation to return an item - even if it is worth a perutah - if it is clearly insignificant and the owner does not care about it. Similarly, one need not return an item which has obviously been abandoned by its owner and is found lying in the street.⁽⁵⁾

Although the basic halachah does not require returning the item of a non-Jew [or even of a Jew who can be halachically classified as a rasha le'hachis, intentionally and deliberately wicked⁽⁶⁾], it is proper to do so in order to sanctify Hashem's Name - kiddush Hashem. If failing to return the item may cause a desecration of Hashem's Name, a chillul Hashem, the finder must return it.⁽⁷⁾ If one finds a lost object on Shabbos in an area where carrying is forbidden, he may not pick it up⁽⁸⁾. Even if it is found in an area where carrying is permitted but the item is muktzeh, many poskim⁽⁹⁾ hold that one should not pick it up.⁽¹⁰⁾

EXEMPTION FROM THE BASIC OBLIGATION

The mitzvah of hashavas aveidah applies only as long as the owner of the item expects and hopes that the item will be found and returned. If, however, the owner has given up hope of recovering his loss and has written it off, the Torah does not obligate the finder to fulfill the mitzvah of hashavas aveidah. The halachah is as follows:

If the owner despaired of recovering his loss, the finder may keep the item. The halachah considers it as if the item has now become his, since the owner forsook ownership once he despaired of ever recovering his loss.(11)

But this applies only if the owner despaired of recovering his loss before the item was found. If, however, the item was found before the owner realized he had lost it [and before he had a chance to give up hope of finding it], then the finder must return the item to its owner - even though the owner had subsequently despaired of recovering it.(12)

Thus one who finds an item and is in doubt about whether or not he must return it, should resolve three issues: 1) Is the owner aware that he lost the item? 2) Even if the owner is aware of his loss, how does the finder know if the owner has given up hope of recovery? 3) Even if the owner has despaired of recovery, how do we know when he despaired - before the item was found or after?

Our Sages have formulated two criteria to help resolve these questions:

1) If one finds an item which will be missed by its owner - either because of its weight or size (like a box or a bag), or because of its importance (like a wallet or loose cash) - we can assume that the owner is aware of his loss, since a person constantly checks his pockets to make sure that his belongings are safe.

2) In certain situations we can reasonably assume that, by the time the item was found, the owner had already despaired of recovering his loss. For example:

1. An item is lost in an area where the majority of passersby are non-Jewish (13) or non-observant Jews.(14) We assume that in this situation, the owner will surely despair, since he presumes that the item will not be returned to him.(15*) The item was lost in a Jewish area but it had no simanim (identifying marks) on it. No reasonable person can expect to recover such an item.
2. The item had identifying marks on it but it was "lost to all", e.g., it was swept away by a flowing river.(16)

In all such cases, the finder will have despaired of recovering his loss. Consequently, if the finder picked up the item after the owner gave up hope, he is no longer required to return it. It is, however, proper to go beyond the strict requirements of the halachah and return any object to a person who offers proof of ownership - even if he has despaired of recovering it.(17) It is considered the "proper and right" thing to do (18) A finder should be made aware of what is required of him according to the basic halachah, as well as the "proper and right" conduct which exceeds the demands of the basic halachah.(19)

WHAT ARE IDENTIFYING MARKS?

As stated earlier, when there are no special characteristics by which the owner can prove that the lost object belonged to him, we assume that the owner has despaired of recovering his loss. The finder may then keep the item.

What are considered identifying marks?

3. Unique markings on the object itself.
4. Being able to identify the area in which the object was lost. If, however, many people put such objects in the same place, this is not considered a mark of identification.⁽²⁰⁾
5. The way the object was packaged or bound. If, however, many people package or tie such objects in the same manner, it is not considered a mark of identification.²¹
6. The unique number of articles found.⁽²²⁾
7. The unique weight or measurements of the objects.

Coins or bills have no identifying marks in halachah. Even if the owner knows the serial numbers of the bills, or that his name is written on them, these are not considered valid proof of ownership since it is possible that the owner gave the coins or bills to someone else, and the other person lost them.⁽²³⁾

FOOTNOTES:

1 "Lost" means that it is clear that the owner dropped the item unknowingly. If it is evident, however, that the item was intentionally placed in a certain spot, the object is not considered "lost" and it should be left in its place undisturbed.

2ushin 34a. See also Shitah Mekubetzes, Bava Metziah 30a, quoting the Rosh.

3 262:1. In 1980, Harav M. Feinstein (Hashavas Aveidah, Responsa 1) wrote that a perutah could be worth a nickel.

4v M. Feinstein (Hashavas Aveidah, Responsa 4). Similarly, if a photograph is found it must be returned even though it is actually worth less than a perutah, since it is worth more than that to its owner; Mishpatei ha-Aveidah, pg. 71.

5Mishpatei ha-Aveidah, pg. 72-73, based on C.M. 359:1.

6 C.M. 266:2. Nowadays, the vast majority of non-observant Jews do not fit into that category; Chazon Ish Y.D. 2:28.

7 C.M. 266:1.

8 Be'ur Halachah O.C. 266:13.

9 Beiur Halachah, *ibid.*, is undecided on this issue, but Shulchan Aruch Harav (Hilchos Metzieh 40) and Chasam Sofer O.C. 42 rule that severe muktzeh, like money, may not be moved for the purpose of hashavas aveidah. Harav S.Z. Auerbach (Shemiras Shabbos K'hilchasah, pg. 236) tends to hold that even light muktzeh should not be moved, since returning a lost item is not considered "a permitted activity". See page 336 for an elaboration.

10 Kicking the muktzeh to a safe place, however, is permitted according to the Mishnah Berurah 308:13.

11 Several poskim hold that only an adult can give up hope of recovering the item, but a minor cannot. Not all poskim agree; see Pischei Chosen, pg. 249 and Mishpatei ha-Aveidah, pg. 85 for conflicting views.

12 C.M. 262:3. The rationale can be explained in one of two ways: 1) Once an item is picked up by the finder, he becomes obligated to return it. The owner's abandonment of hope of recovering the object can no longer release him from that obligation (Tosfos Bava Kama 66a). 2) Once the item is picked up by the finder, he becomes obligated to guard it for the owner. The item is then considered as if it is really in the domain of the owner. One cannot be considered to be in the halachic category of having given up hope of finding an item when it is in his domain, even though he does not realize it (Ramban Bava Metzia 26b).

13 C.M. 259:3.

14 Mishpatei ha-Aveidah, pg. 31.

15 An exception to this rule is when the lost item is a sefer, since we assume that even if a non-Jew found it, he would sell it to a Jew. The owner, therefore, does not give up hope of ever recovering his sefer; Rama C.M. 259:3. A tallis, tefillin, and a mezuzah are considered like a sefer in regard to this halachah (Pischei Choshen, pg. 272).

16 C.M. 259:7. In this case, however, even if the item was found before the owner despaired, and even before the owner realized it was lost, the finder may still keep it; Bava Metzia 21b.

17 C.M. 259:5. However, one does not have to publicize his find; Shulchan Aruch Harav (Hilchos Metzieh 18).

18 In certain cases, such as when the loser is poor and the finder is wealthy, a Jewish court can even "force" the finder to do the "right" thing and return such an item to its rightful owner, even though according to the basic halachah the item clearly belongs to the finder; Shach 259:3; Aruch ha-Shulchan 259:7.

19 Mishpatei ha-Aveidah, pg. 35.

20 Rama C.M. 262:9.

21 Sma C.M. 262:35.

22 C.M. 262:3.

23 C.M. 262:13; Igros Moshe C.M. 4:45-3. Nevertheless, a talmid chacham who is well-known for his honesty may claim that he recognizes the money and that it belongs to him. The finder will then have to return the item to the claimant.

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