Finders (not) Keepers: An Exercise in Written and Oral Law

I. The Biblical Sources

When you encounter your enemy’s ox or donkey wandering, you must take it back to him. You shall not see your brother’s ox or his sheep go astray and hide yourself from them; you shall surely return them to your brother. If your brother is not near to you when you do not know him, then you shall bring it into your home and it shall be with you into your brother inquires after it, and you return it to him. And so shall you do for his donkey, and so shall you do for his garment, and so shall you do for any lost item of your brother that may become lost and you shall find it; you may not hide yourself.

II. What’s Left Out

While, in theory, the Mitzva of Hashavat Aveida is clearly moral and appropriate; a number of significant issues concerning the practical application of this law immediately emerge. For example:

- Under what conditions must a lost item be returned?
- Is the finder of a lost object required to search for its owner? If so, how?
- How can the finder of a lost item determine and verify the identity of the item’s owner?
- What is the finder’s obligation towards the maintenance and care of the lost object?
- What is the extent of the financial obligations that he is required to incur in the course of this care?
- How long must the finder maintain the lost item in his care?
- Is there a time limit concerning the finder’s obligations? If so, what is that limit?
- What happens to lost objects that remain unclaimed?
III. Oral Law: Filling in the Blanks:

A. The Basics

1. Issues of Identification, Ownership and Property

2. Delineating the Rule:
   
   If you find an item that is still “owned,” that item cannot become yours and you must return it to its original owner. If you find an ownerless item, however, you may acquire that item immediately.

3. Complications: A Classical Example

   Exploring the dispute over retroactive ye’ush:

   Rava: retroactive ye’ush is effective
   Abaye: retroactive ye’ush is not effective

B. The Process of Return

1. The responsibility of publication

   Which found objects belong to the finder and which ones must be proclaimed [in the lost and found]? These found objects belong to the finder: if a man found scattered fruit, scattered money, small sheaves in the public domain, cakes of figs, bakers’ loaves, strings of fish, pieces of meat, wool shearings [as they come] from the country of origin, stalks of flax and strips of purple wool, according to Rabbi Meir. Rabbi Judah says: “Anything which has in it something unusual, must be proclaimed. How is this so? If he found a fig cake with a potsherd in it or a loaf with coins in it [he must proclaim them].” Rabbi Shimon ben Elazar says: “New merchandise need not be proclaimed.”
2. For how long?

For how long must a man proclaim [what he has found]? Until all of his neighbors know of it, according to Rabbi Meir. Rabbi Judah says: “At the three Pilgrimage Festivals and for seven days after the last festival, to allow him three days to go back to his house, three days to return and one day on which to proclaim his loss.

The theoretical basis for the dispute between Rebbe Meir and Rebbe Yehuda: Who must I notify?

3. Practicality

The Sages taught: a. Initially, anyone who found a lost item would proclaim his find for three pilgrimage Festivals and for seven days after the last of the three pilgrimage Festivals, so that its owner will go to his home, a trip lasting up to three days, and will return to Jerusalem, a trip lasting up to three days, and proclaim his loss for one day.
b. But from the time that the Temple was destroyed, may it be rebuilt speedily in our days, the Sages instituted that those who find lost items shall proclaim their finds in synagogues and study halls.

c. And from the time that the oppressors proliferated, the Sages instituted an ordinance that one who finds a lost item shall inform his neighbors and acquaintances, and that will suffice for him.

An obligation resurfaces...

5. What do you reveal/announce?

III. The Finder’s Obligations as a Guardian

A. Background (Mishna Bava Metzia 7:8): 4 Types of Shomrim

1. Shomer Chinam, Unpaid Bailee: Since an unpaid bailee receives no benefit from his task, and all benefit therefore flows to the object’s owner, the Shomer Chinam stands at the lowest level of responsibility. He is obligated to pay for damages only in cases of his own negligence.

2. Shomer Sachar, Paid Bailee: Since a Shomer Sachar is paid for his efforts, with benefit therefore flowing both to the owner and to the bailee, the Shomer Sachar’s responsibility is raised one step. He is obligated to pay for damages in cases of loss and theft as well as negligence.

3. Socher, Renter: This case is, according to most halachic decisors, judged to be similar to that of a paid bailee. In a rental agreement, benefit once again flows both to the owner and to the renter. The renter is, therefore, obligated to pay for damages in cases of loss, theft and negligence.

4. Sho’el, Borrower: As all benefit flows in this case to the borrower, with the owner receiving no benefit at all, the borrower finds himself at the highest level of responsibility. He is obligated to pay for damages not only in cases of loss, theft and negligence. He is obligated to pay in...
cases where the object becomes damaged through total accident or force of circumstance. The only situation in which the Sho’el is exempt from payment is when the item self-destructs as a result of its inability to perform the task for which it was borrowed.

B. The Verdict

דרב יוסף דאמר באה תמר שומר אבידה רבה אמר כש"ח רב יוסף אמר כש"ש

IV. Finally: Finances

 chilledriel, bothifty to:
כל דבר שעושה ואוכל יעשה ויאכל ודבר שאיןעשה ואוכל ימכר שנאמר
והשבותו לו ראה היאך תשיבנו לו
מה יהא בדמים ר"ט אומר יימיך בהן לפיכך אם אבדו חייב באחריותן ר"ע
אומר לא יימיך בהן לפיכך

גמ' והעולם אמר רב נחמן אמר שמואל עד י"ח הדשה

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