

לוקוטי ופסקי הלכות "חוקי חיים"

ותלמוד
"תוספי תנאים"
לעשות רצונך
בלבב שלם



שע"י "חדר הוראה" שכונת מנחת יצחק פעה"ק ירושלם תובב"א - בראשות הרב חיים אהרן בלייער שליט"א

Halochos compiled by HaRav Chaim Bleier – Translated from the Hebrew edition by R' Zerachya Shicker

Please do not
read during
Davening or
Krias Hatorah

Hashovas Aveidoh

Parshas Ki Teitzei 5785

74

The Mitzvoh of Hashovas Aveidoh

The Mitzvos

1. Hashovas aveidoh includes three mitzvos: the mitzvas asei of (שם) "לא תוכל להתעלם" (דברים כ"ב א') "השב תשיבם לאחר" (ויקרא י"ט י"ג) "לא תגזול" (ג'), and potentially the lav of "לא תגזול" (ג').

Chiyuv Hashovoh

2. One who sees a Jew's lost item with a simon and ignores it transgresses the lav of "לא תוכל להתעלם" (ש"ע חו"מ סי' רנ"ט ס"א) "לא תוכל להתעלם" and is mevateil the mitzvas asei of "השב תשיבם".
3. If one saw a lost item, but did not pick it up, some say he transgresses the asei and the lav (רמב"ם פ"א מגניבה ואבידה ה"א, ט"ז); others say if he merely saw it, he only transgresses the lav. If he picked it up and did not return it to its owner, he also transgresses the asei (סמ"ע שם סק"א).
4. **Waited to pick it up.** If one waited until the owner lost hope of finding it and then picked up the item for himself, he only transgresses the lav of "לא תוכל להתעלם" (ש"ע שם).
5. **Delayed returning it.** If one picked up the item planning to return it, but did not publicize that he found it before the owner gave up hope, and then kept it for himself, he only transgresses the asei of "השב תשיבם" (ש"ע שם). Therefore, after picking up a lost item, one must hurry to announce it. Otherwise, the owner may give up hope before the announcement and if he keeps it, he transgresses the asei of "השב תשיבם".
6. **No simon.** Most poskim hold that one is potur from picking up a lost item without a simon (רע"א ד"ה דף כ"א ע"ב ד"ה אמנם).
7. **Memory stick/card.** If one finds a memory card without an external simon, he may insert it into a computer or camera enough to identify who it belongs to based on the contents. If it does not contain any simon, he may keep it and record it in a 'hashovas aveidoh notebook' (see below, 41).

Worth Less than a Prutah

8. One is only chayov to announce and return a lost item that was worth a prutah when the owner lost it and when he found it (ש"ע חו"מ סי' רס"ב ס"א). The poskim argue whether the finder of an item worth less than a prutah may acquire it (אבן האזל פ"א ג"א, שער משפט סי' ו' סק"א).
9. **Paper.** Thus, one who finds a **piece of paper** or a **tissue** does not need to search for its owner since these items are worth less than a prutah.
10. **Worth a prutah only to its owner.** Certain items, e.g., a **single shoe, a glasses lens, family photos, medical documents, and passports**, despite having great value to their owners, are worthless to anyone else. Some say that an item must have a market value – not personal value – of a prutah to incur a chiyuv hashovoh. Accordingly, one would not have to return these items (נתיב"מ סי' קמ"ח סק"א, בית יצחק אה"ע סי' פ"ז סק"ז).
11. However, most poskim hold that the owner's perspective is the determining factor, and thus, one must also return items which only have value to their owner (חזו"א חו"מ ב"ק סי' ו' סק"ג, משפט). (האבידה סי' רס"ב מו"צ סק"א).

Cheap Items in a Public Place

12. It is very common today to find all sorts of small objects on the street or in a public place, which may have a simon, but are of slight value, e.g., a **cheap scarf, a single sock, a plain baby hat, a baby bottle or pacifier, a gartel, a cheap pen, toy parts** etc. Oftentimes, even if the finder announces these items or hangs up signs, the owner does not bother to claim them since they are cheap and available everywhere, and he is embarrassed to come and take them. In such cases, many poskim hold that since "עד דרוש אחיך אותו" [the mitzvah to hold on to the item until its owner comes searching for it] is not realistic, "השב תשיבם" does not apply and the finder is potur from attending to these items (השבת אבידה כהלכה, שער משפט אבידה ומציאה פ"ב אות ד').
13. There is an additional rationale not to pick these items up: if one would pick them up, it is near certain that the owner will not search for them, whereas if one leaves them where they are, there is a chance that the owner will come back to look for them. The Torah wants to save people's money. Therefore, the Torah would not command one to do hashovas aveidoh if picking something up will make it less likely that the owner will recover it (שם).

After Picking It Up, One Must Attend to It.

14. There are situations where one is potur from picking up an item that fell – some say also in a case of a sofeik if it fell – but if he picked it up, he must return it (ש"ע סי' ר"ס סי' וס"י) and may not put it back. Therefore, if one picks up a lost item, he should not hang it up on a bulletin board.
15. If a cheap item which one is potur from picking up (above, 12) is resting in a hard-to-see spot, or somewhere it is liable to get damaged, e.g., a pen on the beis medrash floor, or a ball on the street, one may pick it up in order to place it back down nearby, but more visibly or safely since he is only picking it up to make it easier for its owner to recover it.

Non-Jew's Item

16. The chiyuv of hashovas aveidoh only applies to items belonging to a Jew. It is an aveiroh to return something which one knows belongs to a non-Jew since doing so supports wrongdoers (ש"ע סי' רס"ו ס"א).
17. Nevertheless, if not returning it will cause a chillul Hashem, e.g., it was lost in a place where there is a Jewish majority and the non-Jewish owner will suspect that a Jew stole it, one must return it (ב"י, סמ"ע סק"ג).
18. Similarly, it is praiseworthy to return something with intention to create a kiddush Hashem by causing its owner to praise Jews and know that they are trustworthy (ש"ע שם). This is only true if the owner will praise Jews, not just the finder personally (יש"ש ב"ק פ"י סי' כ').

Yi'ush [Giving Up, Losing Hope]

19. **Yi'ush.** If the owner gave up on finding the item he lost, whether it had a simon or not, and afterwards, the finder picked it up, he acquires it (ש"ע סי' רס"ב ס"ה). 'Yi'ush' means that we heard the owner say, "What a shame about my loss" or any similar expression which demonstrates that he gave up on searching for it.

"The Cheder Horoah" | 20 Minchas Yitzchok St. Yerushalayim | paskenshtibel@gmail.com

Opening times: Sun. – Thurs. 5:00pm till 8:00pm | Fri. 10:00am till 11:00am and from 1 hour before candle-lighting

20. **Yi'ush in the heart.** Yi'ush in the heart is valid even if the owner did not verbally express it. Therefore, if a finder comes to return an item, but the owner knows that he already gave up on it, he must tell that to the finder, and it technically belongs to the finder (מו"ר בפתחי חושן אבידה פ"ב הע' א'). Nevertheless, he can go beyond the letter of the law and return it (ע"פ שו"ע סי' רנ"ט ס"ה).
21. **Yi'ush after it was picked up.** Yi'ush is only effective prior to the finder picking up the object. If it was picked up before yi'ush, the finder is chayov to return it despite the owner's subsequent yi'ush. The yi'ush does not exempt him since the object came into his hand b'issur.
22. **There for a long time.** If it is clear that the object was there for a long time, it can be assumed that the owner gave up on finding it and the finder acquires it, even if it has a simon (שו"ע סי' רס"ב ס"ה).
23. **Non-Jewish majority.** If the item was lost in a place with a non-Jewish majority and it is possible that a non-Jew found it, it may be assumed that there was yi'ush.

'Yi'ush Shelo Mida'as'

24. Yi'ush shelo mida'as is not considered yi'ush (ביע"ל ק"ג), הלכה כאביי ביע"ל ק"ג. (גמ' ריש אלו מציאות). In other words, if a person found something before its owner realized that he lost it and gave up on finding it, even if it is clear that the owner will immediately give up upon realizing he lost it – and he indeed did so – since, at the moment he picked it up, the finder was not allowed to keep it for himself and was chayov to return it, the subsequent yi'ush does not allow him to keep the item (שו"ע סי' רס"ב ס"ג).
25. If one picked up a lost item before the owner's yi'ush – even if it is just a sofeik if there was yi'ush – he should put it away until Eliyahu comes (שו"ע שם).

Lost Objects with Definite Yi'ush

26. There are certain items that we assume with certainty that the owner is aware he lost before the finder picks it up. Therefore, if there is no simon on them or their location, the finder may keep them.
27. **Money.** People generally check their money pouches frequently. Therefore, when a person loses money, whether a large sum or a small sum (שו"ת אג"מ חיד"ק סי' כ"ג), we assume that he knows it fell and the finder may keep it since the owner presumably had yi'ush (שו"ע סי' רס"ב ס"ו). Even nowadays that people generally keep their money in their trousers pocket and do not constantly check it, this halochah remains in place, at the very least due to hefker beis din (הגר"ח קנייבסקי בשם החזו"א, השבת אבידה כהלכה פ"ה הע' ד').
28. **Ring.** A ring is also considered something which is felt right when it falls. Therefore, if there is no simon on it, it may be assumed that there was yi'ush (בן איש חי שנה א' פ' כי תבוא אות ד').

Publicizing

Putting up a Sign

29. One who finds a lost object with a simon must announce it (שו"ע סי' רס"ב ס"ג), i.e., publicize that he found it. He may put up a sign where many people will see it, e.g., in a shul (שו"ע סי' רס"ג ס"ג), in the area where it was found. If it is something generally owned by women, e.g., jewelry, he should put up a sign in the shul's ezras noshim. He should also put up a sign in the place he found the object (הגר"מ פיינשטיין, קונטרס השבת אבידה).
30. **Reading a sign on Shabbos.** One may read hashovas aveidoh signs on Shabbos; it is not an issue of shtorei hedyotos (תשובה"ג ח"ג סי' תס"ד).
31. **Notice in a newspaper.** One may also publicize the finding of an item in a local Chareidi newspaper which is read by most people (שו"ת חת"ס חו"מ סי' קכ"ב). If that entails payment, he does not need to publicize it since we pasken that one is not required to spend money on hashovas aveidoh (שו"ע סי' רס"ה ס"א). If it is the type of item that the owner may be willing to reimburse the cost of publicizing, he must pay to publicize it (שו"ע הגר"ז סעי' ל"ג).

How Long to Publicize

32. The notice must be posted for an amount of time that is reasonable to assume everyone saw it. Some say this is a week (הגר"מ); others say the longer, the better (תשובה"ג ח"ג סי' תס"ד). Afterwards, if it was removed, he does not need to post it again.
33. At a time when many visitors come from out-of-town, e.g., at a beis medrash of a Chassidus during special Shabbosos, such as Shabbos Chanukah or Shabbos Shiroh, one must publicize the finding of an object until the next time many people come.
34. **Owner never came.** After informing the owner of a lost item that he found, the finder is not required to bring it to him. Rather, the owner must come or send someone to get it (משפט האבידה עמ' ר"ל). If the owner procrastinated on coming to pick it up, the finder may set a reasonable time limit for the owner to come, after which he may make it hefker (הגר"ז קרליץ, השבת אבידה כהלכה עמ' מ"ח).

Intentional 'Lost' Item

35. If an item was intentionally 'lost', e.g., someone threw his wallet into a public area, or is aware that something of his is somewhere unsafe and does not retrieve it, some say there is no chiyuv to return it, yet one should not take it for himself (שו"ע סי' רס"א ס"ד). Others hold it is like hefker and whoever comes first may take it (רמ"א שם, שו"ע סק"ג).
36. If the item is in a somewhat secure place, it does not have hefker status and may not be taken. Therefore, a **baby stroller** in a building's stairwell, or **building materials** left unguarded on the street are not considered intentionally lost and may not be taken (משפט האבידה).
37. **Child's object.** Anything which clearly belonged to a child below the age of da'as [until six or seven] need not be returned since his parents, by giving him this object, intentionally 'lost' it. Still, all agree that one may not take an object from a child's hands (מו"ר בפתחי חושן אבידה פ"ד אות י"ג).

Upstairs Neighbor's Item Fell onto Balcony

38. Things which fall into a yard or onto a balcony from an upstairs neighbor, e.g., **clothing from a clothesline** or the like, have the status of an aveidoh, and one who finds them may inform the neighbors by hanging a note in the building. The neighbor should make the effort to collect his things from the yard/balcony-owner. The finder may not leave them in the stairwell or toss them since he is chayov to safeguard them until he informs his neighbors.
39. Nevertheless, **small children's toys or games** thrown onto a balcony need not be returned; since the parents gave them the games knowing that they throw things down (מו"ר בשו"ת שבט ד"ש הקהתי ח"ד סי' ד"ש).

Putting Aside Until Eliyahu Comes

Hashovas Aveidoh Notebook

40. There are several circumstances under which the halochah is that the finder must put the object aside until Eliyahu comes, e.g., if one found something with a simon and publicized it, but the owner never came, or if one found something without a simon and picked it up before the owner's yi'ush. Due to our many sins, we are in a prolonged golus and move from place to place, making it difficult to hold on to the many items whose owners were never located that can accumulate over generations. Although Eliyahu can come at any moment and all lost items will be returned to their owners, people still have a hard time saving so many amassed items.
41. Therefore, the great poskim advise every family to make their own 'hashovas aveidoh notebook'. If, some time after finding an item, it appears that its owner is not coming and a replacement can easily be bought, they should record the particulars of the item, e.g., a description, any simonim it may have, when and where it was found, its value etc., in a notebook. They should stipulate that if the owner comes to claim his item, they will give him its monetary value and be able to keep and use the item for themselves. If they have no need for it, they may throw it away.
42. **Fruits or vegetables.** If one finds fruits, vegetables, or anything which will spoil shortly, he may take them for himself and record their particulars in a notebook, and then give the owner their monetary value. The same is true if one mistakenly took vegetables from a store's checkout counter and doesn't know whom they belonged to.
43. **Evaluation.** Some say that the item must be evaluated in front of a beis din (שו"ע סי' רס"ז סכ"ד); others say he does not need a beis din and may evaluate it himself (רמ"א שם) since by returning the item, he has a chezkas kashrus (סמ"ע סק"ז). One may rely on this and evaluate it himself if its value is commonly known. If it is not, he should at least have it evaluated in front of three people who are familiar with that type of item (שו"ת אג"מ חו"מ ח"ב סי' מ"ה).
44. **Valuable items.** Items that have a special value or cannot be easily replaced, e.g., **mehudar tefillin, rare manuscripts or seforim, heirlooms** etc., may not be evaluated and sold. Rather, one must safeguard them until Eliyahu comes.

Place with Many People

45. One who finds an object without a simon, such as money, in a place frequented by many people, e.g., a beis medrash, mikvoh, store, yeshivoh, bus, soda machine etc., may keep it, even if there is a Jewish majority (שו"ע סי' רס"ב).