LOST AND FOUND

SOURCE SHEET AND DISCUSSION QUESTIONS

The Torah is very concerned with justice and fair play in all areas of life. As an example, the rules governing lost objects - what has to be returned and what can be kept - show the consideration given to both the owner's property and the finder's obligations.
In this class we will discuss:

- Various aspects of the rules for returning lost objects and how they apply to different cases
- What types of items a person (finder) can keep and what types they should return

RETURNING LOST OBJECTS

First things first, let's look at what the Torah says about lost property:

SOURCE 1: *TORAH - DEUTERONOMY (DEVARIM) 22:1*

1. You shouldn't see your brother's ox or his sheep go astray and **ignore** them; you should **surely return** them to your brother

א לֹא־תִרְאֶה אֶת־שׁוֹר אָחִיךָ אוֹ אֶת־שֵׂיוֹ נִדָּחִים
וְהִתְעַלַּמְתָּ מֵהֶם הָשֵׁב תְּשִׁיבֵם לְאָחִיךָ׃

Question: The Torah stresses in verse 1, "You shouldn't… **ignore** them; you should **surely return** them." Why do you think that the Torah stresses these two points, returning the lost animal on the one hand and not ignoring this obligation on the other?

The Torah is telling us that returning a lost item isn't just a nice thing to do, it is an obligation. We **must** try to return them to their proper owner and **must not** ignore lost items - both a positive and a negative commandment.

SOURCE 2: *TORAH - DEUTERONOMY (DEVARIM) 22:2*

2. **If your brother isn't near to you,** or if you don't know him, then you shall **bring it to your house,** and it should be with you **until your brother seeks it,** and you shall return it to him.

ב וְאִם־לֹא קָרוֹב אָחִיךָ אֵלֶיךָ וְלֹא יְדַעְתּוֹ וַאֲסַפְתּוֹ
אֶל־תּוֹךְ בֵּיתֶךָ וְהָיָה עִמְּךָ עַד דְּרֹשׁ אָחִיךָ אֹתוֹ
וַהֲשֵׁבֹתָ לוֹ׃

Question: The first two phrases, **"if your brother isn't near you"** and **"bring it to your house"** seem to extend the obligation of returning a lost object? How so?

The Rabbis learn from the phrase **"If your brother isn't near to you,"** that your obligation extends to include cases where the owner is not near you when you find the item. Even if he is not close by, you are still obligated to try and return the lost object.
Secondly, the phrase **"bring it to your house"** implies that you need to bring it to a *safe place* (your house) to be able to return it to the owner.

Question: The last phrase **"until your brother seeks it"** seems to imply that the owner of the object is required to "seek out" his lost property. But didn't we say in verse 1 that *the finder* is obligated to find the owner?

This is an example of where the Torah is making a ***"drasha,"*** taking the phrase out of its literal context to teach us a new Torah principle handed down through our Tradition:

In our verse the word ***"seek"*** refers both to the finder as well as to the owner in the following manner: the owner clearly **has to "seek," i.e. want to find his lost item,** but the finder also has to ***"seek out," meaning, to investigate or inquire about*** the person who is coming to claim it, to ensure that he is the rightful owner.

OWNERSHIP IS DECISIVE

Until this point we have been speaking mostly about the finder's obligation to return the lost object that he finds to its owner. Yet, there is a significant underlying issue we haven't yet discussed that pertains to "its rightful owner."

Question: Any thoughts on what that may be?

The obligation to return a lost item assumes that the original owner still owns the item. If, for whatever reason, he no longer owns it, there would be no need to return it, and the finder can keep it.

That's right, if the original owner no longer owns his lost property, there obviously is no mitzvah to return things which don't belong to him!

Question: Why would the owner lose his ownership? Losing something does not necessarily cancel ownership. So, what does?

This question is addressed by our next source:

IDENTIFYING MARKS

SOURCE 3: *TORAH - DEUTERONOMY (DEVARIM) 22:3*

3. And so you shall do with his donkey; and so, you shall do with his **garment**, and so you shall do with every lost thing of your brother's which he has lost and you have found; you may not ignore it

ג וְכֵן תַּעֲשֶׂה לַחֲמֹרוֹ וְכֵן תַּעֲשֶׂה לְשִׂמְלָתוֹ וְכֵן תַּעֲשֶׂה
לְכָל־אֲבֵדַת אָחִיךָ אֲשֶׁר־תֹּאבַד מִמֶּנּוּ וּמְצָאתָהּ לֹא
תוּכַל לְהִתְעַלֵּם׃

The word "**garment**" in the source above is seemingly redundant because it is already included in the phrase "**every lost thing of your brother's**."

Question: What is the extra word "**garment**" coming to teach us?

SOURCE 4: *RABBI SAMSON RAPHAEL HIRSH ON - DEUTERONOMY (DEVARIM) 22:3*

The word "**garment**" teaches us that just like a garment is unique in that is has identifying marks and its owner is searching for it, so too, *anything* which has identifying marks and an owner is searching for it, must be announced in public [to try to find the owner]. This means to say that the person who finds the lost item only has to be involved with it and return it *if there are clear identifying marks on the item* and there is an owner who is searching for it, like in the case of a cloak. However, if the item has ***no identifiable marks,*** then it belongs to the person who found it.

"שמלה" מלמדת אותנו: "מה 'שמלה' מיוחדת שיש בה סימנין ויש לה תובעין חייב להכריז, אף כל דבר שיש בו סימנין ויש לו תובעין חייב להכריז". הווי אומר, שהמוצא חייב לטפל באבדה ולהשיבה רק אם יש בה סימנים שהיא ניכרת בהם, ויש לה בעלים לתבוע אותה, כדוגמת שמלה. אך אם אין החפץ ניכר על ידי שום סימן, וכו' הרי הוא של המוצא

We see from the word "garment" that the mitzvah to return lost items applies to things which are similar to a garment, in that the owner has a way to identify it as his own. This is called a siman, an identifying mark.

Question: Rabbi Hirsh explains that while "**garment**" means that the Torah is talking about a case where there is a *siman*, we can infer something about the opposite case. What would that be?

If the mitzvah to return a lost item only applies when there is an identifying mark, it follows that when the item has no such marks then one does not have to return it to the owner. The item can be kept by the finder.

Question: The question is, why? Even if one can't actually return the item, because there is no way of knowing whom it belongs to, what gives the finder the right to keep it? It clearly isn't his!

Before we address this question, we have to introduce a foundational principle - that of *yiyush*, abandoning hope.

YIYUSH - ABANDONING ALL HOPE

When a person loses an object, sometimes he has no hope of getting it back while other times he does. If he abandons hope of getting it back (he has *yiyush*) the finder does not have to return it.* If he retains hope of getting his object back than the finder must seek the owner out.

Question: How is the finder supposed to know if the owner had *yiyush* (gave up hope) or not. We can't read his mind? (Hint: think back to last section!)

The decisive factor is whether the item has identifying marks. If it does, the owner will not have *yiyush*. If it does not, he will most certainly have *yiyush*. We now understand why the finder has no obligation to return the item. How could he find the owner without any way to identify him as the owner?

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*This assumes the owner realizes that he lost the object. If we can't be reasonably sure, the finder may not be able to keep it. (money, important and/or heavy objects we assume he is aware of loss and has *yiyush*).

Question: So now we return to our open question: why should the finder be able to keep the item? It still technically doesn't belong to him. What do you think?

The Rabbis explain that the act of "*yiyush*" (giving up hope) actually makes the item legally "ownerless." Now the item is in legal "no man's land", and from this ownerless status it can be legally acquired by the finder.

DELIBERATE PLACEMENT

We have set up some ground rules for how to deal with lost items. If an item has an identifying mark, it has to be returned to the owner. If not, the finder can keep it. However, this framework doesn't work in all cases. The next source sets out an exception to this rule.

SOURCE 5: *CODE OF JEWISH LAW (SHULCHAN ARUCH CHOSHEN MISHPAT) 260:9*

9. Anyone who finds something, with or without a *siman*, **if** it were found in a way which indicates that it was **deliberately placed there**, it is prohibited to touch it. It is possible that the owner left the item there until he returns, and if you take the item which has no *siman* then you are causing your friend a loss, because the item has no *siman* to enable you to return it to him.

ט. כל המוצא אבדה, בין שיש בה סימן בין שאין בה סימן, אם מצאה דרך הנחה אסור לגע בה, שמא בעליה הניחוה שם עד שיחזרו לה, ואם יבא לטלה, והוי דבר שאין בו סימן, הרי אבד ממון חברו, שהרי אין לו בה סימן להחזיר בו

Question: Why can't you take the item in this case? It has no identifying mark, which we saw before means that you can keep it!

The only reason why you can keep an item with no *siman*, identifying mark, is because the person who lost it had *yiyush* - gave up hope and therefore ownership, because it will not be returned to him. Here, on the other hand, the item was deliberately placed somewhere. Clearly, the owner intends on coming back to retrieve it and did not have *yiyush* because it was never lost in the first place! The item still belongs to him, so of course you cannot take it!

Question: Okay, we can understand why you cannot keep the item even when it has no *siman*, but why not pick it up to give it back to the owner?

If the item has no *siman*, then picking it up is the wrong thing to do. Once you are holding the item, you can only return it to the proper owner. If it has no identifying marks, the owner will not be able to prove that it is his, so you will never be able to return it to him.

Question: Fine, you can't take it. What should you do?

Nothing! You should just leave it where it is and let the owner come back and get it.

CASES

Based upon what we have learned, how would you rule in the following cases?

A Carl was walking down the block when he saw something shiny next to the curb. He bent down and found an expensive looking watch lying on the floor. "Fancy!" he muttered, as he picked up the timepiece. As Carl turned the watch over in his hands, he noticed an inscription etched on the back. "Happy Birthday Ray! From Kevin," he read. He slipped the watch into his pocket. "I better ask the Rabbi what to do with this," he said to himself. (source #1 and #2)

B "What a nice day," Gary thought, as he strolled through the park. "Woah - what's that?" he said, as he noticed something green next to the path. "Well, it looks like today just got better!" Gary chuckled, as he gazed at his new fifty-dollar bill. (source #2 and #3)

C Kyle was hiking through the woods, enjoying the scenery, when he tripped over a rock. As he picked himself off the floor, he noticed something stuck inside a crack in the trunk of a nearby tree. "It looks like some money in a plastic bag," he thought. "Looks pretty clear. It hasn't been here for that long," he noted. "I wonder if I could, or maybe even should, take it?" he mused. (source #4)

INTERESTING FINAL APPLICATION

In closing, let's present another aspect of the mitzvah of returning lost objects, one that is relevant to all of us.

SOURCE 6: *SHELAH HAKADOSH ON THE MITZVAH OF RETURNING A LOST OBJECT DEUT. (DEVARIM) 1-3*

The reason for this mitzvah is to let you know that if the Torah has obligated you to return the money of your friend, you are definitely obligated to return to him his soul. **(help him connect to his spirituality)** You have to undertake, to work and toil to see how your friend can be helped to do *teshuva* (come **closer to Judaism.**)

טעם מצוה זו, להודיע שאם אבדת ממון של חבירך חייבה התורה להשיבו, כל שכן אבדת נפשו וכו' שצריך אתה לעמוד על משמרת לטרוח וליגע איך אחיך ישוב בתשובה

If we find something that is lost, we are obligated to return it.

Question: If this is true for mere monetary possessions, how does the source instruct us relating to eternally valuable "spiritual lost items", that the person is certainly not aware that they have lost?

The mitzvah of returning lost objects helps promote within us a desire and responsibility to protect all other fellow Jews from loss that we can prevent. This loss will mostly occur in the physical realm, but how much greater is the mitzvah to actually prevent a fellow Jew from losing his/her spiritual well-being, by helping them come closer to their Jewish Heritage?