



Finders Keepers

The second *perek* opens by discussing lost objects and when the object must be returned, or when it can be kept. The *Mishnah* first lists those items that can be kept. The *Bartenura* explains that they can be kept because we can assume that the owner has given up hope of retrieving it – *yi'ush*. Broadly speaking, the objects listed are generic and there is no way of identifying the owner.

The *Tosfot Yom Tov* refines our understanding of the list further. He explains that for all the object in the list, the owner will quickly be aware that they were lost. The *Tosfot R' Akiva Eiger* explains that if the object was found prior to the owner being aware that he lost it, then the object could not be kept.

The comments of the *Tosfot Yom Tov*, touches on the debate in the *Gemara* whether *yi'ush shelo midaat* is considered *yi'ush*. In other words, if the owner is not yet aware that he lost the object, but when he does he will certainly give up hope of retrieving it, is it already considered as if *yi'ush* has occurred. This is debated between *Abaye* and *Rava*. The *Tosfot Yom Tov's* comment is consistent with *Abaye's* opinion that *yi'ush shelo midaat* is not considered *yi'ush*. Why?

To paraphrase the *Gemara*, if the object was taken prior to the knowledge of the owner, it came into his hands "*be'issura*" – in a prohibited fashion. What does that mean? *R' Akiva Eiger* cites the *Ramban* who explains that when it first came into the finder's hand, he because a *shomer* (guardian) to look after the object for the owner. Consequently, it is considered as if it is in the *reshut* (domain) of the owner when *yi'ush* eventually occurs and cannot be acquired by the finder.

According to the *Ramban* how do we understand the *Gemara's* comment that it came into his hands *be'issura*? The *Ketzut* (259:1) explains that the person did not violate an *issur* when he collected the lost object. Only if he

intended to steal it would that be the case. Instead, citing the *Ritva*, he explains that he took it *be'shaat issur*. In other words, since it was before *yi'ush*, he was obligated to return it, and it is still considered in the possession of the owner. Consequently, it is forbidden for him to keep it.

We need to refine this understanding one step further. The *Ketzut* cites examples, where the *yi'ush* works regarding an object, even in the possession of the owner. For example, if someone finds coins in a *shul* he can keep them, even though a *shul* is considered a *chatzer shutafim* – a joint domain. Instead, the *Ketzut* explains that when we say that the finder's hand is like the owner's hand, it is not just that it is considered in the property of the owner. Rather, even though the owner may have given up hope, this *shomer* has not, and his hand – his position – is equivalent to the owner and therefore the ownership is not relinquished.

The *Tosfot* (*Bava Kama* 66a, s.v. *hacha*) however have a different explanation for *Abaye's* position. They note that if someone steals an item before *yi'ush*, they would acquire it after *yi'ush*. The *Tosfot* explain that the reason why the law is different when it comes to finding a lost item is because at the moment he found it, he was already obligated to return it. The subsequent *yi'ush* cannot relieve him of the obligation. That said however, the subsequent *yi'ush* is effective to the extent that he needs to return the value of what he found and not necessarily the object, like in the case of the theft.

The *Ketzut* explains that the *Ramban* does not have this problem. The reason why the case of the theft is different is because he did not take it with the intent to return it. Consequently, we would not apply the same logic that "his hand is like the owner's hand".

Revision Questions

בבא קמא י' ח' י'

- If a someone stole an animal and then returned it without the owners knowledge, and then the animal is either stolen or dies, is he responsible? (י' ח')
- Can one purchase fruit from someone who is paid to guard fruit trees? (י' ט')
- Can a launderer keep the thread and fluff left over? (י' י')
- After a carpenter has finished work, what parts of the "mess" belongs to the him and what belongs his client? When does it all belong to the client? (י' י')

בבא מציעא א' א' - ב' ג'

- What is the law if two people are holding onto a garment and are disputing the full ownership of the garment? (א' א')
- Regarding the previous question, what if one of the parties claims he has a (half) share in the garment? (א' א')
- What is the law if a person is riding a horse and another is leading it and each of them claim that the horse is theirs? (א' ב')
- If someone is riding a horse and sees a \$5 note on the ground and tells another person to retrieve it for him, when does the money belong to the rider and when does it belong to the person who retrieved it? (א' ג')
- If a person saw an (ownerless) object and jumped on top of it, yet another person came and grabbed it, to who does it belong? (א' ד')
- When can a person claim ownership of a stray animal by virtue of it being in his property? (א' ד')
- If an adult child who still lives at home finds an object, is it considered his? (א' ה')
- Consider a woman who is divorced but has not yet received her *ketubah*, if she found an object, to who does it belong? (א' ה')
- What should one do if he found a loan contract? In what case is there a debate? (א' ו')
- What should one do if he found a *get* in the street? (א' ו')
- What five documents listed in the *Mishnah* are returned if they are found? (א' ח')
- In what situation are all documents returned? (א' ח')
- According to *Rabban Shimon ben Gamliel* when are loan contracts returned to the borrower? (א' ח')
- Provide a number of examples of objects if found, can be kept. (א' ט')
- According to *R' Yehuda* what principle does he state regarding which object must be announced (in order to find the original owner)? (א' ט')
- Provide a number of examples of objects if found, one is obligated announce. (א' ט')
- What should one do if he found an object behind a fence? (א' ט')
- Can a person keep an object that he found:
 - Amongst rubble?
 - Tucked into a wall? (א' ט')

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
22 September י"ט אלול	23 September כ' אלול	24 September כ"א אלול	25 September כ"ב אלול	26 September כ"ג אלול	27 September כ"ד אלול	28 September כ"ה אלול
Bava Metzia 2:4-5	Bava Metzia 2:6-7	Bava Metzia 2:8-9	Bava Metzia 2:10-11	Bava Metzia 3:1-2	Bava Metzia 3:3-4	Bava Metzia 3:5-6

