



Restoring the Primacy of Choshen Mishpat

BUSINESS HALACHA *in the* CLASSROOM

❧ *Bava Metzia* ❧ PEREK BEIS

A project of the
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Finders Keepers

Bava Metzia 21a - Aveidas Maos

“We’ll be taking a class trip now to the park a few blocks away,” the teacher announced. “Please walk in an orderly fashion and keep on the sidewalk.” The class headed out to the park.

Zvi, David, Benzion and Aharon were walking along together, when Zvi suddenly stopped. He looked intently at the other side of the street. “I think I see money lying there across the street,” he said.

His friends turned to see.

“Yes, it’s a \$20 bill!” Zvi exclaimed. “I saw it first; it’s mine!”

“So what?” argued David. “It’s still on the other side of the street.”

David started running towards the money. So did Zvi, Benzion and Aharon.

David got there first. “I got here first,” he called out. “It’s mine.”

Benzion, who was just three steps behind, quickly stretched out his foot and covered the money with his shoe. “That’s it,” he said. “I touched it first. It’s mine!”

As he removed his foot to pick up the money, Aharon reached down and grabbed the bill. “No,” he called out, “it’s mine!”

The four boys stood in a circle shouting at each other, “It’s mine!” “No, it’s mine!”

Aharon put the \$20 bill in his pocket.

The teacher walked over. “What’s going on here?” he asked.

“I saw a \$20 bill lying across the street,” said Zvi. “I found it, so it’s mine.”

“But I got to it first,” claimed David.

“I put my foot on it first,” countered Benzion.

“And I picked it up first,” retorted Aharon.

“It was not safe to run across the street,” the teacher said. “Regarding the money, I don’t know what the halacha is. You can either agree to divide it or we can stop along the way at Rabbi Tzedek’s yeshiva and ask him who’s entitled to the money.”

“Let’s ask Rabbi Tzedek!” they all said.

“Listen up,” the teacher called out. “We’re going to stop at Rabbi Tzedek’s yeshiva.”

When they reached the yeshiva, the teacher took them to Rabbi Tzedek’s office.

“We were on a class trip and a monetary question came up,” he said. “Can we come in and ask you the halacha?”

“With pleasure,” he replied. “Come in.” The class piled in to Rabbi Tzedek’s office.

Finders Keepers, cont.

“Who is claiming from whom?” asked Rabbi Tzedek.

“I am claiming from Aharon,” said Zvi. “I saw money on the other side of the street and claimed it, and then Aharon went ahead and took it.”

“I got there first,” David added.

“And I put my foot over it first,” Benzion chimed in.

“What do you say?” Rabbi Tzedek asked Aharon.

“It’s all true,” replied Aharon, “but I picked it up first.”

“Who gets the money?” asked the teacher.

Rabbi Tzedek turned to the four boys. “The money belongs to Aharon,” he ruled.

Rabbi Tzedek then explained, “A person who finds a stray bill is permitted to keep it (C.M. 262:11). However, for a person to acquire a lost item, he must take possession of it through a kinyan (act of transaction). Seeing the lost item alone is not sufficient to make it yours. Putting your foot on it, or even lying down on it, also does not make it yours, since this does not constitute an act of acquisition. Only picking up the item, or dragging it, if it is heavy, is a valid kinyan to acquire the item (268:1). Therefore, neither Zvi nor Benzion acquired the money until Aharon picked it up and acquired it.”

“We learned, though, that whoever comes close first acquires the item,” inquired David.

“There is, indeed, a concept of ‘daled amos,’ replied Rabbi Tzedek. “In order to prevent fighting over found items, Chazal instituted that the item belongs to whoever comes first within close proximity. This means within four amos, which is approximately 7 feet. We consider this area as belonging temporarily to the person who stands there.”

“So why is the money not mine?” asked David.

“Chazal only instituted this in semi-public areas,” answered Rabbi Tzedek, “such as side alleys or the very edges of public areas where people generally don’t walk. Such an area can be considered as belonging temporarily to the person who stands there. Had the money been there, you could have acquired it through the rule of daled amos. However, in a public area, like the street, or in private property, this idea of daled amos doesn’t apply (268:2; see Aruch Hashulchan 268:1).

“Therefore,” concluded Rabbi Tzedek, “the money remained unclaimed until Aharon finally picked it up.” 

Sunken Treasure

Bava Metzia 22b - Shatfa Nahar

Although it was already fall, the weather remained warm.

“It’s supposed to be sunny tomorrow,” Mr. Bentzion Gluck said on Motzei Shabbos. “Let’s have a family outing to the bay and rent a fast motorboat.”

In the morning, the family headed to the bay. The waves were somewhat higher than usual.

“Make sure to put on life vests,” Mrs. Gluck reminded them.

“There’s going to be a lot of spray,” Mr. Gluck warned his family. “Put all your valuables in this waterproof bag, so that they won’t get wet.”

He passed the bag around and they put in their wallets, cameras, MP3’s, and Mrs. Gluck’s pocketbook.

Mr. Gluck revved the engine and set out into the bay. After twenty minutes of straight runs, one of the children asked, “How about making figure eights?”

“Sure!” said Mr. Gluck. “Hang on!” he yelled as he made become sharper and sharper turns, and the boat began to tilt heavily.

A powerful wave hit the boat broadside just as it headed into the turn. The combined effect of the sharp turn and the wave capsized the boat, tossing the occupants and their belongings into the water!

One by one, the family spluttered up to the surface and grasped the emergency oars that were floating nearby. The boat slowly began filling with water, while the waterproof bag slid below the surface and disappeared.

A family on a nearby boat made their way over to help. Someone tossed Mr. Gluck a bucket and he managed to bail enough water out of the boat to keep it afloat with him in it. “I’ll take the rest of the family back,” offered another boater.

“At least we’re all OK,” said Mr. Gluck in a subdued voice when they returned to the dock. “Maybe someone will even find the bag.”

“I certainly hope so,” said Mrs. Gluck. “My diamond earrings were in there and they aren’t insured. It will be a big loss if the bag doesn’t turn up.”

“I’ll put up a sign at the marina,” said Mr. Gluck. “Perhaps the bag will wash ashore.”

Months later, Mr. Feiner was walking along the shore when he spotted a black bag as it washed up on the sand. It had clearly been in the water for a long time.

Mr. Feiner examined the contents. Water had seeped into the bag and had already

Sunken Treasure, cont.

faded the money and ruined the electronics. However, the plastic driver's license clearly displayed the name, photo, and address of Bentzion Gluck. The expensive-looking pair of earrings that he found at the bottom of the bag were tarnished, but the diamonds sparkled as before.

Mr. Feiner picked up the bag and headed home. As he walked, he wondered whether he was obligated to return the bag that had washed ashore.

He emailed Rabbi Tzedek and asked for guidance.

Rabbi Tzedek responded: "You are not absolutely required to return the lost bag with its contents, unless there is a local law to that effect. However, it is usually proper for the finder to return it anyway."

Rabbi Tzedek then explained, "The mitzvah of hashavas aveidah, returning lost items, applies when the item is lost from the owner, but is expected to be found by someone. However, when the item is completely lost - not only from the owner, but from everyone - you are not absolutely required to return it. Some explain that this is because the owner certainly loses hope of reclaiming it. Even if he declared that he did not abandon hope, his declaration is viewed as a futile statement (Rambam Hil. Aveidah 11:10; C.M. 259:7).

"Despite this, it is proper lifnim mishuras hadin (beyond the letter of the law) to return the lost item to its original owner. This is because a Jew is expected to do not only what is absolutely required, but also what is fair and proper. The beis din can even apply persuasive measures to encourage the finder to act this way (Pischei Teshuva 12:6). Furthermore, if the local law (dina d'malchusa) requires the finder to return the item, then halacha also obligates the finder to do so (Rama 259:7).

"However, since the reason for returning an item that is lost and the owner despaired of finding it is based on doing what is fair and proper, not the letter of the law, it is somewhat subjective. Therefore, if the original owner is wealthy and the finder is poor, he is not necessarily expected to return the lost object (Rama 259:5, see Ketzos 259:3)." 

The Grapes Over the Fence

Bava Metzia 22b - Hani Tamri

Summer was rapidly approaching its end. The neighborhood children had all returned from camp; school was starting up again. Bright rays of sunlight continued to shine, but the days were becoming noticeably shorter.

Mr. and Mrs. Adler were sitting in their backyard on Shabbos afternoon and enjoying the remaining days of sun. A pleasant breeze blew, rustling the leaves of the trees all around. Luscious clusters of grapes hung over the fence from a neighbor's vine, adding a beautiful splash of purple to the green leaves. The neighbor across the fence, who enjoyed gardening in his spare time, was particularly proud of these grapes and used them to produce home-made wine.

Mr. Adler was reading a recent issue of Business Weekly and came across the article "Whose Tomatoes?" which discussed ownership of fruit growing in a rented property. Suddenly, a gust of wind shook the grapes and a few of them fell down into their yard.

Mr. Adler looked up at the clusters of grapes hanging over the fence and wondered: To whom do these clusters belong? Although the vine clearly belonged to the neighbor who planted it in his property, many of the clusters grew over the fence in their yard. Sometimes, the vine got out of hand and had to be trimmed.

He turned to his wife. "I wonder about these grapes," he said, pointing to the grapes hanging over the fence. "To whom do they belong?"

"Hmmm, I never really thought about it," she replied. "I don't know. I suppose that what grows over the fence may be ours."

"I'll see Rabbi Dayan at Mincha and Seuda Shlishis this afternoon," said Mr. Adler. "If I get a chance, I'll ask him."

On the way to shul, Mr. Adler passed by the house of a non-Jewish neighbor, whose apple-tree protruded out over the street. "Could it be that one has to be even more stringent if the tree belongs to a Gentile? I'll check about these apples also," he thought to himself.

After Mincha, people began walking downstairs to the function room for Seuda Shlishis. Mr. Adler accompanied Rabbi Dayan.

"I thought of an interesting monetary question this afternoon," Mr. Adler said. "Our neighbor has a grape vine growing on the backyard fence, and some clusters of

The Grapes Over the Fence, cont.

grapes hang over the fence into our yard. To whom do they belong?”

Rabbi Dayan thought for a moment. “This question was posed to Rav Moshe Feinstein zt”l many years ago (Igrot Moshe, C.M. 1:43). He ruled that the fruit belong to the owner of the vine. Rav Moshe explains that although the Gemara (B.B. 27b) debates whether bikkurim can be brought from a tree whose roots or branches extend into someone else’s property, ownership of the fruit is determined solely by where the stem emanates from the ground. Since the vine’s stem emanates from your neighbor’s property, the clusters of grapes over the fence are also his. The Rama also rules that the branches follow the base of the tree (C.M. 167:2).”

“If the grapes are his,” asked Mr. Adler, “am I allowed to trim the branches that interfere with my yard?”

“Yes,” said Rabbi Dayan. “The Mishna (B.B. 27b) teaches that branches of a tree that interfere with public traffic can be cut down. The same would seem true of branches that interfere with someone else’s private property. Nonetheless, despite your right to trim these branches, the fruit belong to their owner.”

Rabbi Dayan and Mr. Adler washed and sat down for the seuda.

Mr. Adler turned to Rabbi Dayan, “I guess then that it makes no difference whether the neighbor is Jewish or not.”

“Correct,” replied Rabbi Dayan. “Rav Moshe writes explicitly that since monetary ownership is determined solely by the stem, there is no difference between a Jew and a non-Jew. Stealing from a non-Jew is also prohibited.”

Mr. Adler took a drink and thought for a moment of the grapes that had fallen to the ground. He turned again to Rabbi Dayan, “What about individual grapes that fall onto the ground?”

“In principle, there is no difference between whole clusters and individual grapes,” said Rabbi Dayan. “Both belong to your neighbor. However, in practice, we can assume that he is interested only in the whole clusters, not in individual grapes that fall into your yard. Therefore, you can typically take individual grapes that fall, since he most likely doesn’t mind, but you cannot take the clusters without asking his permission.”



Lost and Found

Bava Metzia 23a - Makom

Bava Metzia 23b - Klei Anpuria

The Daf Yomi shiur was full as the participants celebrated the siyum of Maseches Menachos.

Rabbi Dayan concluded the Maseches and announced, “G-d willing, we will begin Chulin tomorrow evening!”

“Are there any seforim that you would recommend for Maseches Chullin?” asked Mr. Bellin, one of the regular attendees.

“Maseches Chulin deals a lot with the slaughter of animals and the examination of their inner organs,” said Rabbi Dayan. “It is helpful to have a book with pictures and diagrams. There are a number of good ones available, such as Chulin Illuminated.”

The following day, Mr. Bellin went to the local seforim store and bought a copy of Chulin Illuminated. He showed it to Rabbi Dayan that evening, and saw that a number of other people had also bought the same sefer.

On Shabbos, Mr. Bellin left his sefer in shul after the daf shiur. However, when he came to the shiur on Sunday evening, he couldn't find it.

“I left my sefer on the table,” he said to his neighbor, “but I don't know what happened to it.”

“Look around the shul,” said his neighbor. “Also check the shul library.”

Mr. Bellin searched the shul and finally found a copy of Chulin Illuminated on a shelf in the shul library.

“It was a big mistake not to write my name on it right away,” Mr. Bellin said to himself. He thumbed through the sefer to see if there was any writing, underlining, coffee stains, or other identifying features, but there were none. It was still in perfect condition.

Mr. Bellin asked the gabbai whether the shul had purchased a copy of Chulin Illuminated. “No, we haven't,” said the gabbai. “Someone must have left his sefer by accident.”

Mr. Bellin took the sefer home.

“I think I found my missing sefer,” he told his wife. “There was a copy on the back shelf in the shul library.”

“But maybe it's someone else's,” said his wife. “You said that a lot of people bought

Lost and Found, cont.

that sefer. It could even belong to a visitor who joined the Daf Yomi shiur over the weekend.”

“It could be, but it could just as easily be mine,” said Mr. Bellin thoughtfully. “I’ll ask Rabbi Dayan tonight if I can keep the sefer.”

After the Daf shiur that night, Mr. Bellin asked Rabbi Dayan, “I lost my copy of Chulin Illuminated on Shabbos. I found a copy yesterday on the back shelf in the shul library. Can I assume that it is mine?”

“You can take it meanwhile,” replied Rabbi Dayan. “You should ask at the shiur whether anyone else lost his sefer. If no one else claims it within a reasonable time, you can assume that it’s yours and keep it.

“Let me explain a little,” continued Rabbi Dayan. “The requirement of hashavas aveidah, returning lost items, is when there is a siman, which is an identifying feature that allows the owner to identify and claim the item. Therefore, if someone loses a brand new sefer, with no identifying features, the finder may keep it, since the owner has no way of identifying the sefer and abandons hope of retrieving it (Choshen Mishpat 262:21).”

“Do you mean that anytime I see a brand new book with no name I can take it?” asked Mr. Bellin incredulously.

“Absolutely not,” said Rabbi Dayan. “This halacha only applies if the book was lost, such as if you found it lying in the street. However, if the book was intentionally placed somewhere, it should not be touched (260:9). Furthermore, the location of the object can even serve as an identifying feature if someone did end up taking it. The Gemara (B.M. 23b) teaches, though, that if the item was left in a place where people commonly leave such items, it cannot serve as positive identification. For example, if you left your sefer on the table where we learn, that is not considered positive identification (C.M. 262:9).”

“Then why can I take this sefer?” asked Mr. Bellin.

“The poskim discuss whether an item that is missing, and then a similar one is found, can be assumed to be the missing item. Regarding hashavas aveidah, since there is no known owner, you are allowed to take the item meanwhile under the assumption that it is the one you lost. You should wait to see if anyone else posts a notice of missing that item. If, after a reasonable time, no one else seeks the item, this indicates that it is yours and you may keep it (Minchas Yitzchak 3:17).”



In the Sand at the Sea

Bava Metzia 24b - Metzia Lifnim MiShuras HaDin

Camp Artzeinu was coming to an end. After a month of touring and learning in Israel, three days remained before the group of teenage boys returned to the States.

They set out for an afternoon of water fun at the separate beach in Ashdod.

"Catch!" said Uri to his friend, tossing a ten-shekel coin. Avi put out his hand, but the coin bounced off and disappeared into the soft, glistening sand.

"Sorry," said Avi. "I was never good at playing catch."

The boys poked around the sand a little, running their fingers through it, with no luck.

Nearby were some young children building sand castles and making mud pies. They had a sieve with which they were sifting the "flour" for their pie.

"Selicha. Can I borrow your sieve for a few minutes?" said Uri in broken Hebrew. The children nodded shyly and passed the sieve.

Uri sifted the sand where the coin had fallen. There were plenty of pieces of broken shell and some small coins, but no ten-shekel piece.

"What are you doing?" asked one of Uri's friends, jogging over.

"I lost a ten-shekel coin in the sand," explained Uri, "so I'm sifting the sand to find money. I already found four shekel, but not my coin."

His friends joined the search. At last, Dov shouted, "I found a ten-shekel!"

Uri walked over and stretched out his hand. "Thanks, Dov," he said. "I wasn't sure that I would find my coin in all this sand!"

Dov looked down. "Finders keepers; losers weepers," he mumbled.

"What do you mean?" asked Uri incredulously. "This is a classic case of hashavas aveida!"

"Who says it's yours?" persisted Dov. "Maybe it fell from somebody else."

"That's crazy," responded Uri. "You saw that I dropped it right around here."

"Yeah," said Dov. "But you also found some other coins."

Uri seized Dov's hand and tried to forcibly grab the coin.

"That's not how we resolve disputes," the counselor said firmly. "When we get back to the youth hostel, we'll email Rabbi Dayan and ask whether Dov has to return the coin."

The next day, the counselor called Dov and Uri to his room. "Rabbi Dayan emailed

In the Sand at the Sea, cont.

back his answer," said the counselor as he printed the email.

He read aloud: "The Gemara (Bava Metzia 26b) teaches that if you drop a coin in the sand and someone else finds it, he is not obligated to return it. The reason is that when a coin falls in the sand, it's extremely difficult to find. Situations like this, where it is almost impossible to retrieve the lost item, are considered almost an automatic yei'ush; we assume that the person already gave up hope of finding his coin (C.M. 262:14)."

"But I didn't give up hope," protested Uri. "Didn't you see that I asked those nearby children for their sieve?!"

"Good point," said the counselor, as he continued reading the email. "The Gemara teaches that even if the one who lost the coin sifted the sand, this does not indicate that he expected to find his particular coin. Perhaps he simply hoped to find a comparable coin that someone else dropped, as you found other coins also."

"See, I told you," said Dov triumphantly. "I don't have to give it to you!"

"Let me finish reading," said their counselor. "Even so, although Dov is not legally obligated to return the coin, it is still proper and right to return it, like it is proper to return any lost item even after yei'ush (259:5,7)."

"But still, maybe it's not his coin at all?" insisted Dov.

"Rabbi Dayan also addressed that point in his email," said the counselor. "Since Uri lost a ten-shekel coin in this immediate vicinity, and we are not aware that others did, we assume that that Dov found Uri's coin (Prisha 262:11).

"In addition," the counselor finished reading, "some authorities suggest that if the owner announced right away that he hopes to find his coin or intends to sift the sand, we do not automatically declare yei'ush (Aruch Hashulchan 262:20). The bottom line: although Dov cannot be forced to return the coin since we generally consider this a case of yei'ush, it is certainly proper for him to do so."

Dov reached into his pocket and handed over the coin. 

Porter Damage

Bava Metzia 24b - Metzia Lifnim MiShuras HaDin

“This house needs a major reorganizing,” Mrs. Blum said to her husband. “Some boxes need to be taken down to the basement; others need to be brought up.”

“Sorry, but I can’t do that with my weak back,” replied Mr. Blum. “Get a strong teenage boy to help.”

Mrs. Blum posted a message on the community list: “Strong teenage boy needed to move boxes. \$15 an hour.”

Shortly after posting the request, Shimshon replied, “I am strong and available to work in the late afternoons.” They arranged a day.

When Shimshon came over, the Blums directed him moving boxes up and down.

“Now, take this box up to the kitchen,” said Mrs. Blum.

Shimshon lifted the box. “You’re sure you have it?” asked Mr. Blum. “It contains glass.”

“Yes,” replied Shimshon. “It’s not heavy.”

Halfway up the stairs, Shimshon tripped. The box slipped out of his hand and fell with a smash! Mr. Blum came running.

“Sorry about that,” said Shimshon. “I hope nothing broke.”

“It certainly sounded like things broke,” sighed Mrs. Blum. “I had glass decanters and vases in there.”

Shimshon picked up the box and brought it to the kitchen. Mrs. Blum opened it and was greeted with shimmering slivers of glass at the bottom of the box.

Mr. Blum assessed the damage. “There’s about two hundred dollars’ worth of damage here,” he said slowly.

Shimshon drew his breath. “That’s almost three times what I earned working the whole afternoon,” he thought.

“It was an accident,” he finally said. “You saw that I tripped on the stairs and the box fell out of my hand.”

“So what?” said Mr. Blum. “You are responsible for the damage.”

“It’s true that I carried the box,” said Shimshon, “but I never accepted responsibility for the contents.”

“I think that’s included in the job,” said Mr. Blum. “We can consult Rabbi Dayan about this, though.”

Porter Damage, cont.

Mr. Blum and Shimshon met with Rabbi Dayan. “We hired Shimshon to move boxes,” said Mr. Blum. “He tripped on the stairs and broke a number of expensive glass items.”

“There was damage,” acknowledged Shimshon. “But it seems unfair that I should work all afternoon and walk away owing money!”

“Strictly speaking, Shimshon is responsible for the damage, unless it was due to circumstances beyond his control (ones). Since he was paid for the job, he is considered a shomer sachar, who is responsible for controllable loss,” replied Rabbi Dayan. “However, Chazal instituted that a porter who stumbles and damages his load is exempt, unless he was negligent, such as if he tried to carry a load that requires two people (C. M. 304:1,4). The reason for this ruling is that otherwise, people would not be willing to accept such a job. Being a porter is a difficult job generally done by poor people, with high risk and low salary. If they would be held responsible for accidental damage, they would not be willing to take the risk (Shvus Yaakov 3:177).”

“Even if Shimshon doesn’t have to pay for the damage,” said Mr. Blum, “I assume that I don’t have to pay him for his work?!”

“There is a dispute whether Chazal required paying his wages,” said Rabbi Dayan. “Therefore, if the employer is in possession of the money he cannot be made to pay. However, if the worker is poor, righteous people go beyond the letter of the law and provide his wages (see Aruch Hashulchan 304:1,11).”

“Why should there be an obligation to pay wages?” asked Mr. Blum.

“The Gemara (B.M. 83a) relates that Rabbah b. Chanah hired porters, who broke a barrel of wine,” explained Rabbi Dayan. “Rabbah grabbed their garments as payment for the damage. Rav instructed him to return their garments, based on the verse, ‘So that you should walk in the way of the good.’ The porters then said, ‘We are poor and worked all day; we are hungry and have no money.’ Rav instructed Rabbah to pay them wages, based on the verse, ‘and keep the paths of the righteous.’ This means that we should act in a manner beyond the letter of the law with needy workers, unless they were grossly negligent (SM”A 304:1).”

“Does this exemption apply also to professional movers?” asked Mr. Blum.

“Nowadays, the custom is that moving companies pay for damage and usually have insurance to cover it,” said Rabbi Dayan. “Therefore, the common custom would prevail, and they would have to pay for the damage.” 

Stuck in the Seats

Bava Metziah 24b - Metziah Lifnim MiShuras HaDin

Reuven Lev drove carpool twice on Sundays. In the morning, he drove his older daughter and her friends to a chesed program, and in the afternoon, he picked up the boys from yeshiva.

One afternoon, his son's friend, Avi, had trouble finding the clasp to buckle his seatbelt. As Avi dug between the seats to find the clasp, he found a \$50 bill that had fallen in between the back seats.

"Wow! Look what I found!" he shouted. "A \$50 bill."

"You know, Avi," said Mr. Lev, "you have a chance to do the mitzvah of hashavas aveidah (returning lost objects)."

"How can I know who owns this money?" asked Avi.

"When you find something, you are supposed to announce it to the people who might have lost it," said Mr. Lev. "Next week, I can ask the girls who were in this morning's carpool."

The following week, Mr. Lev asked the girls, "Did anybody lose money in the car last week?"

"It could have been me," Rivka said. "After the program, I went shopping and realized that I had lost money along the way."

"How much did you lose?" asked Mr. Lev.

"At least \$20, but I'm not exactly sure," said Rivka. "I sat in the back middle seat; if it fell from me, it would probably be there."

"It was found there," said Mr. Lev. "But can you give me a more accurate amount?"

"I never counted the bills," Rivka answered, "but I estimate between \$20 and \$100."

"This is an interesting question," said Mr. Lev. "I don't know whether this serves as sufficient identification (siman)."

When Mr. Lev picked up the boys from yeshiva that afternoon, he told Avi, "One of the girls who sat in your seat lost money, but couldn't identify the amount properly."

"Can I keep the money then?" asked Avi.

"I'm not sure," said Mr. Lev. "Maybe I should keep it, since it was found in my car. I expect to see Rabbi Tzedek tonight at a wedding, though; I'll speak with him."

After the chupah, Mr. Lev found Rabbi Tzedek. "Mazal Tov!" he said. "A fascinating monetary case came up last week." Mr. Lev related what had happened.

Stuck in the Seats, cont.

Rabbi Tzedek replied, “Rivka does not have sufficient identification to claim the money. Therefore, you can keep the money found in your car. However, if it seems reasonably clear that the money is Rivka’s, it is meritorious to return it to her.”

Rabbi Tzedek then explained, “Identifying the denomination of a bill is not sufficient identification, since anyone could have lost a bill of that denomination. Even a particular mark on a bill is questionable, since money constantly changes hands. Only if Rivka had folded the bill in a special way, or if a number of bills were rolled or clipped together, would it be a siman (C.M. 262:11-13).”

“What about the fact that Rivka sat in that seat?” asked Mr. Lev.

“Location serves as an identifying siman when the person knows that he left or dropped his item there,” explained Rabbi Tzedek. “However, if the person was unaware that he lost the item, location is generally not a valid siman, since the owner is not aware of where along the way he lost it. Perhaps Rivka lost her money elsewhere, and someone else’s money fell in between the seats another day (262:3,9).”

“Even if Rivka cannot claim the money, why should I be entitled to it?” asked Mr. Lev. “Shouldn’t it belong to Avi, who found it?”

“If a lost item falls into a person’s property (chatzer), the property acquires it on behalf of the person if the property is secure or if the owner is adjacent,” said Rabbi Tzedek. “Therefore, since the money does not have an identifiable siman, you acquired it when it was lost in your car. However, a chatzer does not acquire a lost item that is not likely to be found. Therefore, if the lost money was buried deeply between the seats and you don’t think that it was yours, Avi could still acquire it when he found it (268:3; see Shach 268:2 and Pischei Choshen, Aveidah 2:ftnt. 12).

“Nonetheless, it is meritorious to return even an item that was found after the owner abandoned hope of reclaiming it (yei’ush),” concluded Rabbi Tzedek. “The same is true if the owner does not have a valid siman, but circumstances clearly indicate that it belongs to that person, especially if there are multiple indications (259:5; S.A. Harav, Metzia #18; see Beis Shmuel E.H. 17:73).” 

Sunken Treasure

Bava Metzia 24b - Metzia Lifnim MiShuras HaDin

Although it was already fall, the weather remained warm.

“It’s supposed to be sunny tomorrow,” Mr. Bentzion Gluck said on Motzei Shabbos. “Let’s have a family outing to the bay and rent a fast motorboat.”

In the morning, the family headed to the bay. The waves were somewhat higher than usual.

“Make sure to put on life vests,” Mrs. Gluck reminded them.

“There’s going to be a lot of spray,” Mr. Gluck warned his family. “Put all your valuables in this waterproof bag, so that they won’t get wet.”

He passed the bag around and they put in their wallets, cameras, MP3’s, and Mrs. Gluck’s pocketbook.

Mr. Gluck revved the engine and set out into the bay. After twenty minutes of straight runs, one of the children asked, “How about making figure eights?”

“Sure!” said Mr. Gluck. “Hang on!” he yelled as he made became sharper and sharper turns, and the boat began to tilt heavily.

A powerful wave hit the boat broadside just as it headed into the turn. The combined effect of the sharp turn and the wave capsized the boat, tossing the occupants and their belongings into the water!

One by one, the family spluttered up to the surface and grasped the emergency oars that were floating nearby. The boat slowly began filling with water, while the waterproof bag slid below the surface and disappeared.

A family on a nearby boat made their way over to help. Someone tossed Mr. Gluck a bucket and he managed to bail enough water out of the boat to keep it afloat with him in it. “I’ll take the rest of the family back,” offered another boater.

“At least we’re all OK,” said Mr. Gluck in a subdued voice when they returned to the dock. “Maybe someone will even find the bag.”

“I certainly hope so,” said Mrs. Gluck. “My diamond earrings were in there and they aren’t insured. It will be a big loss if the bag doesn’t turn up.”

“I’ll put up a sign at the marina,” said Mr. Gluck. “Perhaps the bag will wash ashore.”

Months later, Mr. Feiner was walking along the shore when he spotted a black bag as it washed up on the sand. It had clearly been in the water for a long time.

Mr. Feiner examined the contents. Water had seeped into the bag and had already

Sunken Treasure, cont.

faded the money and ruined the electronics. However, the plastic driver's license clearly displayed the name, photo, and address of Bentzion Gluck. The expensive-looking pair of earrings that he found at the bottom of the bag were tarnished, but the diamonds sparkled as before.

Mr. Feiner picked up the bag and headed home. As he walked, he wondered whether he was obligated to return the bag that had washed ashore.

He emailed Rabbi Tzedek and asked for guidance.

Rabbi Tzedek responded: "You are not absolutely required to return the lost bag with its contents, unless there is a local law to that effect. However, it is usually proper for the finder to return it anyway."

Rabbi Tzedek then explained, "The mitzvah of hashavas aveidah, returning lost items, applies when the item is lost from the owner, but is expected to be found by someone. However, when the item is completely lost - not only from the owner, but from everyone - you are not absolutely required to return it. Some explain that this is because the owner certainly loses hope of reclaiming it. Even if he declared that he did not abandon hope, his declaration is viewed as a futile statement (Rambam Hil. Aveidah 11:10; C.M. 259:7).

"Despite this, it is proper lifnim mishuras hadin (beyond the letter of the law) to return the lost item to its original owner. This is because a Jew is expected to do not only what is absolutely required, but also what is fair and proper. The beis din can even apply persuasive measures to encourage the finder to act this way (Pischei Teshuva 12:6). Furthermore, if the local law (dina d'malchusa) requires the finder to return the item, then halacha also obligates the finder to do so (Rama 259:7).

"However, since the reason for returning an item that is lost and the owner despaired of finding it is based on doing what is fair and proper, not the letter of the law, it is somewhat subjective. Therefore, if the original owner is wealthy and the finder is poor, he is not necessarily expected to return the lost object (Rama 259:5, see Ketzos 259:3)." 

The Missing Money

Bava Metzia 24b - Metzia Lifnim MiShuras HaDin

“We’re flying to Israel tonight for a month’s stay to visit our children who live there,” Mr. Hirsch told his neighbor, Mr. Feiner.

“My son, Shmuli, is learning there for the year,” replied Mr. Feiner. “Would you mind taking an envelope with money for him?”

“I’d be happy to,” said Mr. Hirsch. “Bring it over.”

Mr. Feiner came by with a sealed envelope and wished Mr. Hirsch a safe flight.

When Mr. Hirsch arrived in Israel, he called Shmuli to let him know that he could pick up the money.

“I can meet you on Friday afternoon,” Shmuli said. “Is that okay with you?”

“We’ll be all around town on Friday, so I don’t know where I’ll be,” said Mr. Hirsch.

“I can take the envelope with me, though, and you’ll give me a call when you’re ready.”

On Friday morning, Mr. Hirsch put the envelope in his coat and headed out. As the day wore on, the sun shone strongly and it became warm, so he slung the coat over his arm.

At 12 o’clock, Shmuli called. “Hello, this is Shmuli Feiner,” he said. “Where can I meet you?”

Mr. Hirsch suddenly realized that he no longer had his coat! He had lost it somewhere along the way. Horrified, he apologized profusely.

“I put the envelope in my coat this morning, but left it somewhere along the way,” he said to Shmuli. “Do you know how much was in the envelope?”

“I spoke with my father yesterday, and he said \$200 or \$300,” replied Shmuli. “He didn’t remember, exactly, though.”

“If you can wait for the money, let me see if I can find the coat,” said Mr. Hirsch. “We’ll be here for another three weeks.”

“I’m okay meanwhile,” said Shmuli.

Two weeks went by, with no news of the missing coat and envelope. Mr. Hirsch abandoned hope of retrieving his coat. “It seems that the coat and envelope are gone,” he said to his wife. “I’ll have to buy a new coat when we get home.”

A few days later, Mr. Hirsch received a phone call. “Shalom, this is Amram speaking,” the caller said. “I just found a blue coat in the park that had papers with your name and number on them.”

The Missing Money, cont.

“Was there an envelope in the coat?” asked Mr. Hirsch hopefully.

“No,” said the caller, “just the papers with your information on them.”

“Thank you for notifying me,” said Mr. Hirsch. “I’ll come by this evening.”

Mr. Hirsch picked up the phone and called Rabbi Dayan.

He related the story and asked: “Am I liable for the missing money?”

“Since the money was in a sealed envelope, you have the status of a shomer chinam, an unpaid guardian, on the money,” replied Rabbi Dayan (C.M. 292:7). “As such, you are liable for negligence, but not for theft or loss.

“However, the exemption for loss does not include a case where the guardian does not know where he left the item; that is considered negligence! Therefore, you are liable for the money, even though it seems to have been stolen subsequently (C.M. 291:6-7).”

“How much am I liable for,” asked Mr. Hirsch, “since I don’t know how much was in the envelope?”

“If Mr. Feiner were certain that he had put \$300 in the envelope, you would likely have to pay that amount,” answered Rabbi Dayan. “However, because he also is unsure how much he put in the envelope, \$200 or \$300, you only have to pay the \$200 that he is sure of (C.M. 298:2; 90:10; Shach 90:16).”

“One final question,” added Mr. Hirsch. “I had already abandoned hope (yei’ush) of retrieving the coat. Does Amram still have to return it to me?”

“Amram is not legally required to return the coat if he found it after yei’ush,” Rabbi Dayan responded. “Nonetheless, he should certainly go beyond the letter of the law (lifnim mishuras hadin) and return it, even after yei’ush, unless he is needy and the loser is wealthy (C.M. 262:5; 259:5).” 

Stuck in the Seats

Bava Metzia 25b - Matza BeGal

Reuven Lev drove carpool twice on Sundays. In the morning, he drove his older daughter and her friends to a chesed program, and in the afternoon, he picked up the boys from yeshiva.

One afternoon, his son's friend, Avi, had trouble finding the clasp to buckle his seatbelt. As Avi dug between the seats to find the clasp, he found a \$50 bill that had fallen in between the back seats.

"Wow! Look what I found!" he shouted. "A \$50 bill."

"You know, Avi," said Mr. Lev, "you have a chance to do the mitzvah of hashavas aveidah (returning lost objects)."

"How can I know who owns this money?" asked Avi.

"When you find something, you are supposed to announce it to the people who might have lost it," said Mr. Lev. "Next week, I can ask the girls who were in this morning's carpool."

The following week, Mr. Lev asked the girls, "Did anybody lose money in the car last week?"

"It could have been me," Rivka said. "After the program, I went shopping and realized that I had lost money along the way."

"How much did you lose?" asked Mr. Lev.

"At least \$20, but I'm not exactly sure," said Rivka. "I sat in the back middle seat; if it fell from me, it would probably be there."

"It was found there," said Mr. Lev. "But can you give me a more accurate amount?"

"I never counted the bills," Rivka answered, "but I estimate between \$20 and \$100."

"This is an interesting question," said Mr. Lev. "I don't know whether this serves as sufficient identification (siman)."

When Mr. Lev picked up the boys from yeshiva that afternoon, he told Avi, "One of the girls who sat in your seat lost money, but couldn't identify the amount properly."

"Can I keep the money then?" asked Avi.

"I'm not sure," said Mr. Lev. "Maybe I should keep it, since it was found in my car. I expect to see Rabbi Tzedek tonight at a wedding, though; I'll speak with him."

After the chupah, Mr. Lev found Rabbi Tzedek. "Mazal Tov!" he said. "A fascinating monetary case came up last week." Mr. Lev related what had happened.

Stuck in the Seats, cont.

Rabbi Tzedek replied, “Rivka does not have sufficient identification to claim the money. Therefore, you can keep the money found in your car. However, if it seems reasonably clear that the money is Rivka’s, it is meritorious to return it to her.”

Rabbi Tzedek then explained, “Identifying the denomination of a bill is not sufficient identification, since anyone could have lost a bill of that denomination. Even a particular mark on a bill is questionable, since money constantly changes hands. Only if Rivka had folded the bill in a special way, or if a number of bills were rolled or clipped together, would it be a siman (C.M. 262:11-13).”

“What about the fact that Rivka sat in that seat?” asked Mr. Lev.

“Location serves as an identifying siman when the person knows that he left or dropped his item there,” explained Rabbi Tzedek. “However, if the person was unaware that he lost the item, location is generally not a valid siman, since the owner is not aware of where along the way he lost it. Perhaps Rivka lost her money elsewhere, and someone else’s money fell in between the seats another day (262:3,9).”

“Even if Rivka cannot claim the money, why should I be entitled to it?” asked Mr. Lev. “Shouldn’t it belong to Avi, who found it?”

“If a lost item falls into a person’s property (chatzer), the property acquires it on behalf of the person if the property is secure or if the owner is adjacent,” said Rabbi Tzedek. “Therefore, since the money does not have an identifiable siman, you acquired it when it was lost in your car. However, a chatzer does not acquire a lost item that is not likely to be found. Therefore, if the lost money was buried deeply between the seats and you don’t think that it was yours, Avi could still acquire it when he found it (268:3; see Shach 268:2 and Pischei Choshen, Aveidah 2:ftnt. 12).

“Nonetheless, it is meritorious to return even an item that was found after the owner abandoned hope of reclaiming it (yei’ush),” concluded Rabbi Tzedek. “The same is true if the owner does not have a valid siman, but circumstances clearly indicate that it belongs to that person, especially if there are multiple indications (259:5; S.A. Harav, Metzia #18; see Beis Shmuel E.H. 17:73).” 

Loose Change

Bava Metzia 25b - Matza BeGal

Yosef, Gad, and Benjy headed down to the dining hall in their high school. As they walked along the corridor, they noticed that a new vending machine had been installed.

“I wonder who the machine belongs to,” mused Yosef. “Do you think it belongs to the school?”

“I doubt it,” said Gad. “Look, it says here: ‘Operated by Tuv Taam, Inc.’ Let’s return after lunch and get a snack for dessert.”

After lunch, the three boys returned to the vending machine. “I’m going to get a large chocolate bar,” declared Yosef. “We can all share it.”

Yosef inserted two one-dollar coins into the machine and made his selection. The chocolate bar fell to the bottom, and he heard two quarters drop into the change compartment with a “Clink, clink.” He reached in to take out his two quarters and was surprised to find two additional quarters there.

“Wow! There’s extra change,” he exclaimed. “That saved me 50 cents!”

“Who says you can keep it?” asked Gad. “You need to place a sign for hashavas aveidah.”

“What’s the point of hashavas aveidah?” asked Benjy. “There’s no identification on the money. But maybe you should give the money back to the vending company rep. I heard he comes on Tuesday mornings to restock the machine.”

A bit of a commotion began as other students joined in the discussion.

While they were arguing, Rabbi Dayan walked by. “What’s going on?” he asked.

“I found extra change in the vending machine,” said Yosef. “We were arguing about what to do with the money.”

“It is usually permissible to take the change for yourself,” replied Rabbi Dayan.

“Why can I keep it?” asked Yosef.

“At first glance, this seems to be a case of hashavas aveidah (returning lost property) to the previous customer, who lost his change,” explained Rabbi Dayan. “Since we can presume that the customer already became aware that he did not receive his change, and either he likely does not know the exact form of the change or has abandoned hope of retrieving it (yei’ush), the finder is permitted to keep it (see Hashavas Aveidah K’halachah 12:8).”

Loose Change, cont.

“Wouldn’t the vending operator automatically acquire the lost money that sits in his machine?” asked Benjy.

“A person’s property can acquire a lost item on his behalf, even without his knowledge,” said Rabbi Dayan. “However, this is only if the property is secure and if the owner is likely to find the item left in his property (C.M. 268:3). In this case, the change compartment is not secure, nor is the operator likely to find the money, since it would probably be taken by someone else first.”

“Why did you say ‘At first glance?’” asked Gad. “Is this not a typical case of lost money?”

“Actually, although the change was probably dispensed for the previous customer, he never acquired it, since he did not take possession of it,” explained Rabbi Dayan (C.M. 203:7). “Therefore, upon further reflection, this case is similar to a borrower who placed the money he is returning before the lender, with his permission, but the lender did not take the money. While the lender has no further claim on the borrower, what is the status of the money?”

“Rabbi Akiva Eiger (C.M. 120:1) writes that the money becomes hefker, since the borrower relinquished his claim to the money and the lender did not take it. Here, too, the untaken change becomes hefker.

“In truth, the Nesivos (123:1) disagrees with Rabbi Akiva Eiger and maintains that the money does not become hefker but remains owned by the borrower,” continued Rabbi Dayan, “but even he would likely agree here. Since the vending operator expects the machine to dispense the change to an unsecure place, where it can be taken by anybody, he effectively renders it hefker or expresses yei’ush (C.M. 260:6, 261:4; Shach 261:3). Thus, it is usually permissible to take the extra change.” 

For a more detailed treatment of this topic, contact BHI for the article by Rabbi Tzvi Price, “What to Do When You Find Money in a Vending Machine.”

A Lost Cap

Bava Metzia 25b - Safek Hinuach

Chaim and his wife were visiting Israel and enjoying an afternoon with their grandchildren in the park. After pushing them on the swings, they went to sit down on a bench in the corner of the park.

Chaim noticed a cap lying on the bench.

He turned to his wife and asked, "Should I take the cap home and try to return it to its owner?"

"How will you return it?" she asked.

"I'll put up a sign in the nearby shul," Chaim replied.

"Who says that the person who lost the cap attends that shul?" she said.

"I could also put up a sign on the bulletin board in the park," suggested Chaim.

"That's a good idea, but signs on bulletin boards tend to get covered or torn down after a short time," his wife responded. "Anyway, the person who lost the cap may not even bother to look at the bulletin board. He might simply check the bench and assume that someone walked off with his cap. Maybe it's best to leave it here and hope that the owner will come back in the next day or two."

"What about the mitzvah of hashavas aveida (returning lost items)?" protested Chaim. "I'm not allowed to ignore a lost item."

"I know that, but we've amassed a whole collection of lost caps, yarmulkes and shirts over the years," she said. "Almost no one has ever called to claim anything, other than a couple of valuable items. I almost feel that by taking the cap you're doing the owner a disservice. If you leave it, maybe he'll come back and find it."

"I know what you mean, but I don't think the laws of hashavas aveida allow that," replied Chaim. "I wouldn't do that without consulting Rabbi Dayan."

Chaim called Rabbi Dayan.

"I'm sitting in a public park and there is an unattended cap on the bench," he said. "Should I take it home and try to return it, or just leave it here?"

"The purpose of hashavas aveida is to ensure that a lost item returns to its owner," answered Rabbi Dayan. "Therefore, if an item appears to have been placed there intentionally, you should not touch it, but leave it where it is. The owner will likely come back and look for it there (C.M. 260:9)."

"What if I'm not sure whether the item was placed there intentionally?" asked

A Lost Cap, cont.

Chaim.

“If you’re unsure, the Rema (260:10) differentiates among three cases,” explained Rabbi Dayan. “Each also depends on whether the item has a siman (identifying feature) or not.

“First case, where the item was left in a secure place, you should not touch it.

However, if you already took it home: If there is a siman you must publicize the item; if there is no siman you should hold it until Eliyahu Hanavi comes and clarifies whose it is.

“Conversely, if the place is not at all secure, the item should not be left there. If there is a siman, you should take it home and publicize it; if there is no siman you may keep the item.

“The third case is where the place is partially secure, such as your case. If there is a siman, the Shulchan Aruch, following the Rambam, rules that you should not touch the item, but the Rema and almost all other authorities rule that you should take it home and publicize it. If there is no siman, you should leave the item there. Thus, it would seem that if the cap has a siman you should take it home and publicize it (Shach 260:24).

“Nowadays, though, people rarely search for signs on non-valuable items; it is unlikely that you will succeed in returning the cap,” concluded Rabbi Dayan. “Therefore, HaRav Yosef Shalom Eliyashiv, zt”l, ruled that, nowadays, if the item is not valuable and might have been placed there purposely, even if there is a siman, it is preferable to leave the item; perhaps the owner will return to find it.

“Thus, you should leave the cap where it is.

“However, if the item were a valuable hat that the owner would search for and it had a siman, you should take it home and publicize your find (Hashavas Aveidah K’halachah 1:9).” 

In the Sand at the Sea

Bava Metzia 26b - Metzia in Sand

Camp Artzeinu was coming to an end. After a month of touring and learning in Israel, three days remained before the group of teenage boys returned to the States.

They set out for an afternoon of water fun at the separate beach in Ashdod.

"Catch!" said Uri to his friend, tossing a ten-shekel coin. Avi put out his hand, but the coin bounced off and disappeared into the soft, glistening sand.

"Sorry," said Avi. "I was never good at playing catch."

The boys poked around the sand a little, running their fingers through it, with no luck.

Nearby were some young children building sand castles and making mud pies. They had a sieve with which they were sifting the "flour" for their pie.

"Selicha. Can I borrow your sieve for a few minutes?" said Uri in broken Hebrew. The children nodded shyly and passed the sieve.

Uri sifted the sand where the coin had fallen. There were plenty of pieces of broken shell and some small coins, but no ten-shekel piece.

"What are you doing?" asked one of Uri's friends, jogging over.

"I lost a ten-shekel coin in the sand," explained Uri, "so I'm sifting the sand to find money. I already found four shekel, but not my coin."

His friends joined the search. At last, Dov shouted, "I found a ten-shekel!"

Uri walked over and stretched out his hand. "Thanks, Dov," he said. "I wasn't sure that I would find my coin in all this sand!"

Dov looked down. "Finders keepers; losers weepers," he mumbled.

"What do you mean?" asked Uri incredulously. "This is a classic case of hashavas aveida!"

"Who says it's yours?" persisted Dov. "Maybe it fell from somebody else."

"That's crazy," responded Uri. "You saw that I dropped it right around here."

"Yeah," said Dov. "But you also found some other coins."

Uri seized Dov's hand and tried to forcibly grab the coin.

"That's not how we resolve disputes," the counselor said firmly. "When we get back to the youth hostel, we'll email Rabbi Dayan and ask whether Dov has to return the coin."

The next day, the counselor called Dov and Uri to his room. "Rabbi Dayan emailed

In the Sand at the Sea, cont.

back his answer," said the counselor as he printed the email.

He read aloud: "The Gemara (Bava Metzia 26b) teaches that if you drop a coin in the sand and someone else finds it, he is not obligated to return it. The reason is that when a coin falls in the sand, it's extremely difficult to find. Situations like this, where it is almost impossible to retrieve the lost item, are considered almost an automatic yei'ush; we assume that the person already gave up hope of finding his coin (C.M. 262:14)."

"But I didn't give up hope," protested Uri. "Didn't you see that I asked those nearby children for their sieve?!"

"Good point," said the counselor, as he continued reading the email. "The Gemara teaches that even if the one who lost the coin sifted the sand, this does not indicate that he expected to find his particular coin. Perhaps he simply hoped to find a comparable coin that someone else dropped, as you found other coins also."

"See, I told you," said Dov triumphantly. "I don't have to give it to you!"

"Let me finish reading," said their counselor. "Even so, although Dov is not legally obligated to return the coin, it is still proper and right to return it, like it is proper to return any lost item even after yei'ush (259:5,7)."

"But still, maybe it's not his coin at all?" insisted Dov.

"Rabbi Dayan also addressed that point in his email," said the counselor. "Since Uri lost a ten-shekel coin in this immediate vicinity, and we are not aware that others did, we assume that that Dov found Uri's coin (Prisha 262:11).

"In addition," the counselor finished reading, "some authorities suggest that if the owner announced right away that he hopes to find his coin or intends to sift the sand, we do not automatically declare yei'ush (Aruch Hashulchan 262:20). The bottom line: although Dov cannot be forced to return the coin since we generally consider this a case of yei'ush, it is certainly proper for him to do so."

Dov reached into his pocket and handed over the coin. 

Prime Suspect

Bava Metzia 26b - Suspected

“I arranged with Simon Kleinoff, the plumber, to clear the blockage in the kitchen sink this morning,” Mr. Laks told his wife.

“Oh, great!” she replied.

Simon arrived at 10 o'clock. He worked for a half hour, going in and out of the house to bring tools from his car.

Mrs. Laks came into the kitchen and opened the drawer near the sink.

“Have you seen my ring?” she asked Simon suspiciously.

“No, I haven't,” Simon responded in a surprised voice.

“I left my ring in the kitchen drawer when I cleaned the kitchen this morning,” Mrs. Laks confided to her husband, panic-stricken. “There was no one else in the house other than Simon all morning, and he's been in and out to his car numerous times.”

“Are you sure that you left it in the drawer?” Mr. Laks asked her.

“Absolutely positive,” she said. “I also noticed that the drawer was ajar and had been rummaged through.”

Mr. Laks went over to Simon.

“My wife is missing her ring,” he said. “She is positive that she left it in the drawer near the sink this morning, and only you were in the house today.”

“How dare you accuse me?” said Simon indignantly. “Your wife probably moved it and forgot where she put it.”

“She is sure she left it in the drawer,” said Mr. Laks emphatically.

“You have no evidence that I took it,” said Simon, shaking his head angrily. “Anyway, I just finished clearing the sink blockage. You owe me \$150 for the repair and I'll be off.”

“I'm not paying anything,” said Mr. Laks. “I'm holding the repair payment in lieu of the ring, until we discuss this with Rabbi Dayan.”

“We'd better do that,” retorted Simon. “Let's go right now!”

“My wife left her ring in the kitchen drawer, and it was taken,” Mr. Laks said to Rabbi Dayan. “Mr. Kleinoff was working in the kitchen then and was the only other person in the house. What recourse do we have?”

“A person who makes a definite claim but has no evidence or testimony can impose an oath (shevuas heses) on the other party who denies the claim,” answered

Prime Suspect, cont.

Rabbi Dayan. “Although, in general, a person cannot impose an oath without a definite claim, Rema writes that a person can impose an oath if there is a strong basis (raglayim ladavar) for the claim, even if it is not definite (C.M. 75:17).”

“What is an example of something that is considered a strong basis?” asked Mr. Laks.

“Let’s say someone was in your house. You find your money box broken and the contents stolen, and you suspect that person. You can impose an oath upon him,” replied Rabbi Dayan. “However, the Shach (75:63) questions the Rema’s ruling. He concludes that it depends on the evaluation of the beis din; if they see sufficient basis for the allegation, they can impose an oath upon the accused.”

“I understand that nowadays beis din is wary about imposing an oath,” said Mr. Laks. “Anyway, I want to withhold Mr. Kleinoff’s wages!”

“This is a complicated issue,” replied Rabbi Dayan. “The Sma (75:49) writes that if the plaintiff grabs payment from the suspected thief unobserved (so that there is no evidence that he grabbed), he can keep the payment. Shach (75:64) and Taz (75:17) vehemently disagree; a person cannot take money from another when there is an element of doubt. Pischei Teshuvah (75:20) cites varying opinions of later authorities.

“Bottom line: since the plaintiff is already in possession of the money, he can keep it when he has a clear basis for his claim (see Pischei Choshen, Geneivah 1:[13]).”

“Then I should be able to withhold the wages,” said Mr. Laks, “since I am in possession of the money.”

“It would seem so, provided that no one else was in the house and, due to the circumstances, your wife is sure that Mr. Kleinoff stole and not just that there is a good chance (see 408:2; Pischei Teshuvah 75:20).” 

Take It or Leave It?

Bava Metzia 26b - Ra'ah Selah

The winter was over, and the days began to get longer and warmer. Yeshiva Toras Mishpat decided to take advantage of the beautiful spring weather for an afternoon of exercise on the sprawling grounds of the local park.

After the shiur (class), the students headed to the park for a picnic lunch. Afterwards, they broke into groups and spent the remainder of the day playing ball and competing in races.

As the sun turned a glowing red, the students gathered their belongings and headed back to the yeshiva. A few teachers stayed behind with Rabbi Dayan to ensure that everything was in order and nothing had been left behind.

They came upon a T-shirt that had fallen in a puddle and had gotten wet and muddy, making it quite repulsive.

“Do we have to take this back and try to return it?” they asked each other.

“Of course we have to,” said one. “It’s the mitzvah of hashavas aveida, returning lost items.”

“But it’s disgusting,” said another. “I wouldn’t expect you to pick it up if I lost it.”

“I heard there’s no mitzvah until you actually pick it up,” said a third. “So we can just leave it alone.”

“Who says it’s from our group, anyway?” said a fourth. “Maybe it belongs to somebody else.”

They turned to Rabbi Dayan and asked: “Should we take it or leave it?”

“There are three mitzvos and prohibitions related to hashavas aveida,” Rabbi Dayan replied. “The primary mitzvah is the positive command: ‘Hashev teshivem’ — return them. Second, there is a prohibition to ignore a lost item: ‘Lo suchal l’his’alem’ — You may not ignore (Devarim 22:1-3). Third, if a person unlawfully takes a lost item for himself, he violates the prohibition ‘Lo sigzol’ — Do not steal (Vayikra 19:13; B.M. 26b; C.M. 259:1; Sma and Taz).”

“Then what’s the question?” said the first. “It’s explicit that we must take it!”

“There are some situations in which a person can ignore a lost item,” answered Rabbi Dayan. “One is ‘zaken v’ainah l’fi kvodo’ — an honored person, whom this item would belittle (see C.M. 263:3). The principle is to be as concerned about other people’s property as you would your own. Would you be willing to retrieve the item

Take It or Leave It, cont.

had it been your own? In addition, in cases when you are allowed to keep the lost item, you obviously have no obligation to return it, even if you don't want to keep it."

"So when must a person take a lost item to return it, and when can he leave it?" asked the teachers.

"The Shulchan Aruch writes that a person has an obligation to return a lost item only if eight conditions are met (C.M. 259:2). If any one of them is lacking, he is not obligated to return the item, although in many situations it is still meritorious to do so. The item has to be:

1. in a place where there is an obligation to return it (e.g. where the majority of people are Jewish);
2. in a place where it seems lost (not in a secure place);
3. left a manner that indicates it is lost (not placed there intentionally);
4. it was not willfully abandoned;
5. it is worth the minimal amount of a perutah;
6. there is some siman (identifying feature);
7. the person who found it would tend to it had it been his own;
8. it belongs to someone to whom we are required to return.

"Thus, in this situation, you are not obligated to take the item in order to return it," concluded Rabbi Dayan, "because it is beneath your dignity to pick up such a filthy T-shirt and because the majority of people in this park are gentiles.

"There are also some situations in which it is not recommended, and some in which it is even prohibited, to take the item," concluded Rabbi Dayan, "which we will discuss next time, iy"H." 

Mugged!

Bava Metzia 29a - HaMafkid Maos

Mr. Eric Roth lived in Israel.

"I'm flying to America next week," he told his neighbor, Shraga. "My niece is getting married!"

"Mazal Tov!" said Shraga.

"Do you want anything while I'm there?" Eric offered.

"I need a new zoom lens for my Nikon camera," said Shraga. "It's hard to get that part here."

"I'll try," said Eric. "How much does it cost?"

"Between \$150 and \$200," said Shraga. "I'll give you money."

That evening, he brought \$200 cash to Mr. Roth.

"Do you want me to keep the money separate?" asked Eric. "I may prefer to use my credit card for the purchase and save the cash for other expenditures."

"Either way is fine," said Shraga. "You can use the money if you want."

Mr. Roth put the money in his wallet. He wrote down the specifications of the lens that Shraga wanted.

When Mr. Roth landed, he took a taxi to his sister's house.

"The ride will cost \$40," said the taxi driver.

"That's fine," Mr. Roth said. He opened his wallet and pulled out two of the \$20 bills that he had received from Shraga.

The following day, Mr. Roth went shopping for the lens.

As he turned off the main avenue and walked onto a side street, two men accosted him. One of them pulled a knife. "Gimme your money!" he ordered.

Eric took out his wallet, shaking. The men grabbed the cash and ran off.

Eric flagged down the next police car and reported the mugging.

"There's not much we can do other than taking a description of the men and fingerprints from the wallet," said the policeman. "If we should later catch the muggers, we can possibly charge them for this also."

Mr. Roth was dazed by the experience and decided to cut his day short. As he headed back to his sister's house, he wondered, "What do I do about the \$200 that Shraga gave me? Do I have to buy the lens with my own money?"

That evening, Eric saw Rabbi Tzedek in shul. He related the whole story and asked,

Mugged!, cont.

“Am I responsible for the money that was stolen from me in the mugging?”

Rabbi Tzedek replied, “Since you requested permission to use the money for your own purposes and even used some of it for the taxi, you are responsible for the entire \$200.”

Rabbi Tzedek then explained. “An armed mugging is considered an oness, uncontrollable circumstance, for which only a borrower is responsible, not a shomer chinam (unpaid watchman) or shomer sachar (paid watchman) (303:3). However, if a person is entrusted with money that he is allowed to use and uses it, he is considered a borrower and is fully responsible, even if lost through oness (292:7).”

“I used only \$40 of the money,” argued Roth. “Why should I be responsible for the full amount?”

“A number of authorities write that by using even a small part of the money, you are considered a borrower of the entire entrusted amount,” replied Rabbi Tzedek. “The reason is that by spending some of it, you indicate readiness to use the money as your own (Nesivos 292:10; Pischei Choshen, Pikadon 5:17[63]).”

“What if I hadn’t used the money for the taxi?” asked Roth.

“That’s a complex issue,” answered Rabbi Tzedek. “When a person is entrusted with money in an open manner that implicitly indicates permission to use it, he is considered a shomer sachar because of the privilege of using the money, even if he did not use it. He is then responsible for regular theft, but not for armed mugging. If the person already had the status of a shomer sachar, it is questionable whether he now becomes a borrower on account of the privilege to use the money (292:7; 267:25; P.C., Pikadon 1:[14]).

“However, if someone entrusted money and then gave explicit permission to use it,” continued Rabbi Tzedek, “the Shach (72:31) writes that the guardian, whether a shomer chinam or shomer sachar, becomes fully responsible for the money as a borrower, even for circumstances beyond control. Other authorities disagree, but the Tumim (72:19) concludes that the dispute is only when the owner granted permission on his own. If the guardian initiated the request for permission, though, he is certainly liable. Here, you asked for permission to use the money; this is an additional reason to hold you liable (P.C., Pikadon 5:18).”

Mr. Roth thanked Rabbi Tzedek. The following day, he bought the lens with his credit card. 

Responsibility to Return

Bava Metzia 29a - Shomer Aveida

Moish was walking along the Yeshiva campus when he saw an MP3 player lying on the ground.

“Looks like one of the guys lost this,” he thought. “Must have fallen out of his pocket.”

He picked up the MP3 and examined it to see if contained any identification. The MP3 was full of recorded shiurim and Jewish music, but nothing that provided a name or telephone number. There was a small decal on it, however, that served as an identifying feature.

Moish took the MP3 back to his room and placed it on his desk. He then wrote a sign and posted it on the bulletin boards around the Yeshiva. “Found MP3 player. Please contact Moish at...,” providing his cell phone number.

Two days passed, but no one called to claim the item.

“You know, we need to do a major straightening of the room,” Moish’s roommate said to him. “Can you help me move the stuff out to the hall?”

“I think you’re right,” Moish said, surveying the mess around the room. The two boys moved the desk and the other belongings out to the hall.

When they finished cleaning the room and went to get the desk, Moish noticed that the MP3 was missing from the desk. “Oh no,” he exclaimed. “It seems that someone took it!”

Later that day, Moish received a call. “Hi, it’s Shalom. I saw a sign that you found an MP3.”

“Yes,” said Moish.

“I lost mine a few days ago,” Shalom said. “It had a decal on the side with a miniature picture of the Chafetz Chaim,” Shalom said.

“I did find an MP3 like that...,” said Moish.

“Oh, great!” said Shalom. “I was really worried about it. I use it to review shiur and listen to the Daf.”

“The problem,” Moish said slowly, “is that we left it outside my room and it’s gone.”

“You’re kidding me,” said Shalom. “Why did you leave it outside the room?”

“I was trying to straighten the room and moved the desk outside to the hall,” said Moish. “I didn’t expect it to be taken.”

Responsibility to Return, cont.

“I really appreciate your trying to help,” said Shalom, “but you ruined things now.”
“It’s no worse than when it was lying around the campus,” said Moish.

“Still, once you took it, I would expect you to be responsible for the MP3,” said Shalom.

“I never accepted responsibility for it!” said Moish.

“When you picked it up, you did,” said Shalom.

“I don’t see how that makes me responsible,” said Moish, “but it would be best to discuss the issue with Rabbi Tzedek.”

Moish and Shalom met with Rabbi Tzedek. “Am I responsible for an MP3 that I found and was lost or stolen from me?”

Rabbi Tzedek ruled: “If Moish left the MP3 outside his room carelessly, then he is responsible. Had he put the MP3 away safely in the room and it would have been stolen, there is a dispute whether he is responsible.”

Rabbi Tzedek then explained, “A person who finds a lost item is responsible to take it and safeguard it until the owner claims it. During this time, he is considered a shomer, a guardian over the object, and is responsible for it as any other item entrusted to him.

“There is a dispute in the Gemara (B.K. 56b) regarding how to consider a person who holds a lost item. Raba considers him a shomer chinam, unpaid guardian, since he has no monetary benefit from holding the lost item. Rav Yosef, on the other hand, considers him a shomer sachar, a paid guardian, since his involvement in the mitzvah of hashavas aveidah when picking up the item exempts him from the mitzvah of giving tzedakah at that time. Furthermore, since the Torah imposes the responsibility to guard the item on the finder, he is considered a shomer sachar.”

“How do we rule?” asked Moish.

“The Shulchan Aruch (C.M. 267:16) rules that the finder is treated as a shomer sachar, a paid guardian, and therefore is also responsible for theft and avoidable loss. The Rama, however, cites an opposing opinion that he is treated as a shomer chinam, unpaid guardian, and therefore responsible only for negligence. Later authorities rule that the issue remains as an unresolved dispute (SM”A 267:17; Shach 267:14).

“Therefore, if the MP3 was lost through negligence, such as by leaving it outside, the finder is responsible for it. However, if he put it away and it was stolen, he cannot be made to pay.” 

The Ball Over the Wall

Bava Metzia 31a - Aveida

Mr. Marks was relaxing in his garden one Sunday afternoon, savoring the remaining days of sunshine. From over the wall of his garden came the steady “thump, thump” and shouting of the local teenage boys playing basketball in backyard next door.

Mr. Marks didn't mind their playing ball, although the noise was disrupting to his “quiet” relaxation. However, he very much minded the frequent balls that made their way over the wall into his garden.

Sometimes, the ball would land in Mr. Marks's lap while he sat reading in the sun. Occasionally, it would land on a flower pot or toy and break it.

At first, the boys would simply climb over the wall to retrieve their ball.

“Excuse me,” they would say, as they popped over the wall and landed in his garden, “I just have to get the ball...”

In the summer this had been occurring almost daily. Mr. Marks finally put his foot down, especially since he liked to sit in his garden undisturbed.

“If you need the ball, you come around the front and ask for it like a mentch,” he insisted.

Mr. Marks tried talking to the neighbor. “Could you get your kids to play elsewhere?” he said. “It's annoying me.”

The neighbor apologized, but wasn't particularly cooperative about stopping the boys.

Today, as Mr. Marks lay there with his eyes closed, enjoying the warmth, another ball flew over and landed right next to his head.

“I've had enough of this!” Mr. Marks leaped up.

“I'm warning those boys that the next time their ball comes over the wall, they're not getting it back!” he said to his wife. “I've told them over and over again to stop playing like this. They just don't listen, and their parents don't do anything about it.”

“I agree that the neighbors are not acting properly,” said his wife, “but I'm not sure that you're allowed to keep their ball.”

“Well, then what can I do?” asked Mr. Marks. “This is becoming crazy.”

“I don't know,” replied his wife. “How about speaking with Rabbi Dayan, though?” she suggested. “Ask him if you can keep their ball. Maybe you can even stop them

The Ball Over the Wall, cont.

from playing or require them to build a fence.”

Mr. Marks met with Rabbi Dayan and explained his predicament.

“What can I do to alleviate this problem?” he asked. “Do I have a legal right to demand that the boys stop playing ball?”

“A person can restrain his neighbor from doing activities that damage, are a major nuisance, or to which he is particularly sensitive,” explained Rabbi Dayan. “However, ball playing does not seem to fall into these categories, even if the ball makes its way over the wall numerous times (C.M. 155:35-41).”

“What about requiring the neighbor to construct a tall fence?” asked Mr. Marks.

“If the ball typically causes damage, it is possible to require them to do so, since a person has to take precautions not to damage another (155:34),” said Rabbi Dayan. “However, if the ball rarely damages and the issue is primarily the minor nuisance, it is not possible to require the neighbor to build a tall fence, but rather only one as customary in that place.”

“Can I threaten to confiscate the boys’ ball if it falls into my garden?” asked Mr. Marks.

“You do not have a right to unilaterally confiscate the ball,” said Rabbi Dayan. “Although the ball is a nuisance to you, you cannot take it from them. You have an obligation to let them have it back, just like any other lost item, even if it gets ‘lost’ numerous times. (267:2).”

“What if I warn the parents also?” asked Mr. Marks.

“If this is a recurrent issue, the parents could allow you, as an educational measure, not to return the ball,” answered Rabbi Dayan. “You can also insist that you will return the ball only to the parents.”

Mr. Marks still had one more question. “What if the ball caused damage in my yard?”

“In that case,” replied Rabbi Dayan, “the teenage boys are required to pay for the monetary damage that they did to your property. This is true even nowadays that there are limitations on the beis din’s ability to adjudicate certain other kinds of damage (1:1).

“In any case, the boys do need to be more careful,” Rabbi Dayan concluded. “It is wrong to do something which disturbs a neighbor. Such behavior is a lack of v’ahavta l’reiacha kamocho - love your neighbor as yourself.” 

Reluctant Reference

Bava Metzia 31a - Saving Another

Mr. Lazer ran a successful restaurant and employed close to twenty people. At the end-of-year accounting, there was a small, but noticeable, discrepancy in the cash receipts of his enterprise. In the following semi-annual account, a similar discrepancy was noted.

“What explanation can there be?” Mr. Lazer asked his accountant.

“Perhaps one of your workers is ‘taking home’ a little bit?” suggested the accountant. “You might want to keep a tighter tab on the money.”

Mr. Lazer implemented certain security measures and began watching his workers more carefully. He came to suspect one particular employee, Mr. Shuker, and finally caught him pocketing some money!

Mr. Lazer informed Mr. Shuker that he was releasing him, on account of his theft.

Mr. Shuker protested slightly. “It was just this one time, and only a small amount,” he argued.

“Money has been missing for two years now,” Mr. Lazer said to him bluntly. “I suspect that’s also linked to you.”

Mr. Shuker remained silent. He packed up and left.

Shortly afterwards, Mr. Lazer was talking with a neighbor, who ran a catering business.

“I interviewed someone today for a position at my company,” the neighbor said. “Apparently, he worked with you for a number of years, and recently left.”

“Who is that?” asked Mr. Lazer.

“Mr. Shuker,” said the neighbor. “He said that he wasn’t earning enough with you, and was looking for a higher paying position.”

“I see,” said Mr. Lazer, as thoughts raced through his head.

“What should I say?” he wondered. “Should I protect Mr. Shuker? My neighbor? Play dumb? Spill the beans? I need to buy some time!”

“I need to run now,” Mr. Lazer said to his neighbor. “We’ll talk tomorrow.”

Mr. Lazer pondered the sticky situation. “Perhaps Rabbi Dayan can give me some guidance on this issue?” he said to himself.

Mr. Lazer called Rabbi Dayan and explained the uncomfortable circumstances. “What are my responsibilities here?” he asked. “What sort of reference should I provide?”

Reluctant Reference, cont.

“The issue of references is a very delicate one,” replied Rabbi Dayan. “On one side stands the prohibition of lashon hara, negative talk that can harm the prospective employee. On the other side stands the requirement to protect the prospective employer from harm or loss.”

“Is there really such a requirement?” asked Mr. Lazer.

“Yes, based on the mitzvah of hashavas aveidah,” answered Rabbi Dayan. “Just as there is a mitzvah to return lost items to a fellow Jew, there is a mitzvah to protect him from potentially harmful situations. There is also a prohibition, lo ta’amod al dam reiecha – ‘Do not stand aside when your fellow’s blood is shed’ – if you see him facing danger (C.M. 426:1; SM”A 426:1). The Chofetz Chaim explains at length that this also includes a requirement to protect him from financial loss or a potentially harmful partnership (Be’er Mayim Chaim, Rechilus 9:1).”

“How do we balance this requirement with the prohibition of lashon hara?” asked Mr. Lazer.

“The Chofetz Chaim (Hil. Rechilus 9:1-2) stipulates five conditions,” answered Rabbi Dayan. “First, you must not assume in haste that the potential worker or partnership is bad, but must consider carefully that it is, in fact, bad. Second, you must not inflate the situation more than it actually is. For example, you cannot say that he has been stealing for two years, but rather that you caught him stealing once, but suspect that he might have been doing so for a while.

“Third, you must intend only for your neighbor’s benefit, to spare him from loss; not out of hatred for your former worker,” continued Rabbi Dayan. “Fourth, if it is possible to bring about the benefit without revealing the bad – such as by simply saying, ‘I have reservations about recommending him’ – you should do so.”

“Finally,” concluded Rabbi Dayan, “if actual damage will come to the worker, e.g. he has already entered an agreement and signed a contract, and the employer will break it off unilaterally, there are further restrictions (see Hil. Rechilus 9:5-6).” 

Snow Job, Part II

Bava Metzia 31b - Mavriach Ari

Mr. and Mrs. Winter had returned from Shabbos after a snowstorm, and found their sidewalk, walkway and driveway shoveled... and a note from two neighborhood boys, Zvi and David, asking for \$40.

Mr. Winter felt that he shouldn't have to pay the boys since he hadn't hired them, but Rabbi Dayan explained that if it is common to hire people to shovel, he would have to pay, since he benefited from their service.

"It's not fair," Mr. Winter protested. "I often shovel by myself and would have shoveled when I came home!"

"That changes things," agreed Rabbi Dayan. "However, the issue is somewhat intricate, so it would be best that we all meet."

When they met, Rabbi Dayan told Zvi and David, "I previously explained to Mr. Winter that you are entitled to payment based on the law of *yored l'sdei chaveiro*. If a person plants trees in a field that was suitable for planting, the land owner has to pay the planter the minimum going rate for such work, since he provided the owner benefit. Here, Mr. Winter would have to pay you the minimum going rate for shoveling, \$30.

"However, if the owner normally plants his own trees, he does not have to pay the planter for his professional services," continued Rabbi Dayan. "Since the owner does not need the work, this case is treated like a field that is not suitable for planting, so he has to pay only a minimal amount for having been spared the time and effort of planting (Rama 375:4; Aruch Hashulchan 375:8). Therefore, since Mr. Winter often shovels by himself, he has to pay you only a minimal amount, let's say \$15, for sparing him the time and effort of shoveling."

"We learned in Yeshiva, though," said Zvi, "that even if the field is not suitable for planting, if the owner demonstrates that he wants the work, he has to pay the going rate (C.M. 375:3). Here, Mr. Winter pulled into the cleared driveway when he came home! Doesn't that demonstrate that he wanted the work we did?"

"I see that you remember what you learn," smiled Rabbi Dayan. "However, this only applies when the owner demonstrates willingness to pay or expends additional effort for the same benefit, such as widening the path."

"I still think that Mr. Winter should pay us the full rate," said David. "He didn't

Snow Job II, cont.

come home until Sunday afternoon and could have gotten a fine meanwhile. Also, someone could have slipped on his sidewalk and he would face a lawsuit!”

“That touches upon a whole other topic called *mavriach ari*, one who chases away a lion,” said Rabbi Dayan. “The Gemara (B.K. 58a) teaches that if a person lays out money of his own volition to spare his friend a possible loss, such as to ward off a lion threatening his flock, he cannot legally demand reimbursement (C.M. 128:1). Therefore, the fact that you spared Mr. Winter a potential fine or lawsuit is not sufficient grounds to obligate him (Nesivos 264:1).”

“How is this any different from the law of *yored* that we began with?” asked Zvi.

“In this case, the owner did not receive any positive gain; he was just spared a possible loss,” answered Rabbi Dayan. “The obligation to pay a *yored* is for the gain that the planter provided (*Tosfos s.v. e nami*). Furthermore, Mr. Winter might not have gotten a fine anyway. Therefore, he has to pay for the gained benefit of having a clean, usable area, but not for being spared the potential loss of a fine or lawsuit.”

“According to this,” said Mr. Winter, “if I went away for the winter and someone shoveled the snow without my asking, would he not be able to charge me, since I received no benefit?”

“That seems correct,” replied Rabbi Dayan, “although it would be irresponsible to leave for a long time without making an arrangement for someone to shovel the sidewalk.”

“If Mr. Winter had hired someone else to shovel when necessary and we shoveled instead,” David asked, “could we then demand payment since he indicated willingness to pay?”

“Certainly not,” argued Mr. Winter. “You would be taking the job away from the person whom I hired!”

“You’re correct that it is prohibited to encroach upon another person’s livelihood and a person who does so is called ‘wicked’ (*ani hamehapech b’charara*),” said Rabbi Dayan. “However, if the boys wrongfully did so, Mr. Winter would have to pay the minimum going rate, since he indicated willingness to pay for the service (Rama C.M. 156:5).”



Your Loss or Mine?

Bava Metzia 33a - Aveidaso

Dan and Shai stood in the train station. They had just finished shopping and each one carried a bag, which he put down next to him.

“I bought a gift for my parent’s 25th anniversary,” said Shai. “It cost me quite a lot of money, but it’s for a very special occasion.”

As the train approached, two youths came up from behind them. The youths grabbed the bags and ran away.

Dan and Shai, who were both trained in martial arts, were not cowed and immediately began chasing them. Dan was faster, and had almost caught them when the two youths split apart. Dan instinctively headed after his own bag, but realized that Shai’s bag was much more valuable.

“Should I forget about my bag and try to save Shai’s bag?” Dan thought to himself. He made a split-second decision and turned with a burst of speed after the other youth, who was holding Shai’s bag. The youth dropped the bag and fled down a stairway.

Shai caught up shortly and congratulated Dan for retrieving the bag. “Thanks for saving my my parents’ gift!” he said. “What about your bag, though? It looks like the other guy got away.”

“I could have caught him, but realized that your bag was much more valuable,” Dan said. “I was expecting that you would reimburse me for my loss.”

“I really appreciate that you saved my bag, and will definitely give you something for having chased the thief,” said Shai. “I just spent a tremendous amount on the gift, though, and can’t afford to cover your shopping also. It was your decision to give up your bag and save mine. Besides, I was also chasing them, and I had alerted the police, so we might have caught the thief anyway.”

“I went after your bag assuming that you’d compensate me for my small loss, rather than risk losing your whole bag,” responded Dan. “And it’s not likely that you or the police would have caught him in time.”

“I hear what you’re saying,” said Shai. “Let’s ask Rabbi Dayan tomorrow in shiur.”

The following morning, Dan related the story in shiur, and asked: “Was I supposed to have chased after Shai’s bag? What about my loss?”

“There is a mitzvah of hashavas aveidah,” replied Rabbi Dayan, “but if you are faced

Your Loss or Mine, cont.

with your own loss and that of another, you are not obligated to retrieve your friend's loss, even if it is far greater than your own. Nonetheless, it is proper to consider your friend's need (C.M. 264:1)."

"If I chose to save Shai's bag at the expense of my own," asked Dan, "does he have to compensate me for my loss?"

"That depends on the circumstances," answered Rabbi Dayan. "If Shai was present and you went ahead and saved his bag without saying anything to him, he is not obligated to cover your loss. He has to pay only the value of your service in pursuing his bag.

"However, if you stipulated that he should cover your loss, Shai must pay the full value of your loss. In addition, he cannot claim afterward that his bag might have been recovered by the police (B.K. 115b; C.M. 264:3-4)."

"What if Shai was not present when I decided to save his bag?" asked Dan.

"You can stipulate before beis din or three other people," said Rabbi Dayan. "If neither Shai nor any other people were available, or if circumstances did not allow you to stipulate that he should cover your loss, it is assumed that the friend would agree to cover the loss, as if it was stipulated (Rama 264:3; Sma 265:8)."

"What if Dan had been unsuccessful in recovering my bag?" asked Shai.

"The agreement to cover the loss is with the understanding that the bag will actually be recovered," said Rabbi Dayan. "Therefore, if Dan did not recover the bag, he is only entitled to the regular value of his service in pursuing the thief, unless you explicitly agreed to cover his loss even if it would prove unsuccessful.

"If you were present and Dan did not say anything, you would owe him nothing, since he did not provide any service of value (C.M. 264:4; see Sma 264:12)." 