

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

# Hashavas Aveida Shiur One

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## Mareh Makomos for this Shiur

**Chumash Devarim 22:1-3**

**Gemara Bava Metzia 26b, middle of page**

**Tur and Beis Yosef**

**Shulchan Aruch Choshen Mishpat Siman 259:1-2**

**Sma and Shach**



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## *Introduction to Hashavas Aveida*



Siman 259: From where is one required to return a lost item. (9 Seifim)

### *Siman 259 Seif 1*

**1** If one discovers an object lost by a Jew, he is obligated to care for it and reinstate it to its owner; as the *Pasuk* writes “You should certainly return it”. If one took the item with intent to steal it prior to the owner giving up hope of recovering it, he has violated the *Mitzva* of “You should certainly return it to your brother” as well as the prohibition against theft and has also transgressed the *Issur* stated “You shall not ignore it”. Even if he would subsequently return the article, he has already transgressed the *Aveira* of “You shall not ignore it”. If he lifted the item with intent to return it prior to the owner giving up hope but subsequently after his despondency changed his mind and decided to keep it; he is in violation of “You should certainly return it”. If he waited until the owner gave up hope and only afterwards took the item, he is only in non-compliance with “You shall not ignore it”.

### *Siman 74 Seif 2*

**2** The above is only applicable when the finder is obligated to return an object found in that location, in a place where it is reasonable to suspect the item was lost, under circumstances where it is evident the article was lost and not intentionally discarded, it is worth at least a *Peruta*, it has an identifying mark either in its body or its location, he would have cared for it had it been his own possession and it belongs to an individual whose objects must be returned. However, if any of these conditions are lacking, he is not required to repatriate the lost item.

## The Biblical Sources for Returning Lost Items

The **Torah** primarily addresses the obligation to return lost property in *Parshas Vayeitzei*, **Devarim** 22:1-3. There it states:

לא תראה את שור אחיך או את שיו נדחים והתעלמת מהם השב תשיבם לאחיך. ואם לא קרוב אחיך אליך ולא ידעתו ואספתו אל תוך ביתך והיה עמך עד דרש אחיך אתו והשבתו לו. וכן תעשה לחמרו וכן תעשה לשמלתו וכן תעשה לכל אבדת אחיך אשר תאבד ממנו ומצאתה לא תוכל להתעלם.

“You should not observe your brother’s ox or sheep straying and ignore them; rather, you should surely return them to your brother. If your brother is not close and you do not know him; you should gather it into your house, where it will remain until your brother requests it and you return it to him. You should act similarly towards his donkey of garment or any other object your brother loses and you find; you may not ignore it.”

## The *Gemara* Addresses its Severity

Based upon these verses, the **Gemara** in *Bava Metzria* on 26b understands that failure to properly repatriate a found item could potentially render one in transgression of both a positive and negative commandment, in addition to committing theft. “You should surely return them to your brother” is understood as an imperative to insure the object eventually reaches its owner, while “You may not ignore it” is an injunction against even a temporary decision to refrain.

### As a general rule,

Once the original owner has become aware of his loss, if the item has no identifying marks and is virtually impossible to recover, he will give up hope of finding it. Once this has occurred, the object is rendered ownerless, and “finders keepers”.

### In this context,

**Rava** declares that if one found a lost coin prior to the owner giving up hope of recovering it and intended to keep it, he has transgressed theft as well as both *Hashavas Aveida* related precepts, even if he ultimately does repent and return it. If he notices the loss prior to it’s becoming ownerless and picked it up intending to return it but later gave in to temptation and decided to keep it, he is in violation of the positive commandment to return it.

If he noticed the loss prior to its becoming ownerless and tarried picking it up until the owner gave up hope, he is only in violation of the negative commandment against ignoring a lost item.

**Rashi** there explains the middle case,

That even though he ultimately retained an object that does not rightfully belong to him, “theft” is only possible when the object entered his possession illegitimately. However, when his intent at the time he lifted it was to act properly and return it, this is not relevant.

**Tosafos**<sup>1</sup> inquires regarding the first circumstance,

Why his later repatriation cannot rectify his error, and concludes that indeed it will repeal both the injunction against theft as well as mitigating the positive requirement to return the item. He concludes that only the transgression against “ignoring” a lost object is irrevocably violated by his delay, and even then the implication is only if he tarried until after the owner did give up hope.

## The *Halacha*

The **Shulchan Aruch** records these three facets relating to lost objects and writes:

- 1) When one observes a lost item, it becomes incumbent upon him a positive commandment to return it.

The **Sma** §1 elaborates that literally “observing” the object alone is not sufficient to bind him to care for it. Until he actually lifts the item, he will not transgress this precept if he fails to reinstate it. However, he concedes that the negative prohibition against ignoring a lost item is incurred immediately upon viewing it.

However, the **Taz** dissents and supports the literal reading of the **Shulchan Aruch** that the obligation to return a lost object commences the moment he views it.

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<sup>1</sup> s.v. *Matana*

- 2) If one took a lost item for himself which he was obligated to return and which the owner had not yet given up hope of recovering, he is in violation of the Biblical injunctions against theft and ignoring lost property, as well as the positive commandment to reinstate the aforementioned item. Even if he subsequently regrets his actions and returns it, the transgression of ignoring the item remains.

The **Sma** §2 cites **Rashi** and **Tosafos**, and interprets **Tosafos** as we quoted previously, that his transgression is irreparable only when he returned it only following the owner's loss of hope. Nevertheless, he mentions disapprovingly that the **Levush** understood **Tosafos** otherwise and rules that his intent to retain it is instantly irrevocable.

However, the **Shach** §1 quotes the **Rambam**<sup>2</sup> and the **Ramban**<sup>3</sup> who disagree with **Tosafos'** conclusion. In their opinion, none of the three precepts violated are rectifiable by a subsequent return of the object. He suggests that this is the straightforward reading of the **Gemara**, and implies that he concurs with their interpretation.

- 3) When the finder initially intended to return the item and only later recanted, his sole transgression is that of ignoring a lost article.

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**SIMAN 74:2**

## Conditions for the Transgressions

The obligation to return a found object and the injunctions against failing to do so are conditional on numerous circumstances which will be covered in the following *Seifim* and *Simanim*. In our *Seif*, the **Shulchan Aruch** briefly alludes to many of the conditions which must be met.

- 1) Not all locations obligate the finder to return an object. For example, if an item is discovered in a city which contains primarily non-Jewish residents, the finder need not return it. The details of this *Halacha* will be addressed in the immediately following *Seifim*. When the finder has no obligation to return the article, obviously he transgresses no prohibition by failing to do so.

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<sup>2</sup> *Gezeila* 14:6

<sup>3</sup> **Milchamos Hashem** *Bava Metzja*

- 2) The item must clearly have been lost and not intentionally placed in its current location intentionally. If it is apparent, or even likely, that this article was hidden in the place it was found, it should be left there and not picked up to return. The details of this *Halacha* will be covered in *Siman* 261.
- 3) One is only required to return an object lost accidentally. If the owner knowingly disposed of his property, there is no obligation to return it to him. This *Halacha* is brought in *Siman* 260:11.
- 4) The *Mitzva* of *Hashavas Aveida* is only incumbent upon an item worth at least a *Peruta*. An object of trivial value need not be returned, and consequently one incurs no *Aveira* for failing to do so. These *Dinim* will be addressed in *Siman* 262:1-2.
- 5) A generic article which was mass-produced or otherwise indistinguishable from many others cannot be returned. Since there will be no authoritative manner of determining who this item originally belonged to, it can be assumed that he immediately gave up any hope of recovering it. Consequently, the imperative to reinstate a lost item is limited to one which contains an identifying detail, whether on the object itself or by virtue of its placement. This will also be covered over the course of *Siman* 262.
- 6) An elderly or respected member of the community is not required to pick up an object he would usually consider beneath his dignity. Therefore, the obligation and resultant transgressions associated with *Hashavas Aveida* are only relevant to an item the finder would have felt comfortable dealing with had it been his own. This *Din* is mentioned in *Siman* 263.
- 7) In *Siman* 266 we will learn that the **Torah** only requires one to return a lost item belonging to a Jew. Consequently, if the owner was a gentile, there are no *Aveiros* involved if the finder fails to reinstate it or keeps it for himself.

The **Shulchan Aruch** concludes that all of the seven conditions enumerated above are necessary to conclude that a finder who acts improperly has transgressed from the three precepts mentioned in the previous *Seif*. If any one of them is lacking, none of the three *Mitzvos* applies.

## Summary of the Shiur

1. An individual who finds a lost object is obligated to return it to the owner, and may not keep it for himself except under certain circumstances.
2. If he fails to do so, he may transgress as many as three Biblical precepts; a positive and negative commandment specific to lost items and the general prohibition against theft.
3. “Theft” is only relevant when it entered the thief’s hands under illegitimate circumstances. Consequently, if he picked up the article with intent to return it and only subsequently decided to embezzle it, it is not applicable.
4. The *Poskim* debate whether the prohibition against “ignoring” a lost object can be rectified by subsequently returning it; and if so, until what point in time.
5. The injunction against “ignoring” a lost item commences immediately upon seeing it. The *Achronim* disagree whether the commandment to return also begins then or only after he picks it up.
6. There are numerous details impacting upon the finder’s obligation or lack thereof to return article he finds. In any case where he is not required to return it, he transgresses nothing but not doing so.
7. These *Halachos* will be discussed over the course of learning all of the *Dinim* of *Hashavas Aveida*.

## Questions and Answers

1. **What are the *Aveiros* one could potentially commit by not returning an item he finds?**

If he already intended to keep it at the time he picked it up, he is in violation of the commandment not to steal. Furthermore, the **Torah** writes that one may not ignore a lost object, and one who fails to reinstate it to its owner has transgressed this as well. Additionally, an individual is enjoined to return lost items, and one who fails to do so has neglected this positive *Mitzva*.

2. **When do these *Mitzvos* begin?**

As soon as one sees the object, his failure to care for it would incur the prohibition against ignoring it. The **Sma** writes that the obligation to return it only commences when it enters his physical possession, but the **Taz** disagrees and equates it to “ignoring”. Theft only applies when the object entered his possession illegitimately, but if he picked it up with intent to return it and afterwards decided to embezzle the article, he is not a thief.

3. **If an individual picked up a lost object that he is obligated to return but had intent to keep it, can this transgression be rectified?**

The **Shach** quotes the **Rambam** that none of the three precepts can be rectified. However, **Tosafos** suggests that the *Mitzva* of returning it can be performed at any time and the *Aveira* of theft is relieved upon returning the stolen item. Only the prohibition against ignoring the lost object cannot be rectified; and even then, only if the owner already gave up hope. Until that point, this issue is also resolvable. The **Levush** concurs with **Tosafos** that the first two *Mitzvos* can be rectified, but interprets him as denying any recourse for ignoring the item even if he recants immediately.

4. **Briefly list some conditions which must be fulfilled before the finder would transgress any commandments by failing to return a lost object.**

It must have been found in a predominantly Jewish locale, it must clearly have been lost and not hidden purposely, the object must not have been intentionally discarded, it must be worth at least one *Peruta*, it must have some identifying detail, it must be an object that the finder would have felt comfortable dealing with had it been his own and it must have been lost by a Jew.