

# שְׁנַיִם אוֹחֲזִין בְּטָלִית

Two people are holding a garment

## Case #1

Two people come to court holding a garment.

-Each say, "I found it first."

-Each say, "It is all mine."

Each must swear that not less than  $\frac{1}{2}$  of it is his.

They divide it in half.

## Case #2

Two people come to court holding a garment.

- One says, "It is all mine." He must swear that not less than  $\frac{3}{4}$  is his.

- One says, "At least  $\frac{1}{2}$  is mine." He must swear that not less than  $\frac{1}{4}$  is his.

We divide it  $\frac{3}{4}$  -  $\frac{1}{4}$  with an oath from each of them.

## Case #3

Two people come, both riding on 1 animal (or 1 riding and 1 leading).

-Each claim, "It is all mine."

-Each must swear not less than  $\frac{1}{2}$  is "mine".

They divide with an oath.

But, if they agree that they acquired it simultaneously, or there are witnesses that they grabbed it simultaneously, we divide it without an oath.

\*In actuality they are dividing it equally, even though one gets  $\frac{3}{4}$  and the other  $\frac{1}{4}$ .

How is that equal? One says, all of it is mine, the other says  $\frac{1}{2}$  is mine? Only  $\frac{1}{2}$  is in controversy. Since that is all that is in controversy, they divide only the controversial  $\frac{1}{2}$ .

## זֶה אוֹמֵר כּוֹלָה שְׁלִי

This one says. “It is all mine” and this one says, “It is all mine”.

A mourner for a parent has precedence over other mourners. If two mourners. for a parent come, each has a claim on all the rights to lead the service and say Kaddish. Therefore, we divide the rights between them.

If a grandson is sent by his father to lead the services when he is unable:

- Some commentators say – An agent, even a person unrelated, or a grandson sent as an agent, has all the rights of the person who sent them. Therefore, if they encounter a second mourner, they divide equally.
- Others say- The grandchild has some claim on those rights, but a mourner for a parent has greater claim. Therefore, the grandson should be given 1 of the 3 Kaddish recitations and the other person 2 times. Or, one should lead 2/3rds of the service and the other approximately 1/3rd.

# דְּבִרְאִיהָ לֹא קָנִי

Principle:

Seeing it, is not acquiring it.

Having it in your hand is needed to claim you found it. ‘Looking cannot acquire.’

When the Mishnah says, “I found it and it is all mine”, it seems redundant to say both, since it is understood. But it really speaks of 2 cases:

1. A found object.
2. A purchased object.

This is to teach us that in both cases, an oath may be needed.

Case 1- A found object - The person may say, “I will claim it is mine.”

The other fellow does not lose anything. It is a found object.

Case 2- A purchased object, bought or sold: Let’s ask the shop-owner, which customers paid him for the object. The shop-owner might have accepted money from 2 persons.

The courts would not impose an oath that would be false. (See Ben Nano’s case Shevuos 45a.) That is not a problem here. An oath may not be false. They might have each picked it up simultaneously.

## הַמוֹצִיא מִחֲבִירוֹ עָלָיו הָרְאָיָה

Proof rests on the one who seeks to extract payment from his fellow.

Rather in our case, both litigants are in physical possession of the item.

Our case is not one where one person is trying to take some item that another person holds.

Insight into human nature: How can we thwart the deceiver?

-A case where a person deposited 200 and another deposited 100 with a third party. Both claim they were the party who deposited the 200.

Gemara says to give each person 100, since there is no doubt on that and hold the third 100 until Elijah comes.

R Yose says - No, all 300 should be held, otherwise, the lying party has nothing to lose.

## דְּלוּדֵי הֶתֶם קְנִיס לִיה רַבִּי יוֹסִי לְרַמָּאֵי כִּי הֵיכִי

There is the case where R Yose penalizes the deceiver so that he would be induced to admit his fraud.

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Each gave the storekeeper money to purchase the same object and claims to have given him 200. The storekeeper has only 300 in his possession. How to resolve which one is lying?

Ans #1 -Give each 100 and divide the remaining 100. That gives the liar 50 that is not his and denies the other 50 that rightfully belongs to him.

Ans #2 -Give each 100 and hold the remaining 100 in dispute until Elijah comes. That, at least, causes the liar to have no benefit, however, he loses nothing either. The other person loses 100 that rightfully belongs to him.

Ans #3 - Withhold all 300, so the liar loses and will likely admit his lie.

Comment: Sadly, the liar will not necessarily confess. The honest party might need the 100. He may grant the liar money, just so as to free up his money. This is similar, to King Solomon's story regarding the 'true mother'. This is the story about the disputed baby and the willingness to give up the baby, so that it lives.

## מוֹדָה מִקְצֵת הַטַּעֲנָה יִשְׁבַּע

### The oath of Modeh Miktzas.

A defendant who admits to a part of the plaintiff's claim, but denies the rest, must support his denial with an oath. An unsubstantiated claim can be denied by an unsubstantiated denial. A claim that has been somewhat substantiated (i.e., the defendant admitted that the claim against him is partly true and not entirely baseless), requires that the defendant substantiate his denial of the rest of the claim against him with an oath.

Why is it not considered a migui?

Here, migui does not pertain, because if the defendant really did owe the claimant, a person may not be so brazen as to deny it all, but only a part. Therefore, his admission is not done out of being an honest person, but merely not a brazen person.

3b1 The admission of a litigant is equal to 100 witnesses!!

(There is no legal value to more than 2 witnesses.)

A discussion ensues regarding the relative power of testimony of a litigant vs. testimony of 2 witnesses.

If witnesses are required and you are found guilty, you must give a Korban Chatas, or Asham, and pay a penalty of 'Chomesh', 'one-fifth'.

Therefore, an admission is not subject to 'hazomah' (cross examination) and is therefore, stronger.

## מַה לְּפִיו שֶׁכֵּן מַחֲיִיבוּ קֶרְבָּן

What is stronger a confession, or witnesses?

With his own confession, he is obligated to bring a Korban Chatas, but not on the testimony of witnesses.

A person says, “I committed this crime (I ate forbidden fat).” Witnesses say, “The fat was kosher, he violated nothing.” He must bring an offering. A person’s confession is stronger than the testimony of witnesses, even 100 witnesses.

Yet, we have a rule that a person cannot make himself wicked, i.e., incriminate himself, so how could he be obligated to bring a korban. And if he did not actually commit the sin for which he is bringing this offering, how could the Kohanim officiate at an unnecessary service in the Bais HaMikdash?

For the purposes of atonement, a person’s confession is believed, even though witnesses say that he is innocent. Since we rely on him, the Kohanim may officiate.

מָה אִם יִרְצֶה לֹאמַר מִזִּיד הָיִיתִי יִפְטֹר

But if he wished, he could claim that he did it intentionally and he would have been exempt.

A person is not permitted to make himself wicked. A person is not believed to incriminate himself. Yet, a shoichet, on his death bed, confessed that he did not strictly adhere to the rules, i.e., his knife was not sufficiently sharp and therefore, the meat he sold was not Kosher.

They declared that all the utensils people used and the meat itself, were not Kosher. The shoichet recovered and returned to his trade, denying that he ever gave such a confession.

The shoichet was believed when he gave his confession, since he was doing it for the purposes of teshuvah (repentance).



מָנֶה לִי בְיָדְךָ וְהִלָּה אֹמֵר אֵין לָךְ בְּיָדִי אֶלָּא נ' זוז

“You owe me a maneh (100 zuz)” and the other one says, “I owe you only 50 zuz.”

If a person admits he owes some portion of what is claimed, but not all of it, ‘modeh bemiktzas’, he pays the portion he admits to and makes an oath that he owes no more.

R Chiya says – No, as soon as he pays the part he admits to, we consider that part paid. He totally denies owing anything now. It is seen as being totally denied, for which there is no oath.

Otherwise, we see a penalty for being honest enough to admit a partial debt. Should we not say that since he could have denied it all and have no obligation to take an oath; we should believe him when he admits to part and disclaims any further obligation?

הֵיִלֵּךְ

Discussion re: 'heilech', 'here it is'.

Does this constitute part of a lender's claim?

Rav Sheshes says- No, and therefore, the second ½ of the claim is denied entirely.

Since there is no admission to part of the claim, the borrower does not have to swear an oath because of 'modeh bemiktzas,' 'an admission of a part'.

There is no oath of modeh bemiktzas in cases of "heilech".

## אַרְבָּעָה שׁוֹמְרֵינַן צָרִיכִין בְּפִירָה בְּמַקְצָת וְהוֹדָאָה בְּמַקְצָת

The four types of custodians require partial denial and partial admission.

Unpaid custodians	3 oaths “I was not negligent.”-Shomer Chinam
The borrower	“I did not use it.” -Hashoel
The paid custodian	“It is not in my possession.” – Noseh Socher
The renter	- Hasocher

6a2 line 15 A20

A general rule: People may not be reluctant to take doubtful money, but people will also be reluctant to take a doubtful oath.

6a2 line 16 A23

Why? The money can always be returned, but an oath, once uttered, cannot be recalled.

ג' פרות מסרתי לך

I handed you three cows.

These are different examples discussing whether they constitute modeh bemiktzas. For if they do, an oath is required. Land claims are excluded unless they include objects, pits, ditches or caverns.

5a2 line a1

3 cows to a custodian

5a3 Barley vs. wheat – The admission must be something of the same type.

5a3 Shepherd who is a thief- A shepherd is disqualified in general, if his sheep are his own, but not if they belong to another person.

A person won't steal if he does not benefit from it. Therefore, he is like a public shepherd. Others will benefit (not him), if he allows the sheep to eat other people's produce.

5b1 line 6 A41

Discussion as to why the oath is worded as it is worded.

-I swear that not less than ½ is mine.

-I swear that ½ of it is mine.

5b1 line 26 B15

A person documented to be a liar can serve as a witness.

A person documented to be a thief cannot serve as a witness.

Exodus 23:1 “Do not place ... a thieving witness.”

## רועה פסול סתם

An ordinary shepherd is disqualified as a witness.

A shepherd is not eligible to testify in court as a witness, because he is suspected of leading his sheep to graze on other people's property. Therefore, he is a (suspected) thief and a thief is disqualified from serving as a witness in court.

But, if this is the case, how can we entrust our sheep to a thief? Also, if we do give him our sheep to graze for us, are we not enabling, aiding and abetting his crime? We are encouraging him to sin, i.e., placing a stumbling block before him!

No, only when he is tending his own sheep, does he stand to gain from his dishonesty, but he is not suspected if he is committing a crime to benefit other people. No person sins for the benefit of others.

לֹא תַחְמֹד לְאִיִּנָּשִׁי בְּלֹא דְמִי מִשְׁמַע לְהוּ

People think that ‘do not covet’, is only violated if you don’t pay for the item.

A person who commits a transgression cannot serve as a witness.

But only, if he was warned.

However, if the transgression was generally known to be a transgression, no warning is needed.

Since people do not generally know that:

- Coveting is a sin even if you take it and later pay for it.
- Tying or untying a knot on Shabbos is prohibited.
- Shaving with a razor is prohibited for everyone, not only the pious.

A person, who transgresses these details without a warning, is not prohibited from, or disqualified from, giving testimony in court.

לֹא תַחֲמֹד לְאִיִּנָּשִׁי בְּלֹא דָמִי מִשְׁמַע לָהּ

People wrongly assume that ‘do not covet’ applies only where no money is exchanged.

What is worse, stealing, or making a false oath?

If we suspect a certain person of stealing, we ask him to take an oath.

A watchman was to guard a valuable object. He claims it is no longer in his possession. It was either lost or stolen. We ask him to take an oath. We, therefore, assume a person might steal, but he would be more fearful of taking a false oath. The fear of taking an oath is likely to keep a person from stealing.

Example: You are a watchman, something is stolen and you are accused. If you agree to pay for it, even though you claim you don’t have it, is this still categorized as a violation of the commandment “Do not steal” or, “Do not covet”.

Tosophos – You are not a sinner if you pay for it.

Others say - You are a sinner if you take something (steal it) and you obviously coveted it.

However, many people do not think you stole it, if you subsequently pay for it.

לֹא תַחְמֹד לְאִיִּנְשִׁי בְּלֹא דָמִי מִשְׁמַע לָהּ

“Thou shalt not covet” even applies only where no money is exchanged.

A man bid for an aliyah in Shul on Rosh Hashanah, but was outbid by another of the bal habatim in Shul.

He found it difficult, as he saw the man in Shul in the days following, not to feel resentment toward him. Was it because he was embarrassed that he lost? Did it show that the other man was more rich than he, or valued the mitzvah, or the Shul, or the Rabbi, more than he? Did he resent the honor the aliyah bestowed on his friend? Did he covet the position his friend now had, that he had wished for himself?

It is very hard not to resent, or be jealous, i.e., to covet, that which another person possesses.



## שבועות משביעין אותו

We require him to swear.

The owner of an animal comes to claim his animal back from a person entrusted with guarding the animal for its owner. The guardian now claims it was stolen, through no fault of his. The guardian must come to court and swear an oath that he no longer has the animal in his possession. If we suspect him of stealing, how can we believe his oath?

We assume that there is greater fear in violating the command against taking a false oath, than there is of taking someone else's property.

When the second commandment, “You shall not take my name in vain (Exodus 20:7)” was spoken at Sinai, the entire universe trembled. This awe remains part of the human psyche and enables the court to use an oath, as a means of forcing a defendant to tell the truth.

## Daf Digest

אִיגְלֵאִי מִיִּלְתָּא דְּהָאִי דְּשָׁתִּיק מֵעֵיקָרָא סָבַר הָא קָא חָזוּ לִיה רַבָּנָן

It is evident that he was silent in the first place, because he thought the rabbis observed.

A person had an item snatched from his hands, in front of Bais Din. He was silent and later protested.

Can we say his silence is:

1. An admission that he has no claim on the item.
2. His reliance that the judges saw the aggressive act and he need not protest since it is so obvious? And had he not been in front of Bais Din, he would have protested?
3. Had he not been in front of Bais Din, his lack of protest could be more understandable, since there is no legal benefit to do so without witnesses.

Lack of protest is an admission and would have to be countered by evidence and explanation.

שֶׁתִּקְפֶּה אַחֵר בְּפָנֵינוּ

He snatched it before us.

Scenario in court:

- Two people stand before us, each holding the coat. One grabs the entire coat from his neighbor:
  - If the other objects, we adjudicate.
  - If the other is silent, he admits, in effect, the coat was not his.

However, temporary silence is not construed as an admission.

Some items that you do not have full, clear, possession of, you cannot consecrate.

6a4 -coat

6b1 -bechor

-animals of questionable status

-animal tithe obligation (does not apply in cases of doubt, i.e., the animal was already counted)

-animal jumped back into the pen

7a1 -i.e., cases of questionable status

## קפץ אחר מן המנויין לתוכן

If one jumps back, after being counted, into the midst of the remaining animals,  
all are exempt.

A man was counting his sheep in order to tithe. Every tenth one is maaser, but if one jumps back, in the man is no longer certain about the count and all are exempt from maaser, This is due to the fact that since the obligation is to count and that can only be done if he is certain (See note #2 p7a1).

This rule is extrapolated to counting the omer. If a person is not sure which day it is, he must not count at all. He can't say, "I'm not sure if this is the 17<sup>th</sup> or 18<sup>th</sup>" and count both. The law is only regarding an accurate count. However, it is only a Rabbinic ordinance and we could be lenient.

## מאי ספיקות

What is meant by questionable status?

A questionable status of being holy.

If an animal is already Holy, i.e., a first born, he is automatically consecrated to God by his order of birth. He is not included in the obligation to tithe, because by using the tithing process, the “10<sup>th</sup> becomes holy”, ‘Haashiri yihiyeh kodesh La’Shem’ (Lev 27:32).

This process incorporates an exemption for the poor, because contrary to popular understanding, tithing is not a donation of 10%, it is a donation of the tenth. Meaning, if you are poor and have less than 10, you give nothing, not 10% of your 9. The word ‘tenth’ is interpreted as meaning ‘definitely tenth’.

An animal of questionable status: Was this animal a bechor? - Do I have full ownership of this animal? An animal of questionable status can be exchanged for a redemption animal, prior to the tithing process.

## שְׁנַיִם אֲדוּקִים בְּטָלִית

Two people are holding a tallis (garment)  
and enter the court.

What method do we use to divide it?

1. Each takes as far as his hand extends and divides the remainder.
2. One holds the cloak at the edge, another in the middle.
3. One holds the jeweled gold striped edge and the other the unadorned end.
4. One holds the cloth / the other the fringes.

Proof from Chalifin - Acquisition by exchange.

A token object, i.e., a handkerchief, used as a means of transaction: Touching the edge, with at least 3 fingerbreadths, suffices to create acquisition. Proof is derived from a get attached to a string. This is only permissible, if the string is too weak to draw the bill of divorce back. This is supposed to separate them and a strong string would not do that.

How are we to divide it?

1. Split the article in two? No, that will reduce its value.
2. It means divide it according to its value. No, a split cloak could still be valuable for children or if gilded, for young princes.

What happens in the situation of two people contending for the possession of an animal? If it is Kosher, it is permissible to split? If not, divide its monetary value.

22 Bava Metzia 7a3  
Daf Digest

line 38 A36

שְׁנַיִם אֲדוּקִין בְּשֵׁטֶר

Two people are holding a note of indebtedness.

You must not make a loan without a written document.

You should retrieve the document and destroy it, once you pay it back.

You need witnesses at both ends of the transactions.

## אימור צָרִי אֶתְפָּסָה

Say, perhaps, the husband deposited bundles of valuables with the woman.

Life insurance and Ketubah.

The Ketubah is a contract which states, amongst other details, that the groom will give the bride a certain amount of money upon his death, or their divorce.

Would an insurance policy satisfy that obligation, or would the widow still have a claim for her Ketubah money from the estate?

The wife contends the insurance policy was a gift, in addition to the Ketubah money.

The designation of a beneficiary is not a reliable conveyance, because it is revocable. The monies conveyed are not yet in existence, since the husband is still alive and therefore, cannot be a means of valid kinyon (conveyance of ownership).

Even if the beneficiary is also designated, the owner retains the power to designate an alterative beneficiary.

Ans: If she has the policy in her hand, it is hers. If the insurance money was meant to satisfy the Ketubah requirements, he should have had the promissory note, i.e., the Ketubah returned to him. If the insurance paid the debt, what is the note doing in her hand?! So it would be considered a gift and not used to satisfy the Ketubah.



22 Bava Metzia 7b4  
Bleich 4:375

line 44

A13

ממשעבדי בשטר אית ביה זמן גבי

With a document that has a date, one can collect from encumbered property.

Predating a contract is not permitted, since that creates a lien on property.

During the summer months, wedding ceremonies frequently take place an hour after sunset. The Ketubah is written and signed before the ceremony and is, therefore, a predated contract, which is invalid in Jewish law. If the marriage does not take place, and/or the Ketubah is lost, it could be used improperly. Therefore, it is best that the signing of the Ketubah and the marriage ceremony, be on the same day.

## וַיַּחֲלֹקוּ נָמִי דְאֶמְרָן

“They shall divide”.

How do we interpret this phrase? Must we actually divide the object, or do we mean sell it and divide the proceeds?

Garment - Cut it in half. It still is valuable to use as clothes for a child.

Garment overlaid with gold – Cut it in half. It is valuable as a robe for children of Kings.

Animal – Kosher – Cut it in half and eat or sell your half.

Non-Kosher – Cut it in half and sell the meat to non-Jews.

Promissory note – Cut in half destroys its value!

This is not true. The borrower gets the full value of the of the promissory note even though the note is physically divided in half, because he (the borrower) does not have to pay anymore.

Halacha: If the physical division of a disputed object would destroy it, or decrease it's value, then the object is sold and the proceeds are divided, rather than the object itself (Shulchan Aruch Choshen Mishpat 38:4).

## וְשׁוֹתְפִין שְׁגָנְבוּ חֵיבִין

Partners who steal, are responsible.

Two thieves each stole  $\frac{1}{2}$  a prutah from an individual. The  $\frac{1}{2}$  prutah is not sufficient to create an obligation to pay it back.

Two thieves, who were partners, each stole  $\frac{1}{2}$  a prutah, or one thief stole a  $\frac{1}{2}$  prutah, from each of two partners. If money is owed by partners, each partner is responsible for the entire debt, not just half.

Two thieves stole and divided the money between them. One escaped, the other was caught. He is obligated to pay back all the stolen money.

Two partners borrow money. Each is obligated to pay back the entire loan.

Partnership creates a new entity that has the capacity to incur debt or steal money. It is created as a complete entity, not a composite of separate interests and responsibilities.

תְּקִינוּ לְהוֹרָבָן דִּלֹּא אֶתִּי לְאַנְצוּי

Chazal made a decree against controversy.

There were arguments amongst the members of the synagogue.

The Rabbi stood up and said, “There is a rule against conflicts. When I go to Heaven, I will have to answer as to why I did not speak out against the controversies occurring in my Shul. Perhaps some of you believe your position is correct, because I, your Rabbi, have not spoken out. I do now speak out and tell you that controversy is a very grave offense. I ask you to please sign a paper stating that I warned you. I do not want to have your sins, to add to my own burden of sins.” He spoke with such heartfelt pain, the conflict stopped.

## וְזֶה אֹמֵר כּוֹלָה שְׁלִי זֶה אֹמֵר כּוֹלָה שְׁלִי

This one says, “It is all mine,” and this one says, “It is all mine.”

This discusses this superfluous phrase in the Mishnah (2a1)

“All is mine” and “I found it”.

The first phrase relates to a found object.

The second phrase relates to an object which is subject to buying and selling.

If a person claims ‘ $\frac{1}{2}$  is mine’, he should be considered honest, since he could have claimed it all. He should be granted a ‘migui’ (“a since” argument) which presumes truthfulness.

Nonetheless, we learn he must swear. Why? Because, if he claims it all and needs to swear, he could scheme and say to himself, “If I claim only  $\frac{1}{2}$ , I avoid an oath and I appear honest.”

Two people riding an animal, both claim it is theirs:

- Can still divide the animal, if it is Kosher.

- Can’t divide if it is not Kosher. We could offer to divide it. Recall the story of King Solomon and the disputed baby.

## מוסירה לא קני

Holding the bridle does not acquire.

This is final proof that we divide by money.

Two people riding on a horse, both claim it is theirs – divide it.

What if one is a rider and the other a leader?

Leading is a better means of acquisition. If you hold the bridle, you can acquire it by pulling, leading, riding or holding the bridle.

Riding on a horse, or sitting in a wagon, but not holding the bridle, is NOT a good means of acquisition.

-Another opinion:

Riding a horse actively shows acquisition, rather than passively sitting on the horse and having another person lead it.

ספינה מניחה נייחת ומיָא הוא דקא ממטו לה

A boat is at rest and the water is what moves it.

Fish jump in the boat. A boat is considered a non-moving ‘yard’, ‘a chatzar’ and he acquires the fish.

Implications: One of the elements to the definition of a public domain is one in which 600,000 people pass through daily. Another criterion is that it be at least 16 amos wide and open at both ends. Must those people only be walking through, or could they ride in a car or a boat or wagon or train? An argument is that people, enclosed in a box, such as a car or train, should not be counted, since they are in a self-contained space which is its own public domain. Therefore, they can’t contribute to creating a public domain. In addition, the statement in our Gemara suggests that a boat is at rest and it is the water that moves. Accordingly, people who travel by boat (or car or train), are not counted amongst those who are traveling upon the public domain and so, cannot be counted amongst the 600,000 needed to reach the required criterion.

הִיָּה רוֹכֵב עַל גְּבוֹי בִּהְמָה וַרְאָה אֶת הַמְּצִיָּאָה

If someone was riding on an animal and saw a lost object

and he says to a fellow standing by, “Give it to me.” But then, the other person takes it and says, “I acquired this for myself.” He has acquired it, unless he first gave it to the rider and then says, “I acquired it first.”

Gemara: ‘Hagbah’ - ‘lifting’ is the act that acquires, not merely seeing it.

1. If the pedestrian lifts it- it is his.
2. If the pedestrian gives it to the rider-
  - A. It shows that he did not intend to acquire it for himself.
  - B. He gave it as a gift to the rider.
3. If the pedestrian gives it to the rider- rider acquires it.
  - A. It was still ownerless.
  - B. He received it as a gift.

If the pedestrian admits it was his intention, as he picked up the article, to do so on behalf of the rider, it automatically becomes the rider’s (other person’s) possession.



## שְׂאֲנִי פוֹעֵל דִּידוּ כְּיָד בֶּעַל הַבַּיִת הוּא

An employee is different, since his hand is like the hand of his employer.

- An agent acts on behalf of his principal, but does not become his body.
- An agent can only serve as agent for acts the principal could do himself.
- “There is no agency for sins”.
- An employee is treated like the body of his employer, but only in those acts an employer could do for himself.
- Since a non-Jewish employee could not do a mitzvah, an employee cannot do a mitzvah for his employer.
- An employee is considered the hand of his employer, only in monetary matters.

פועל יכול לחזור בו אפילו בחצי היום

A day laborer may quit his job, even in the middle of the day,

if it causes no actual damage to his employers. He is still due his wages for the hours he worked.

The freedom to quit is based on the sentence (in Vayikra 25:55), “The children of Israel are my servants and not the servants of servants.” To compel someone to work against his will is tantamount to bondage.

„בִּי-לִי בְנֵי-יִשְׂרָאֵל עֲבָדִים”

For the children of Israel are slaves onto Me.

Involuntary labor is a form of servitude.

A laborer is a hired employee

- He cannot be compelled to work.
- If his withdrawal results in an irretrievable loss, he must compensate the employer.
- A hired employee is entitled to vacation and severance pay.
- A laborer is hired for a specific period of time and to work fixed hours.
- Has specific hours.
- Certain jobs have a mixture of both categories.

An independent contractor

- He is not granted the prerogative of withdrawing from his contractual agreement.
- Any expenses incurred in completing the task, can be deducted from the sum owed the contractor.
- No benefits of vacation or severance pay.
- A contractor is hired to complete a specific task and may work the hours that please him.
- Has a specific task.

Mixture: A person is hired to work specific hours (i.e., to work ‘employee criteria’) but for a specific task (‘contractor criteria’).

Examples: A chauffeur – at specific hours – drive the children (a specific task) = specific hours most important to the employer: a mixture of both categories.

A tutor - chooses his hours - teaches the children –has no specific hours, but has a specific task=a mixture of both categories.

דֹּאמֶר תִּנָּה לִי וְלֹא אָמַר זָכָה לִי

If the rider says, “Give it to me”,  
but did not say, “Acquire it for me” and the pedestrian picks it up.  
When the pedestrian lifts it, it belongs to the pedestrian.

In our Mishnah, the rider says, “Give it to me.”  
No agency had been established and if there was, it can be terminated.

The Torah says, no Jew can be forced to work for another Jew, “The children of Israel are slaves onto me only” (Leviticus 25:55).

‘Tenah Li’ ... “Give it to me” - No requirement to do so.  
‘Zachah Li’ ... “Acquire it for me” - If the pedestrian lifts it, it belongs to the rider.

## רָאָה אֶת הַמְצִיָּאָה וְנָפַל עָלֶיהָ

If someone saw an object and fell on it

and another came and seized it. The one who seized it, acquired it.

The Rabbis ruled that an ownerless article, that comes within 4 amos of a person, that person has exclusive right to acquire the article. This was done so that people wouldn't quarrel with each other.

Here he fell on it. Obviously, it was in his 4 amos. Why does the Mishnah rule that it belongs to another who comes to seize it?

Because by falling on it, he shows that he does not wish to acquire it by virtue of it being within his 4 amos. He forfeits that method of acquisition (see 10a4).

אַרְבַּע אַמּוֹת שֶׁל אָדָם קוֹנוֹת לוֹ בְּכָל מָקוֹם

The immediate 4 amos domain that surrounds a person, serves to acquire objects for him within it, in any location.

That is his “yard” and anything ‘hefker’ (‘an item that belongs to no one’) belongs to him, when it is within his “four” (‘daled’) amos. No one else has any right over that area, until and unless, he moves away. While he is there, even temporarily, he is the owner and no one else is allowed to take any item.

The radius of the area is 4 amos, with the person standing in the middle. That means a total of 8 amos, across the circle (diameter).

רָאָה אוֹתָן רָצִין אַחֵר מְצִיָּאָה

A person saw people running after an ownerless item (i.e., a lame deer, or young pigeons that can't fly).

He says, “My field will acquire them for me”, and indeed, the field acquires for him.

If the items could leave on their own, i.e., a healthy deer or flying pigeons, he has said nothing.

A field can ‘acquire’ for a person:

1. When the object remains secure in the field.
2. When the owner stands on the side of the field.
3. When the field is guarded.

(2a1) If a person’s property can ‘acquire’ for him automatically, what would happen if a purse is thrown into and flies through and out of his property; while it was in his air space, did he acquire it? If so, then, even a deer or pigeon that runs through would be acquired.

שְׁלִפְנֵיו אֵין שְׂכַחָה

What lies before him, is not ‘shichchah’, “forgotten”.

After a harvest there is material left, called, “forgotten”, it is for the poor to take.

This is the only mitzvah done by mistake. A person gets credit for forgetfulness!! It is a constant mitzvah to always remember HaShem. Yet, it is impossible for the vast majority of people to constantly think of HaShem at all times. One’s mind drifts to other ideas, topics or activities. So at any one time HaShem is not being remembered as He should be. He is forgotten in the rush of other activities.

Not so. From this phrase in the Gemara, we learn that ‘shichchah’, “a forgotten leaving” that is free for the poor, only applies to that which is left behind by the harvester. The verse says, “do not return to take it”, which applies only to that which he does not plan to go back for. Since the Jewish people, even if their thoughts stray, immediately plan to return to HaShem, it is not considered ‘shichchah’.



## מְצִיאת בְּנוֹ וּבִתּוֹ הַקָּטָנִים

Items that are found by his minor son, daughter,

gentile slave, or his wife, belong to him.

Items that are found by his adult son, daughter, Hebrew slave, or divorced wife, belong to them.

Can a minor acquire for himself?

We learn from a Baraisa – A person may be rich. However, his son can follow the harvesters and collect leket (collections). This proves that he can acquire something unrelated to his father. However, a minor son cannot acquire. Leket is an exception. Only by leket do we permit it, because all the poor people would agree to it, since they could bring their minor children to collect after them, if they wished. (12b1)

A ‘minor’ in our Mishnah and ‘child of age’ refers to whether the child depends on his father, or is independent ( i.e., sits at his father’s table). (12b1)

## מְצִיאת בְּנוֹ וּבִתּוֹ הַקָּטָנִים

Objects found by one's minor son or daughter.

They belong to him, a minor child:

If the minor child is supported by his father:

Lost objects belong to ----- the father

Gifts to the minor belong to the ----- father

Gifts the father gives to the minor belong to the ----- father

Since the minor does not have that capacity to acquire property for himself.

There is a prerequisite to fulfilling the mitzvah of esrog and lulov on the first day of Succos which is:

- You must own the lulov and Esrog used for the mitzvah. However, a minor can't own anything, so he can't gain the mitzvah for himself. While the mitzvah of blessing the lulov and esrog may not be fulfilled, the mitzvah of teaching your child is fulfilled for you, when you teach him/her to make the blessing on the lulav and esrog.

לֹא יִחְזִיר

The finder may not return them.

This deals with found documents that are of no value to the finder, only to persons mentioned in the document.

If returning it to one, will harm the other .. This Mishnah tells us what do.

An IOU: 1. If finder gives it to the lender, he can collect (again) from the borrower,  
2. If finder gives it to the borrower, it suggests that he already paid and does not owe anything.

There are considerations that help us decide who should get the paper:

- The party, who is disadvantaged, admits the other person should have the lost paper.
- A lien on real property that has been sold.

דינא הוא ומשתעי דינא בקריה

The law is that Reuven, the seller, must fend off the threat from his creditor.

Reuven sold a field to Shimon with a guarantee (i.e., lien).

Reuven's creditor comes and tries to collect the field from Shimon.

Reuven is obligated (implied in the guarantee), to defend Shimon's property from his (Reuven's) creditors. It is not enough for Reuven to just allow the field to be taken from Shimon and then pay Shimon the value of the guarantee.

Reuven is considered an integral part of the litigation between Shimon and his (Reuven's) creditors.

## בְּעַל חֹב גּוֹבֶה אֶת הַשֶּׁבַח

It cannot be said that “a person knows, etc.”.

A ritual slaughter was thought to have violated a Mitzvah and the community had a debate that they brought to their Rabbi.

If he violated a rabbinic injunction. People may not be strict about those.

If he violated a Biblical injunction. That is very serious if he did it knowingly.

If however, there are differing opinions about a matter and he chooses to follow a minority view we do not consider that he knowingly and brazenly violated. His penalty would have been that we require him to have his knife inspected for sharpness. But we did not find him guilty of any actual sin.

## בְּעַל חֹב גּוֹבֶה אֶת הַשְּׂבָח

The seller's creditors get the improvements.

Reuven lent Shimon money. Shimon did not pay it back.

So Reuven expropriated a piece of land that had been put up for security. by Shimon.

Reuven made expensive improvements on the land.

Levi comes later and says, “Shimon was my caretaker and never owned the land. I want my land back, and I don’t want the improvements that have been put there.”

1. Must Reuven give Levi the land?
2. Must Levi pay Reuven for the improvements?
3. Can Levi make Reuven remove the improvements?

Our Gemara: If a person purchased property from a thief, which was later recovered by a true owner, the purchase never occurred, there was no legal transfer of the property.

1. Yes
2. No
3. Yes. However, if Levi uses the improvements, he should pay Reuven for them.

וְחֵד אָמַר מִתְּנָה כְּמִכָּר

One opinion is that a gift is similar to a sale.

One who gives a gift, usually does so out of a sense of gratitude for something he has received. Thus, a gift is part of an exchange, making it similar to a sale.

One is not permitted to give a gift on the Sabbath, because it is viewed as a business activity.

שָׂדֶה שֶׁאֲנִי לוֹקֵחַ לְבִשְׂאִקְחָנָה קְנוּיָה לְךָ מֵעַכְשָׁיו קָנָה

That field that I plan to buy, I sell it to you as of this moment.

Can he sell something he does not own?

Can he make a transaction about something that has not yet entered into existence?

Yes, using the word ‘meyachshav’, “as of this moment“, indicates “retroactively”, “once the condition is met”. It was sold now and the seller cannot rescind the offer.

The item destined to come into his possession, is already considered as if it was his, at the time of the writing of the document.



שְׁטֵר שְׁלוֹה בּוֹ וּפְרָעוֹ אֵינוֹ חוֹזֵר וְלוֹה בּוֹ שֶׁבְּכָר נִמְחַל

A loan document which has been paid, but is used for a subsequent loan,  
is not valid.

It is prohibited for reuse, because with the payment of the loan, the lien has been satisfied.

The same document cannot be used for a subsequent loan.

אִי לֹא דִדְלֵאִי לָךְ חֶסֶפָא לֹא מִשְׁכַּחַת מִרְגְּנִיתָא תוֹתָהּ

If I had not lifted up this shard (i.e., my ruling), you would not have discovered the pearl underneath it.

The ‘pearl’ being the general principle that a court imposed obligation, has the same weight as a document (see N #1).

This discusses: Finding a ketubah – Give it to the husband, he might have already paid her.

- If you give it to the wife, she could collect again.

Finding a get - He gave it to her and she lost it.

- He prepared it, but never gave it to her.

מִצָּא גִיטֵי נָשִׁים וְשַׁחְרֵוּרֵי עֲבָדִים

If one found bills of divorce or of emancipation.

If one found any of these documents, don't return them to the recipients named in them.

- Bill of divorce
- Bill of emancipation
- Sickbed will
- Gift document
- Receipts

We are concerned that they were written, but never delivered and the author reconsidered.

Gemara:

Perhaps there exist different persons with the same names and this document is not for the people we know.

Perhaps it is a place where caravans come frequently and the possibility that the document refers to other people, is present.

We don't give the documents to the people named in them, but we do give them to a person who can accurately identify the correct object, i.e., "There is a small hole next to a letter on the second line". He identifies 'simanim', 'special identifying characteristics'.

## חִיּוּשֵׁינָן לְשָׁנֵי שְׁוִירִי

Considered that there might be two towns by the name of Shviri.

A ‘get’, a ‘bill of divorce’, that is found, should not be returned to either husband or wife unless the husband tells the finder that he lost it and he may still wish to use it, even after a long interval of time.

This seems to contradict a ruling in BT Gittin 27a, regarding a messenger who lost a get. Only if he finds it immediately, can he rely on this document being the same get that he lost. But, if it was a longer period of time, we cannot assume this is the same get. Why does our Gemara permit a long time interval and the Gemara in Gittin only a short interval.

In Gittin, we consider the get to be a different one, because of a “double doubt”, ‘safek sefekus.’

It could have fallen from any passersby. Perhaps there are more persons with those names in the town. Perhaps there are two towns of the same name. The dual factors of doubt is enough to prevent the return of the get.

רַב אֲשִׁי מְסַפֵּק לִיה סִמָּנִים אִי דְאֻרִּיתָא אִי דְרַבָּנָן

Rav Ashi was uncertain regarding identifying marks for biblical or rabbinical matters,

such as weight, quantity, or place of lost object. But, if a get is lost and a person wishes to claim it, are more stringent proofs needed? After all, a get, if present, permits a woman to remarry and the validity of the marriage and subsequent children depend on the validity of the get.

Noda B' Yehuda and Rambam say that ordinary identifying marks are adequate for both. But Rambam adds, that a person who claims ownership of a lost object, must first provide witnesses who will testify that he is reliable. That resolves any concern that he might be lying. Therefore, it is unnecessary to be concerned that there might be someone else, somewhere, who lost an identical object.

וְדוֹקָא צוֹרְכָא מִדֶּרְבֵּינָן

Only to a scrupulous Rabbinical scholar.

See Note #2

If an honest person, a Torah scholar, cannot tell us a particular detail, ‘a siman,’ but claims to recognize the object visually, by its form and general appearance, he is to be believed.

In fact, visual recognition is considered more reliable than a particular detail, since it is based on a familiarity with the entire object, rather than merely a single outstanding feature (BT Chullin 96A).

## כִּיּוֹן שְׁנָתָן עֵינָיו לְגֶרְשָׁה שׁוֹב אֵין לְבַעַל פִּירוֹת

Once he decided to divorce her, he has no right to her produce.

Rashbam: If a man decides to divorce his wife, not only has he no further right to her produce, but he does not inherit her property, nor is he obligated to mourn her, or sit Shiva, since she is no longer considered his wife.

Some say – Not even the first day of mourning.

Rabanan says – The husband does not lose the right to inherit from her, until they are actually divorced.

The get, written but not delivered, triggers these consequences.

The get, not even already written, can indicate their separation and triggers these consequences.

-Also discussed are cases where a man may not divorce his wife against her will.

Circumstances where they mutually agreed to divorce and this fact is known in the community can also trigger these consequences.

## הָרִי זֶה יִחְזֹר

He shall return it to him.

A great Rabbi found a box, within which, were the jewels of the Queen. The Queen proclaimed a big reward if the jewels were returned within 30 days (so as not to give time to the person who found them, to sell them, or to spirit them out of the country). But, if they are returned after 30 days, he will be beheaded.

The Rabbi waited until the 30 days past and then gave the jewels back to the Queen

The Queen asked the Rabbi why he waited until 30 days had passed, before he returned her jewels. The Rabbi answered, “Your edict made it appear that I would be returning your jewels because of fear of you, and a fear that you would put me to death. By waiting these 30 days, I demonstrated that I returned the jewels to you because that is the right thing to do, and out of love of HaShem’s mitzvahs.”



## הָרִי זֶה יַחְזִיר

He shall return it to him.

A doctor felt very put upon. People crowded to come to him. He extended his work hours so long, that it interfered with his private life. Patients were calling him on the phone, and even came to his home for treatment. He wondered, “If it is not a matter of life and death, what is my obligation to all these people?”

The Satmar Rav quoted the Rambam, “We are all, and especially a doctor, obligated to ‘restore to him’, whatever a person has lost, whether it be health, money, or knowledge.”

## מָצָא שֵׁטֶר בֵּין שְׂטְרוֹתָיו

A person finds a document amongst his papers,

and does not know it's status. Leave it rest until Eliyahu Hanavi comes.

This relates to a document dealing with others and you don't know it's status, i.e., was it paid or not, was it in your papers merely for safekeeping, etc.

However, if you are the lender, you may use it for collection, if you are certain you have not been paid. You must have proof to extract money from the borrower.

If you are not certain, but the borrower is certain that he has already paid off this loan, he wins (certainty trumps uncertainty).

If the claim, that the loan was paid, is made by his heirs, we leave the document in the possession of the lender, until the arrival of Eliyahu Hanavi..

# אלו מציאות שלו ואלו חייב להכריז

These found items belong to him  
and these, he is obligated to announce that he found them.

## Introduction

This deals with the obligation to return a lost object to its owner (Deut 22:1-3).

- You are obligated to announce that you found it.
- You are obligated to return it to the rightful owner, who then, must prove it is his, through witnesses, or a 'siman', 'an identifying detail' (not necessarily a unique mark, but an identifying mark).

A caveat: The finder is obligated to return the object, only if the owner has not 'given up hope of its recovery', 'yeush'. If the owner has given up hope, it belongs to the finder.

The finder may keep an object that lacks a 'siman', because knowing it has no siman, the owner promptly gave up hope.

An owner could also give up hope of recovery of an object that has a siman, believing he will never reasonably expect to find it and have it returned to him.

## קב שומשמין בארבע אמות מהו

A kav of sesame scattered over 4 amos. What is the law?

-Or a kav of dates?

-Or a kav of pomegranates scattered over 4 amos?

This deals with the value and toil factor needed to collect these items.

Sesame is most valuable, but hard to gather. Dates are less valuable and the work is easier. Pomegranates are even less valuable and even easier to gather. So it might be worthwhile for the owner to gather them.

If a mixture of all three spills out, would an owner return and collect only the easiest items or only the most expensive items?

יְאוּשׁ שְׁלֹא מִדַּעַת אָבִי אָמַר לֹא הָיָה יְאוּשׁ

Abaye says, “Abandonment (despair of recovery) without the owners awareness (that he has lost the article), is not abandonment.”

An item that has no identifying mark on it, was lost by Reuven and Shimon found it.  
If Reuven abandoned hope of ever finding it, the item belongs to Shimon.

Abaye says – If the one who lost the item, doesn’t even know he lost it; how can we say he abandoned it, or despaired of ever finding it? If Shimon finds it, before Reuven knows he lost it, the item still belongs to Reuven.

Rava says - Even if Reuven does not yet know he lost it, when he finds out, he will realize that the item has no identifying marks. He will realize it was not ever going to be traced back to him. He will abandon hope retrospectively. Therefore, it belongs to Shimon, who found it.

יאוש

Despair (of its return).

Rambam: Yeush is a psychological phenomenon reflecting a mental state.

Examples in which yeush is expected to occur

1. Losing an article without identifying marks.
2. Losing articles in a non-Jewish neighborhood.
3. Losing articles washed away in a flood.
4. Losing articles to plundering armies or marauding, mobs.

There is no yeush when losing books with Hebrew writing, even if stolen. The thief could only benefit by selling it to a Jew, who would make every effort to return it to the rightful owner. Therefore, if a Hebrew book was stolen, yeush should not be assumed, since the owner would not lose hope of it being returned.

What about yeush concerning books or Hebrew manuscripts, rare originals, taken during the Holocaust? The owner could not keep alive the hope that a Jew would eventually buy them, all the Jews were to be destroyed!! We could assume Yeush regarding Hebrew books, perhaps even more so than secular books, in those circumstances.



## Despair.

Yeush operates to rest title of stolen property in a ‘successor of due course’, but not in the case a thief. Title is also transferred to those who ‘take’ at a time of war. The ‘spoils of war’ become vested in the conqueror.

‘Kibush Milchamah’- “The right of conquest.”

Synagogues were being looted and Jews purchased sacred texts from the plunderers. Do the purchasers acquire valid title and may they retain the books as their own, or were they obligated to return the stolen property to their original owners?

Rambam (Shitah Mekubetzet, B Metzia 24b) wrote a responsum.

Rambam wrote – Since the looting occurred at “the command of the King”, the purchasers may retain the sacred books. He based his logic on BT Avodah Zarah 52b + 54b; that even the utensils of the Temple lost their sanctity when the Temple was pillaged by conquerors.

22 Bava Metzia 21b1  
Weiss #230

line 3

A9

וְאִם

Despair (of retrieving it).

R Menachem Mendel of Kotzk: If a person comes to a state of despair, it is only because of lack of knowledge.

R Nachman of Breslov: Despair does not exist. It is a state of mind and our minds are playing a trick on us.



שטף נהר

A river flooded.

It washed his possessions downstream.

The Jordan River took from that one and gave to that one.

Different interpretations: Personal possessions vs. actual land borders.

The Jordan River washed away items and that owner was not aware that the items were missing. Nonetheless, the receiver downstream is permitted to keep them. This is a situation of ‘yeush shalow midaas’, “relinquishing ownership rights without his knowledge”. Another interpretation could be that changes in the flow of the river changed its course gradually, through natural ebb tide flow, etc., and it transfers some land onto Eretz Yisroel on its west side and at other sites, relinquished land on its other side to east of the river.

הָאֵלֶּה הֵם שְׁתֵּמָא לֹא

But ordinarily, if an owner is not aware of his loss, the finder cannot acquire title,  
A finder cannot acquire title to lost property, unless he is aware of his loss.

A minor cannot understand the implications of certain situations and therefore, cannot give consent. Do we adults have a right to take bone marrow, or a kidney from one child and give it to another person, even his own sibling, since the child cannot give his permission?

The principle of substituted judgment might apply, if we could say that all persons would choose that decision, i.e., give a donation. However, we know that is not true. Many refuse and to ‘donate’ does not reflect a “general will”.

However, here it is to the child’s benefit to do so:

1. He gains a Mitzvah.
2. A sibling may be able to live.

However, we are not permitted to take property from an individual without his permission and the pain, the procedure causes, is comparable to taking property. However, the doctor, or society (represented by Bais Din), have the obligation to save a life. They may appropriate the bone marrow, or kidney, for that purpose, but they must pay for the injury they cause.

וּמִיָּיִן הוּא יוֹרֵעַ

### How do we know?

A worker was appointed to tithe the owner's field. He set aside crops as terumah for the Kohen, from the owner's better crops, even though the owner usually tithed from his average crops.

If the owner indicates his disapproval, the tithing was done without a mandate and is invalid. Otherwise, it is valid. How can we know whether the owner objects?

If, upon becoming aware, the owner suggests that the tithing should have been taken from even better crops (and there are such better crops), then we conclude he approves the agent's decision; or if he adds to the quantity set aside by the worker (of the same or better quality). This too is a sign of approval.

Our only concern is that the worker took more than the owner intended to have taken, less is permissible.

## אֵייתִי אֶרִיסִיָּה תִּמְרֵי וְרִימוֹנֵי

His sharecropper brought out dates and pomegranates.

Several Rabbis came to visit a person and his sharecropper served them. One of the Rabbis, Rabbi Mar Zutra, would not eat. He was concerned that he was eating from the property of the man who was not present. Perhaps, the sharecropper will not report to the Baal Habayis that he gave of their mutual property to the Rabbis. Perhaps the sharecropper will consider that what he gave the rabbis, to be his (the sharecropper's) payment to the owner.

When the sharecropper gave them fruit, they can assume he will be honest and report it.

Tosophos asks- Why did Mar Zutra have a problem? The owner would be happy that his guests were well cared for and content, even if all of it comes from his property, as would have been the case, had he been home.

## אֵיִתִּי אֶרִיסִיָּה תִּמְרֵי וְרִימוֹנֵי

You pick up a lost wallet and the person has not yet given up hope.  
Later, he gives up the possibility of getting it back.

Since you picked it up, you should have returned it, even if later, he gives up. You must return it. Here, the sharecropper gave items away and when the Rabbis received it, the owner did not yet know. The fact that the owner later agrees, does not solve the problem. It does not allow the guest to take the item.

Tosophos: The two cases are not comparable. “In the case of my lost wallet, I want it back, but in the case of the fruit, I am content to not have it.”

Even if you know the person would be alright with it, you must not use something that he does not know you took.

## אֵיִתִּי אֶרִיסִיָּה תִּמְרֵי וְרִימוֹנֵי

When may you use something without permission?

- If there is precedent, i.e., you did it before.
- If there is implied or expressed permission.
- If it is an item that does not get used up, i.e., a book.
- If it is the use of something that no one would ever refuse you. For example, a mirror, or an item less than a portion of a prutah (it is not loss of money, but it does cause inconvenience).

When may you not use something without permission?

- If you take something that gets used up. For example, taking a splinter from a pile of wood. Because everyone who comes along, might take some and the entire pile will be used up eventually.

You cannot take even the smallest amount from anyone, Jew or Non-Jew.

The person may give his permission, if asked, but it is not permitted without his knowledge.

# אִיתִי אֶרִיסִיָּה תְּמָרִי וְרִימוֹנִי

His sharecropper brought out dates and pomegranates, etc.

Two Amaraim ate, one would not.

The two who ate, reasoned: If a sharecropper gives you food, you may eat it because:

1. You can assume it is his and not his landowner's.
2. Even if it might be the landowner's, he won't mind.
3. If the landowner does not know about it, he will have abandoned of any hope of recovery without a witness.

The one who did not eat, reasoned:

1. One can't assume it is the sharecropper's.
2. You can't assume the landowner won't mind.
3. Abandonment without knowledge, is not abandonment (Abaye).

We use the phrase, 'abandonment', when he is forced to abandon hope of its restoration to him, because he does not know where it is. For example, it was taken by robbers, or by the military in time of war, or was washed away by flood waters, etc.

## וְאֵין מַעֲבִירִין עַל הָאוֹכֵלִין

One may not pass by food on the ground and leave it there.

There is respect that should be accorded food and especially bread.

1. Prohibited to throw food  
if it will become inedible by doing so.
2. You may throw nuts and pomegranates.
3. Prohibited to walk past food on the ground  
unless it is clearly inedible or  
unless it is less than a kezayis.
4. However, one must, at least, push it to the side.
5. Bread
6. Should not be thrown, even if  
it will not be inedible by being  
thrown. For example, throwing  
rolls in a bag onto the table is not permitted.

### Regarding bread:

One is obligated to lift it off  
the ground, even if it is not  
edible and even if it is not the  
volume of a kezayis



## דְּמַשְׁנוּ בְּמַלְיָהוּ

### Bending the truth,

It is the practice of Rabbis, to deviate from the truth in their speech, regarding only three matters.

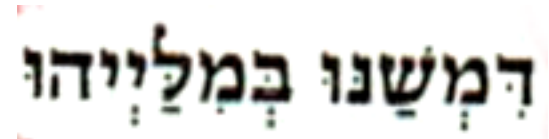
When is one permitted to not tell the whole truth?

1. To put off nosy strangers who ask too many questions.
2. To avoid being disturbed by people who call or visit inconveniently. It is permitted to say, “So and so is out not available, etc.”, rather than to tell someone he does not want to talk to you.
3. It is certainly permitted for shalom bayis or to avoid embarrassing someone.

Be careful that a child does not overhear you say, “My husband/wife is not here”, when they are actually there. Teaching a child to lie is dangerous.

It is also permissible to bend the truth:

- To understate the true extent of one's knowledge.
- In regards to intimate matters. It is not decent.
- About one's experience as a guest regarding the hospitality he received.



A Talmid Chacham may lie about three things,  
if necessary, to avoid embarrassing another.

-Talmidai Chachamim argue with their friends regarding what they believe to be true, or what they believe to be false. To show a colleague that he is wrong, might be embarrassing, which we should avoid.

How does this fit with the commitment of integrity, that is the foundation of Torah learning?

It relates to topics about which, reasonable debate and variation in opinion are possible and no absolute position is known. Even if we disagree with a friend's conclusion, we should respect his reasoning and praise him to others regarding that. He can be praised for the process, even if you disagree with the conclusion.

Talmidai Chachamim try to never embarrass anybody. However, we must never avoid an appropriate rebuke where error may occur, based on another person's words.

דְּמָשִׁי יָדֶיהָ וְנָגִיב בְּגָלִימָא דְּחֻבְרִיהָ

He washed his hands and dried them on his friend's garment.

What did the person do wrong? The Gemara (Pesachim 4b) teaches that a person is happy for others to fulfill a mitzvah with his property. But there is a limit to that principle. It applies only when the item that is borrowed, does not become damaged from use, i.e., borrowing someone's tallis.

Is it permissible to use a friend's sefer (book), without permission? If it is rare sefer, no, it might become damaged. However, today, books are common and easy to obtain. People are not particular if others use their sefarim (books).

## כְּרַבִּי שִׁמְעוֹן בֶּן אֶלְעָזָר שָׁמַע מִיְנָהּ

In accordance with R Shimon ben Elazar, we learn from this.

What is the law if you find a purse in a public place?

It is assumed that if a stranger found it, he would not return it to the owner, so the owner would abandon hope of ever receiving it back and would despair. Therefore, it belongs to whomever found it. That is the law.

However, if a person comes later and shows an identifying mark, the purse should be returned to him. Not because the law says he must, but because he is expected to act ‘lifnim mishoresh hadin’, “above the letter of the law”.

Rambam (M.T. Hilchos Gazeilah –Ve’Aveidah 11:7):

The lost article belongs to the finder, because the person who lost it had given up hope of recovering it. He assumed that a stranger had found it. Even though it belongs to the person who found it, one who wishes to walk in the path of the good, and act beyond the requirements of the law, will return it to the person who is able to identify the item as his. We don’t compel such kindness. For example, if the finder is poor and the loser is rich, the finder is not compelled to return it. It would be preferable, but it is not an enforceable coercion.

## אָמַר לִיה לְפָנִים מְשׁוֹרֵת הַדִּין

He said to him, “This is action beyond the letter of the law.”

To act beyond the letter of the law (“beyond the origin of the law”) is laudatory and derives from Shemos 18:20, ‘et hamaaseh’, ‘the rules’ (the letter of the law), ‘asher yaasoon’, “that should be done”, (suggests “beyond the letter of the law”).

Mishle 2:20: To follow the way of the righteous.

- Examples:
1. A person is exempt, because of age, from helping to unload a wagon,  
— but helps anyway.
  2. Returning a lost object after a period long enough to expect ‘yeush’,  
that the owner ‘gave up hope’.
  3. Workers broke barrels or committed other negligence, yet the owner  
paid them their full wages anyway.

אָמַר רַבִּי יִצְחָק מִגְדָּלָא שֶׁשְּׁוִיין בְּמִגְדָּלִין וְהוּא

R Yitzchak Migdalah said, “When the coins were arranged like towers.”

Coins can be arranged, such that, when you see them, you know the owner intended to return for them. For example, they are arranged in a circle, a straight line, in three piles like a tripod, piled like steps of a ladder, piled like towers (migdalah), or arranged in front of a purse.

This idea of coins in tower formation, has large coins on the bottom and progresses to smaller coins on top. This is a stable construction. This is the only ruling in the entire Talmud by Rabbi Yitzchak Migdalah, whose name means ‘tower’. Either that was his name, or because of this ruling, he was nicknamed Migdalah.

However, if the coins are scattered, they belong to the finder.

## אם היה משכירו לאחרים

If he rented a house to others

and a lost item was found, it belongs to the finder.

- A bought a house from B and he found gold coins hidden in the yard. The coins belong to - A
- Hired workers found gold coins in the yard. The coins belong to - the workers.
- A rented a house from B and A found hidden treasure. The treasure belongs to- A.

The owner of the property never took ownership of the hidden treasure, therefore, it belongs to whoever finds it.

-A prize winning bottle cap found in a :

- store – belongs to the storekeeper?
- friend's home – belongs to your friend?
- restaurant - belongs to the owner of the restaurant?
- \$20 found on the back seat of a taxicab- belongs to the cabbie?

No, it belongs to whoever found it.

An item, that would have remained hidden forever, is not automatically acquired by one's property.

האי מאן דחזי דנפל זוזי מחבריה בי חלתא

One saw a zuz, belonging to his friend, fall into the sand.

As long as a person retains a reasonable hope of locating his lost object, it is still considered his property and does not become the property of the finder.

-A man lost coins in a sand dune and came with a sifter to strain the sand, to look for his lost coins. Is this not a sign that he has not given up hope?

Rava says – No, the one who finds these lost coins, may keep them. The possibility of finding the lost coins, even with a sifter, is so remote that we assume (with legal certainty) that the loser has despaired of recovering them. His motivation for sifting, is his calculation that, just as he lost items in this sand, perhaps others did also. Perhaps, he will make up his own loss, by finding what others have lost.



מָצָא בְּחִנוּת הָרִי אֵלוֹ שְׁלוֹ

If money is found in a store, it belongs to the finder.

Since the store is a public place, the owner of the coins would have given up hope of retrieving unidentifiable objects, lost in a public place.

Why do the coins not automatically belong to the store owner, after all, the store is his “yard”? No, the store is open to the public. It is not a secure area and therefore, the property cannot ‘acquire’ for him.

## קשיא

These words are hard to explain.

We have seen that if an owner abandons hope of recovering his lost object, it no longer needs to be returned to him. The Rabbis use this example to advise us not to give up on things we have lost. We can expect HaShem to fulfill the mitzvah, just as we must, of returning that which is lost.

We have seen that if an owner abandons hope of recovering any lost object, it no longer needs to be returned to him.

That includes:

- Any lost opportunity.
- Any loss of fulfillment of your potential.
- Any last chance to do your best.

Don't give up! If you do, the finder (HaShem) has no need to return what you lost, to you. Therefore, be optimistic. Expect those opportunities to be presented to you again, 'to be returned to you'. You can still do 'teshuva', 'repentance' and rectify everything.

וּמִצָּאתָהּ בְּעֵינֶיךָ דָּאִיתָ בָּהּ שִׁיעוּר מְצִיאתָהּ

“And you have found it”, means that it has a value of at least a prutah.

Rashi – “It” is not called a lost object, unless it has a value of at least a prutah.

If it is worth less than a prutah, you are exempt from returning it and in fact, may keep it for yourself. Once there is agreement that an item need not be returned if it is worth less than a prutah, the person who lost it, will abandon hope of recovering it. Therefore, it is available to be kept by any finder of the object.

How do we decide on its value? A family picture may be intrinsically worth less than a prutah, a single shoe or shoe lace may be worthless to the finder, but valuable to the owner.

How do we decide?

- Some say the market value.
- Some say the value to the finder.
- Some say the value to the one who lost it.

R Moshe Feinstein and Rav Elyashiv say– A lost object’s value is set by the owner, not its market value.

## הֵתְקִינוּ שִׁיהוּ מִכְרִיזִים בְּבֵתֵי כְּנִסְיֹת וּבְבֵתֵי מִדְרָשׁוֹת

They enacted that announcements should be made in the synagogue and study halls,

that lost objects had been found. It is true that the owners of the lost objects may not be present to hear the announcements, but people will talk about the fact that the item was found. The person who lost an item, will know that if it is found, it will be announced in shul. Therefore, he will be able to inquire in the appropriate places.

Must you advertise in a newspaper or place notices up?

We are not obligated. Notification in the synagogue and study hall is sufficient.

How long must we post the notice for before we can use the item?

Can we assume that the owner has despaired?

We may need to protect it until Eliyahu Hanavi comes!!

## לא ישתמש בהן

Don't use them.

If you find a lost object – are you permitted to use it?

If you sell a lost object because it may depreciate (i.e., a crate of eggs), are you permitted to use the money? If yes, – you are a ‘shomer socher’, ‘a paid custodian’, and you have to pay if it is lost. If not - you are a ‘shomer chinam’, ‘an unpaid custodian’, and you are not held liable for loss.

Practical advice:

- Photostat your credit cards and important papers.
- Take note of distinguishing details of your possessions.
- Take pictures of your household valuables.
- Consider the difficulties we have encountered in studying the rules of lost objects and make life easier on yourself by these precautions.

## כָּל שֶׁבִּשְׁלוֹ מַחְזִיר בְּשָׁל חֲבִירוֹ נִמִּי מַחְזִיר

An item he would handle for himself, he should handle, in order to return it to another person.

The Torah commands that a person return lost objects. However, a person may avoid involving himself in this situation.

For example:

1. A Kohen sees a lost object in a graveyard.
2. The finder is an elderly person.
3. The finder is a distinguished person and should not be seen in public carrying such an item.

What criteria can we use?

Rava says - An object, that the finder would not retrieve to carry in public, if it were his own, is exempt from doing so for others.

The Mishnah merely says that there are circumstances where a person might be exempt from this mitzvah.

Rava tells us how this is evaluated - ‘Do to others as you would do for yourself’.

Responsa 1991-2000

## רבי ישמעאל ברבי יוסי הוה קאזיל באורחא

R Yishmael and R Yose were walking along the road.

A man carrying a bundle of wood put it down and asked R Yishmael to help him lift it, so as not to have to exert himself. R Yishmael asked the man how much it was worth, paid him that, and then said, “I declare this wood, that I now own – ‘hefker’ – ‘free for anyone to take’”, and walked on. The man lifted the wood, ran before R Yishmael, put the wood down and then repeated this scene. When R Yishmael saw the man was going to do this a third time, he declared the wood ownerless to the whole world, but not to this man.

R Yishmael was a person of stature and an older person, he never was obligated to lift the bundle of wood. Why did he involve himself in the first place?

The Gemara concludes his behavior is inexplicable and can only be accounted for as an act beyond the requirements of the law.

„יֵלְכוּ" זֶה בִּיקוּר חוֹלִים

They may walk – (This refers to visiting the sick).

Can this mitzvah be fulfilled by calling the sick person on the phone?

Our Gemara derives the mitzvah of bikur cholim from the word, ‘yalchu’, ‘they may walk’. The primary component of the mitzvah is to specifically walk to the patient and not simply inquire about his well being in other fashions.

No agent can fulfill this mitzvah for you. Speaking on the phone is only allowed, if a visit is not possible.

A visit permits you to pray for his recovery, to be more specific and heartfelt.

The patient obtains a higher degree of contentment by a visit.

R M Feinstein – A phone call certainly fulfills the mitzvah, but certain components of the mitzvah are not fully fulfilled (Bava Metzia 30). Each visitor takes away 1/6<sup>th</sup> of the sickness. Therefore, visit the sick person personally.



לֹא חָרְבָה יְרוּשָׁלַיִם אֶלָּא עַל שֶׁדָּנוּ בָּהּ דִּין תּוֹרָה

Jerusalem was destroyed because people based their judgment strictly upon the law of the Torah.

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They did not act beyond the letter of the law.

But, did we not learn (in Yoma 9b) that Jerusalem was destroyed because of ‘groundless hatred’, ‘sinas chinom’?

Yes, both contributed.

In fact, to judge strictly by the letter of the law, when mercy, wisdom and moderation in judgment is possible and even beneficial, can be considered groundless hatred.

„הוֹכַח׳׳ אֶפִּילוּ ק׳ פְּעָמִים

### Rebuke even 100 times.

The Torah tells us that Moses addressed the Jewish people with a caring and constructive rebuke (Devarim 1:3).

Rashi notes that Moses rebuked the people only once, just before he died,. If ‘only once’ is praised by Rashi, why does our Gemara teach us to rebuke even 100 times?

Divrei Shaul - There are two types of rebuke.

1. A detailed specification of shortcomings, need be mentioned only once. Do it too many times and people become defensive. That is the type of rebuke Moses gave.
2. General topics of rebuke corrections, i.e., critiques, can be well received numerous times and not generate animosity or a counter reaction. This is the type of constructive criticism that should be frequently repeated.

## יש לו ואינו רוצה להתפרנס

One who has resources, but refuses to use them to provide himself with support.

Shulchan Aruch rules- One is not obligated to financially support a wealthy person who refuses to spend his own money to provide for his and his families needs.

However, we are obligated to show compassion to his family.

If we do not know for certain, that his unwillingness to spend his money is from stinginess, we should assume that his resources are dwindling and we should continue to provide for him.

What is the rule regarding a poor person who refuses to get a job?

That person is not permitted to take Tzedaka and the community is not allowed to give him Tzedaka. However, his family should be given funds for their needs.

או שאמר לו אל תחזיר לא ישמע

He was told by his father, “Do not return the object.” He should not listen to him.

If you are told to violate a Torah law by your father, do not listen to him.

The preservation of life is obligatory. If a readily identifiable human life is at stake, withholding consent for postmortem organ or tissue donation, when needed for a lifesaving transplant procedure, is prohibited by Jewish law. If the dead person refused permission, the living relatives should not obey the wishes of that person (even of a parent), if it goes against Jewish law. The relatives should grant permission for the organ donation.

However, certain states have laws that if you know that the deceased would not wish to donate, you cannot and you are not permitted to consent to donation.

It is recommended that we work to reverse such limitations on life saving donations and to urge the deceased, prior to death, to reverse their decision not to donate.

אָמַר לוֹ תְּנוּ רַבֵּנּוּ אָבִיו הִיטָמָא

If ones father instructs his son to become Tamei,

he should not listen to him.

A parent cannot order you to violate a Torah commandment, but can order you to give up a voluntary mitzvah; one that is optional and not mandatory. The child should comply.

A parent cannot order you to comply with their request that does them no good, or that provides them no physical benefit, unless they have a good reason.

- A parent asked that the son not allow a Torah scholar to live in their house. The son considered it a mitzvah to let the scholar live there, but it is an optional and voluntary mitzvah. He should listen to his parent.
- A parent said it is forbidden for the son to drink any coffee. If they are concerned for his health, he should honor their request. However, if they give no reason, he need not listen to their request.

## הואיל והוקש כיבוד אב ואם לכבודו של מקום

The lesson to honor one's parents is associated with honoring HaShem and some believe it is equal to honoring HaShem.

What should one do if one's parents direct the child to violate HaShem's Torah rules?  
To whom should the child listen?

For example, a parent says:

- Don't return that lost item.
- Don't observe Shabbos.

Since everyone is obligated to observe HaShem's laws, in such a case, the rule of the parent must not be allowed to eclipse any mitzvah observance.

## צַעַר בַּעֲלֵי חַיִּים

### Causing undue pain to animals.

Shackling and hoisting, lifting, with a chain around one hind leg, tilting the head back with nose tongs (required because the government stipulated, that for sanitary reasons, an animal cannot be slaughtered on the ground, falling into the blood, etc., of another animal) was judged to be inhumane and outlawed. This could only be done after stunning the animal into unconsciousness. However, stunning was not considered halachically acceptable. As a result, kosher meat has an exemption and can still shackle and hoist the animals. However, new methods of kosher slaughter were developed in 1963, which keep the animal upright and calm and are economical and efficient.

Stress is increased by 300%, as measured by stress hormones (Cortisol) in animals which are hoisted and shackled. Still, 10% of cows, 50% of veal calves, and 100% of sheep and lambs are shackled and hoisted.

This is judged as 'undue pain' to animals and is forbidden under Jewish law, since there is an alternative.

## מצוה בשוּנא

It is a mitzvah to assist one's enemy's animal first.

If one can help his enemy, or one can help his friend, whom should he help first?  
He should help his enemy first.

This is to force him to overcome his natural inclination to avoid helping his enemy.  
The Torah forces us to help the people we hate first, to help us overcome the  
tendency to learn hatred.

It is a bad trait and should be discouraged.



## אַבְדָּתוֹ וְאַבְדָּת אָבִיו אַבְדָּתוֹ קוֹדֶמֶת

If you and your father lost objects, returning yours comes first, before anyone. Your own lost object takes precedence over all others, even that of your father, or your teacher (Deut 15:4).

“There shall be no poor among you (Deut 15:4)”. Nevertheless, one who strictly adheres to this selfish avoidance of poverty, will eventually suffer poverty. Although you are not obligated to give others precedence over yourself, you should go beyond the letter of the law, except in a case of substantial loss. Otherwise, consistent selfishness will detach you from charity and kindness, and bring upon you the punishment of poverty.

## אֲבֵדָה אֲבִיו וְאֲבֵדָה רַבּוֹ

A lost article of his father and a lost article of his rabbi – his rabbi takes preference.

A student visited his beloved rabbi, who was sick and in pain and said, “Dear Rabbi, I wish I could take your pain on to myself and you would be spared.”

The Rabbi appreciated the love expressed by that statement, but rebuked the student, “Your comment is contradicted by the Mishnah on daf 33 in Bava Metzia, ‘If a lost article of your own and that of your Rabbi, are noticed by you, and you can only save one, you should save your own.’”

If one’s money takes precedence over his teacher’s’, the same is true regarding saving his body. He must save himself pain, before rescuing his teacher from pain.

## אֲבֹתָ אָבִיו וְאֲבֹתָ רַבּוֹ

A father's lost object and a rabbi's lost object.

The Gemara rules that preference should be given to returning the lost object of one's rabbi, since one's rabbi leads one into the world to come, whereas, a parent only brings a person into the physical world.

- When it comes to honor, the rabbi comes first.
- When it comes to privileges, the father comes first.

A father has a right to the monetary acquisitions of his son.

If a son has the right to lead services, he should offer it to his father, rather than to his rabbi, if he does not wish to do it.

Children should be named after the name of your ancestors, rather than in the name of one's rabbi.

## שֶׁל אָבִיו קוֹדֶמֶת

That of your father comes first.

Your teacher, whose torah wisdom brings you to the world to come, gains preference over your father, who only brought you into this world.

This applies only

- If the teacher receives no compensation.
- If the father provides the salary.

Then, the father's lost object takes precedence. If a benefactor or group pays the teacher's salary, then their lost object takes precedence over that of the teacher.

Sefer Chassidim par 585  
Shulchan Aruch  
Yoreh Deah 242:34

## וְאִם אָבִיו חָכֵם שֶׁל אָבִיו קוֹדֶמֶת

If the father is scholar, return the father's lost item first.

A student found two lost items, one belongs to his father, the other to his rabbi, to whom should he return the lost object, first?

- If the father is not a Torah scholar – to the rabbi first.
- If the father is a Torah scholar - to the father first.
- If the father is a greater Torah scholar – to the father first.

If the father actually taught the son– return the lost item to the father first (even if he is a lesser scholar).

Rambam: If the father is a greater scholar, but never taught his own son, return the lost article to the father first, since he is the greater scholar.

Hamafkid Etel Chavero Behamah

Introduction

This chapter discusses the responsibilities obligations and liabilities of a custodian  
Based on Ex22:6-14 which outline the various categories of Shomen.

Unpaid custodian  
Safeguard and

	+	+	like #2
Use for his own purposes	No	No	
Negligence	liable	liable	
Any other damage	No	yes theft or other loss under his control	
Loss not secondary to his control	not liable	liable for i.e. death breakage capture = if it was stolen	swears that did not use it for his own purposes liable for mishaps not even not under his control
	must swear he was not negligent.		

אָמַר אֵינִי מְשַׁלֵּם

If he said, “I will not pay.”

Reuven lent Shimon money. Shimon’s circumstances changed and he became very poor. Reuven mentally decided to forgo the loan and not make any attempt to collect it. Later, Shimon’s condition changed for the better and Reuven considered requesting payment of the loan, but was uncertain if his mental decision to forego waived his right to collect.

Does a mere thought to forgo a loan, have any Halachic authority?

Rema rules that one can obligate himself to give Tzedakah with a mere thought.

But, a mere thought to forgive a loan has no binding effect. However, if he expressed his thought to anyone, or his decision to forgo is well known, he should not collect the loan.

אָמַר רַב הוּנָא שְׂאִינָה בְּרִשּׁוֹתוֹ

Rav Huna says, “We make him swear that it is not in his possession.”

Be careful what questions you ask in class!

The rabbi noticed that a sum of money was missing from his jacket pocket. He asked his students and they all denied any knowledge of the situation.

Later, the rabbi asked a certain young man to come to his office, and with no preamble, told him to put the money in an envelope and place it on his desk. The student was shocked and asked, “Rebbe, how did you know I was the one who took the money?”

The rabbi answered, “I remember when we learned Bava Metzia, daf 34, regarding the oath of Rituna. You asked me, “What is to stop him from giving the object to another, so it is out of his domain, and he can swear with a clear conscience?”

“I sensed the hint of a deceitful mind.”



22 Bava Metzia 35a2  
Schottenstein

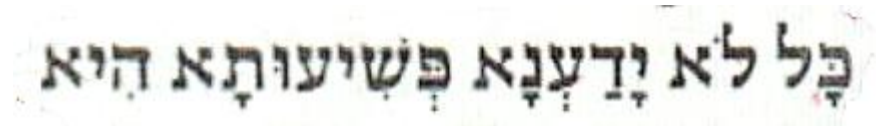
line 32

B10

כָּל לֹא יָדְעָנָא פְּשִׁיעוּתָא הִיא

Any claim of “I don’t know”, is indicative of negligence.

Therefore, go and pay for the loss.



A claim “I don’t know” is considered negligent.

If a custodian claims he does not know the whereabouts of the item he is to watch, he is considered negligent. Many times people forget, and it is not termed negligent.

A person who missed davening is permitted to make-up the missing prayer.

In fact, forgetting is a Mitzvah when it comes to “Shikchah” forgetting grain in the field for the poor to gather.

Why here is it considered negligence? Because here he is a custodian and he is required to have a higher level of caution in regards to the item entrusted to him.

In fact, we consider him to have damaged the item, since its unavailability prevents the owner from using it and the custodian is responsible for any loss incurred to the owner.

## כִּיצַד הָלָה עוֹשֶׂה סְחוּרָה בְּפֶרֶתוֹ שֶׁל חֲבִירוֹ

How could this one do business (i.e., profit), from his friend's animal?

One is not permitted to do business with his friend's animal, according to R Yose.

This is the scenario: Reuven rented a cow from Shimon. Reuven, as a renter, would not be liable to pay Shimon, if the cow died of natural causes.

Reuven lent the cow to Levi. As a borrower, if the cow dies, even of natural causes unrelated to work, Levi would owe the value of the cow to the person he borrowed it from, Reuven.

The Rabbi's say – Reuven, the renter, keeps the money.

R Yose says – No, the money should go to the owner. If money is available for payment, it should go to the owner who lost his cow. The renter should not profit from his friend's loss of his cow.

## לֹא מִבְּעֵינָא שׁוֹמֵר חֲנָם שְׂמֵסֵר לְשׁוֹמֵר שְׂכָר

It is not necessary to state that an unpaid worker, who transferred the object to a paid worker, is not liable for unavoidable loss.

- A shomer sachar – A paid watchman, is paid for his services.
  - Can be expected to guard very responsibly.
  - Is obligated to pay if the item is lost, or stolen, or damaged.

A shomer chinam – Watchman for free.

- Guards for free.
- Has a sense of less responsibility.

If a shomer chinam passes on his duties to a shomer sachar:

- The item is better watched.
- The shomer chinam retains his exemption to pay.

If a shomer sachar passes his duties on to a shomer chinam:

- The item is less reliably watched.
- The shomer sachar retains his obligation, if the item is stolen.

In each case, the first watchman is exempt from any additional obligations beyond his original level of obligation.

## לֹא מִבְּעֵינָא שׁוּמֵר חָנָם שְׂמֵסֵר לְשׁוּמֵר שְׂכָר

It is not necessary to state that an unpaid worker, who transferred the object to a paid worker.

A person prefers a kav of his own produce, more than a kav of his friend's produce.

Reuven found a lost object that he knew belonged to Shimon.

He wondered if he had to return it, since it would be paid for by insurance. He does.

If a person loses his object, he would prefer to have his original item returned to him.

If, however, the lost item is money, he will accept replacement of the money and he doesn't expect his own dollars to be returned to him.

He accepts replacement of the money from any source. However, if the insurance carrier is going to reimburse him, does Reuven still have to return those dollars to Shimon? - Yes.

If a lost item loses value and is no longer worth a prutah, the obligation to return the object continues. Even though the owner will not lose, even a prutah, the obligation to return remains in force.

דַּעַלְוֵי עַלְיוּהָ לְשִׁמְיָרָתוֹ

He upgraded the watching of the object.

A bus driver found a camera, left by accident, on his bus. He put it into his case, expecting the owner to try and find it. Hoping to restore it to its rightful owner, the driver locked it up with his personal items on the bus. Is he a shomer chinam or a shomer sachar?

Is leaving the item in a locked bus considered negligence, so that even if we judge him to be a shomer chinam, he would be liable? It is easy for thieves to break into an empty bus in a deserted bus lot. He is being paid to drive the bus and part of his job is to look after lost objects.

Does the fact that he took the same risk with his own property, make him less culpable of negligence?

Rema: Unpaid watchmen are only responsible for negligence or waste. A paid watchman is responsible if it is stolen. Here, he upgraded the watching of the object and is responsible if it is stolen.

שְׁנַיִם שֶׁהִפְקִידוּ אֶצֶל אֶחָד

If two people deposited money with one custodian?

When the Gemara gives an example of money, it uses i.e., \$100 versus \$200, a two-fold difference.

When it gives an example of a vessel, it uses items worth 100 and 1000, which is a 10-fold difference. Why?

Because,, if a person has 100, he wants 200. But naturally, a person wants his own vessel, so to make it enticing for him to be dishonest, we raise the example 10-fold, which is a much larger differential.

## שְׁנַיִם שֶׁהִפְקִידוּ אֶצֶל אֶחָד

Two people deposited money with an individual custodian,

this one \$100 and this one \$200.

The custodian lost track of which bag belonged to which depositor.

The law is: We give \$100 to each and \$100 waits for Eliyahu Hanavi.

However, by that ruling, the liar loses nothing and the honest man loses his \$100.

Let's address the custodian: The custodian is responsible for the mix-up.

Rambam elaborates on the negligence of the custodian and writes that the custodian should have written the name of each and every depositor on his own bag.

- It serves as a 'siman', 'symbol' to identify each bag.

- It serves to protect the bag from being claimed by some other person.

- It serves to aid the return of the bag, if it is negligently lost.

Therefore, it is best if the custodian writes on each and every item of deposit, whose bag it is.



מִי אָמַר רַבִּי עֲקִיבָא לֹא זֶה הַדֶּרֶךְ מוֹצִיָאֲתוּ מִיָּדֵי עֲבִירָה

Did R Akiva actually say, “ This is not the way we extricate the thief from transgression.”?

For example, that the thief retain the item, until the victim proves it is his.

1. A thief stole from one person in a group of five, all of whom claim they were the victim.
2. A person betroths one woman of a group of 5 and does not know which one. All claim to be his wife.
3. A person bought an item from two stores and does not remember which. Both claim he bought from them.

- R Akiva
1. He acted illegally. He must pay back each person.
  2. He acted irresponsibly, to create confusion among all the women. He must give each a get and Ketubah money.
  3. It is considered irresponsible for a person not to be aware from whom he acquired an item. Therefore, he should pay both, in order to be viewed as a pious person.

## מוכרן בפני בית דין

He should sell it in the presence of the court.

The watchman may sell the bailment, if it is in danger of depreciation, to preserve some value for the bailor.

This is used in the discussion regarding a Jewish business that stays open on the Sabbath or a Holy day.

The best method might be a corporation with a non-Jewish stockholder, who keeps the profits of the Jewish Holy days. The Jew keeps the profits on equal numbers of secular days.

The minority shareholder must (by the right of first refusal of the majority stock holder) offer his shares, to be bought back by the corporation, in case of retirement, death or divorce.

אָדָם רוֹצֶה בְּקָב שְׁלוֹ מִתְּשֵׁעָה קָבִים שֶׁל חֲבִירוֹ

A person prefers one kav of his own produce, to more than nine kavs of his friend's produce.

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Reuven found a lost object that he knew belonged to Shimon.

He wondered if he had to return it, since Shimon would be reimbursed by insurance.

He must return it due to the above statement.

What if the item found was lost money (that is not considered something that a person desires be returned to him because it is his own)? He accepts replacement of the money from any source and it does not matter. However, if the insurance company is going to reimburse Shimon, does Reuven still have to return these dollars to him? Yes.

A lost item loses value and is no longer worth a prutah, but his obligation to return the object continues. Even though the owner will not lose, even a prutah, the obligation to return remains in force.

## בְּמוֹצִיא עַל נֶכְסֵי אֲחֵר דָּמִי

He is like one that spends money on another's property,

he is to be compensated for his expenditures.

A man bought an ox. After two weeks, he found that it had a blemish, which made it useless for the purpose he had intended. The seller was not aware of the blemish, was willing to take the animal back and have the sale canceled. The buyer however, also asked to be paid for the food and upkeep necessary for those two weeks. Is the seller obligated to pay that also?

If someone had found a lost animal and fed it, etc., for that time frame, he could expect the owner to reimburse him. The owner, after all, was spared that expense during that time.

Yes, the seller must reimburse the buyer for the upkeep expenses of the animal.

וַיִּכְּרֵ יוֹסֵף אֶת-אֶחָיו

And Joseph recognized his brothers,

but they did not recognize him.

This teaches that Joseph departed from his brothers without a full beard and now appears before them with a full beard. Whereas, the brothers all had beards before Joseph left them. He was, therefore, able to recognize them 22 years later.

## הַמִּפְקִיד פִּירוֹת אֶצֶל חֲבִירוֹ

If one deposits produce with another.

A man was entrusted to keep the grain of his neighbor, safe. When the time comes to return the grain at the end of a year, he is allowed to deduct 1/40th for every 180 kav he held in trust. That is the amount rodents customarily consume in a year (4 1/4 kav out of 180).

If that's all they eat, why does he get to deduct 4 1/4 kav from every 180 kav? After they eat 4 1/4 kav, the rodents are full and can't eat any more!

Not so: The more grain there is, the more rodents there will be. Therefore, he can expect a loss of 4 1/4 kav from every pile of 180 kav.

Others say that the depletion allowance is only for one kor, even if more was entrusted to him.

22 Bava Metzia 40a1  
Weinbach p511

line 11

A32

הַמִּפְקִיד פִּירוֹת אֶצֶל חֲבִירוֹ

If one deposits produce with another.

1 kor = 180 kav. Therefore, there are  $(9) \frac{1}{2}$  kavs to a kor =  $2 \frac{1}{2} \%$ : 1:40 wheat and millet + (a type of millet – 9 kavs/kor = 5%)

Spelt and Flax seed 3 seah from a kor (30 seah in 1 kor therefore = 10%)

## הַמַּפְקִיד פִּירוֹת אֶצֶל חֲבֵירוֹ

He deposited produce with his friends.

- A man bought groceries and had them delivered, but mice, etc., had eaten a part of his portion. Does the store owner have to pay or replace the damaged goods?

1. If that is the custom in the community-Yes. If not, no.
2. If he knew he had a problem with mice and made no effort to eliminate them-Yes, the responsibility is his. However, if he did his best, he is not responsible to replace the damaged goods.
3. If he never had a problem before and this is the first time, he is not responsible.

In our Gemara - The custodian was not negligent and if there is no ‘minhag medinah’, “a rule of law in the land” that he must pay, he does not need to pay for that which the mice ate.



## שׁוֹאֵל שְׁלֹא מִדַּעַת גִּזְלָן הוּא

One, who borrows without permission, is a thief.

The person, to whom it belongs, does not know it has been taken. He may search for it and waste his time doing so, since it is not there. This, though the item may be returned, it is considered a theft of the time of the owner.

One who borrows without permission, is considered a thief.

לְעוֹלָם יִשְׁלִיֹשׁ אָדָם אֶת מְעוֹתָיו

Advises that for a person to be secure with his possessions, he should make a three fold division:

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- One third real estate “good houses” Deut 8:12:4-5
- One third merchandise “herds and flock” Deut 8:13:1-3
- One third cash “gold and silver” Deut 8:13:4-7

In verses Deut 12-13, it states that Bnei Israel will have this division.

לְעוֹלָם יִשְׁלִיֹשׁ אָדָם אֶת מְעוֹתָיו

A person should always divide his asset into thirds.

One third cash, one third land, one third investments.

Never invest it all in one place.

Each has different strengths and weaknesses.

בְּסָפִים אֵין לָהֶם שְׁמִירָה אֶלָּא בַּקֶּרְקַע

The only way to secure money is to bury it in the ground,

but how deep?

Chometz, that has been buried near a falling wall, must be 3 tefachim deep, so that a dog will not smell it and dig it up. (Pesachim 31b) Only then is it considered destroyed.

Rambam: Money, which has no smell, is adequately buried if 1 tefach deep.

The only way to secure the value of money is to invest it in land.

הַחוֹשֵׁב לְשַׁלוֹחַ יָד בְּפִקְדוֹן

One who intends to misappropriate  
and articulated his intention to misappropriate the deposit.

There is a debate over whether acts done for the sake of a mitzvah, i.e., ‘lishmah’, require verbal declaration of that intention, or not.

Can one mentally intend that one’s actions are taken for the sake of the mitzvah, or must he verbalize that intention? It is better to verbally declare, but if not, the item is still Kosher.

For example, the creation of a sefer Torah, mezuzah, tzitzis, etc., mental intent is sufficient, but verbalization is better.