

Parshas Ki Seitzei

פרשת כי תצא

לא תראה את שור אחיך או את שיו נדחים בדרך והתעלמת מהם, השב תשיבם לאחריך....
לא תוכל להתעלם.

“Do not observe the ox of your fellow or his lamb wandering on the wayside and ignore it, [rather] you shall return it to your fellow.... you may not disregard it.”

Here and in Parshas Mishpatim the Torah commands us the Mitzva of Hashovas Aveidah – returning a lost object. The Shulchan Aruch (ח"מ הל' אבידה) brings six basic criteria that must be met, in order for one to be required to return a lost object. If any one of these criteria are not present, the object is not required to be returned. They are:

1) One is only required to return the lost object of a Yid. Therefore, only if the object is found in a place that it is likely to belong to a Yid, is one required to take it and return it. If most (רוב) people who walk by the location of the Aveidah are Yidden, then it must be returned. However, if most of the passersby are not Yidden, even if most of the population are Yidden, one may keep the object for himself or leave it in its place¹. An example of this scenario is the Jewish quarter of the Old City in Yerushalayim. Although most / all of the residents are Yidden, the majority of the people who walk through are not². There is one exception made to this rule regarding lost Seforim. Since the owner assumes that a Yid will take it, he does not give up on it, and it is obligated in Hashava³.

If one finds the lost object of an Akum, not only may he keep it, but he is also required to do so⁴. However, if it is possible that a Chilul Hashem will occur if one does not return it, one must return it to its owner. This would be the case, if one found an Akum's wallet (with ID) in an area that is highly frequented by Yidden. In such case it is plausible that the Akum will assume that his wallet was taken by a Yid, hence creating a Chilul Hashem. If a Chilul Hashem will not take place, but one will create a Kiddush Hashem if one returns the object to its owner (i.e. the owner will be impressed by Yidden in general and not just by the righteousness of this individual), then it is certainly praiseworthy to return it, although one is not required to do so. Obviously each circumstance requires individual assessment⁵.

There are two explanations why one is forbidden to return the object of an Akum (except in the aforementioned circumstances). The Rambam (שם) explains that by returning the lost object of an Akum, one is in essence providing him with financial assistance. Since it is forbidden to support an idol-worshipper financially or otherwise, one may not return his lost object⁶. It would therefore follow, that an Akum that does not worship idols is not included in this Din⁷.

Rashi⁸ explains differently, that if one returns all lost objects that he finds to anyone, he is clearly not doing so purely for the purpose of following the commandments of the Torah, since the Torah only commanded to return an Aveidah to a Yid. Therefore, to demonstrate the G-dly motive behind his actions, one is forbidden from returning an Aveidah to an Akum.

2) The second condition that must be present is, that it must be clear from the situation that the lost object is indeed lost, and has not just been placed there temporarily with the owner intending to come for it later. If the object is lying in a place and position that clearly indicates that it has fallen inadvertently, it is considered an Aveidah. If however it

¹ גמ' ב"מ כ"ד וש"ע רנ"ט ס"ג וע' בפרישה. ואפי' יודע שהיא של ישראל, כיון דכבר נתיאשו הבעלים בסברם שענו"ם מצאה, כ"כ הט"ז.
ובסמ"ע סק"ט כתב הטעם דתלין ברוב עכו"ם ע"ש

² ראיתי בשם הגרי"ש אלישיב

³ רמ"א שם בשם הגהות מרדכי

⁴ ואסור להשיבה דכתיב אחיך ולא לגוי, ב"ק קי"ג הובא בשו"ע רס"ו. ועל המשיבה נאמר "למען ספות הרוה את הצמאה" ע' סנהדרין ע"ו

⁵ רמב"ם גו"א פ"א ה"ג וב"י וש"ע שם

⁶ ע' סמ"ע

⁷ באר הגולה אות ב' שם דזה יהא נפק"מ ביניהם, וע' תורה תמימה ויקרא כ"ה י"ד ושמות כ"א ל"ה שהאריך לבאר דבימינו שהגוים הם

בעלי ישוב ואינם פוראים וכחיות השדה אשר היו בימי קדם אינם בכלל המיעוטים האלו ע"ש

⁸ סנהדרין ע"ו ד"ה מחזיר

seems to have been left in this place on purpose, or it is at least possible that such is the case, one may not pick it up (unless it is in danger of being stolen or lost in its present location), since taking it will cause unnecessary inconvenience to its owner. If one did take the object away from its place, one may no longer return it there, and it must be treated as a regular lost object (see below II)⁹.

3) The Aveidah must also have Simanim – identifying characteristics specific to this object, in order for it to be obligated in Hashovas Aveidah. An object without any Simanim may be kept by its finder. There are three levels regarding Simanim. The highest level is a Siman that is specific only to this object, for example, a name label, a stain, or a scratch in a specific location¹⁰. The owner who presents these type of Simanim can claim his object Min Hatorah¹¹. The second level is slightly less specific Simanim, for example the location that the object was found, or the amount of items in a bundle. In this case the object still must be returned to the presenter of these Simanim, albeit Midrabanan¹². The lowest level of Simanim are those that are very general and apply to many objects, for example, the color or clothing size. These types are not considered valid Simanim, and an object with only these sort of Simanim is considered to have none at all¹³.

4) Furthermore, the Aveidah must be worth the value of a Prutah. (ב"מ שם ושו"ע ר"ס ב"א) Although some items do not have the market value of a Prutah, nevertheless they may be exceedingly valuable to their owners. For example, a family portrait, one shoe of a pair, or a key may have little or no value on the market, however to the owner they are valuable. The Acharonim dispute regarding this scenario, however many contemporary Poskim say that it must be returned¹⁴.

5) The object must be found prior to the owner abandoning hope of finding the object. If the owner has already given up all hope of finding it (whether verbally or otherwise), the finder may keep it for himself. If at the time when he found the object, the owner had not yet given up, he is obligated to return it, even if later the owner gives up hope¹⁵.

6) The final condition that must be met is, that the object must be one that had the finder himself owned it he would bring it home. However if the Aveidah is something that is below the dignity of the finder to deal with, he is exempt from Hashovas Aveidah. For example, if a Rosh Yeshivah finds someone's lost cat, he is not required to deal with it, since it would be below his dignity to walk with a cat in the street¹⁶.

II. If one sees¹⁷ an object that is obligated in Hashovas Aveidah (i.e. it meets all the above criteria), he is forbidden to ignore it, and must bring it to his home or another safe place. One may not simply place it on the nearest windowsill or hang it on the bulletin board. However, if one is certain that the object cannot or will not be stolen, and that the owner will retrieve it from there, one may place it in such a place¹⁸.

Once one has brought the object home, he must "announce" that he has found an Aveidah. This can be accomplished by hanging signs in the shuls or other public places in the vicinity of the Aveidah¹⁹. The signs should be placed in a way that as many people as possible will see it. Therefore, if the Aveidah may possibly belong to a

⁹ בשו"ע ר"ס ס"ז וברמ"א ס"י נראה דגם בספק הינוח הדין כן, וכ"פ בשו"ע הרב ס"י ג ובערוה"ש וכתבנו כדבריהם, אבל בש"ך שם סק"ל שינה הגירסא ברמ"א. וכל זה דלא כדעת הרמב"ם דס"ל דבספק הינוח ויש סימן חייב להכריז ובאין סימן ה"ה שלו, ע' ערוה"ש שביאר שיטתו בהרחבה

¹⁰ ע' ערוה"ש

¹¹ ב"מ כ"ז וברמב"ן ועוד ראשונים ביארו דלא חיישינן לרמאות בכה"ג. וע' ס' ר"ס ז"ס וס"ו מח' רמ"א ומחבר אם גם בודאי רמאי אמרינן

כן וע' ש"ך

¹² כ"כ הרבה מהראשונים. וברא"ש ס"י ג שם נסתפק אי הוה מדאורייתא או לא. וטעמא דלא יהי רק מדרבנן משמע דהוא או משום שיכול לנחש או שגם הוא איבד חפץ אם סימנים אלו, ע' קצוה"ח רנ"ט ס"ב דמ"כ. אבל מדרבנן מחזירין דניחא ל' לאהדורי וכו' ע' בגמ' שם

¹³ כ"ז בדרישה ס' ר"ס ז"ש בשם הה"מ גו"א פי"ג ה"ג, וע"ש מש"כ בשיטת הרמב"ם דהאידין אין מחזירין אפי' בסימנים מובהקים רק בעדים ע"ש

¹⁴ הנתיה"מ קמ"ח א' ס"ל דהולך לפי השוק והחזו"א ב"ק ס"ו סק"ג ס"ל דהולך לפי הבעלים. בס' השבת אבידה כהלכה הביא בשם הגר"מ

פיינשטיין זצ"ל ויבלח"ט הגרי"ש אלישיב שליט"א כהחזו"א, וע' בית יצחק אה"ע פ"ז אות ז'

¹⁵ שו"ע ר"ס ב"א ס"ג. ולענין ישר"מ הגליון אינו מספיק ליכנס לענין ע' ב"מ כ"א בראשונים ואחרונים

¹⁶ דכתיב "והתעלמת" פעמים שאתה מתעלם, ב"מ כ"ט. ול"ד ת"ח דה"ה כל עשיר ונכבד, כ"פ הרמב"ם והשו"ע הרב ס' ל"ח

¹⁷ ע' ב"ח ריש ס' רנ"ט דיש שיעור בריחוק ולא הביאו הפוסקים

¹⁸ תשובה מהגר"מ פיינשטיין זצ"ל בקונ' השבת אבידה

¹⁹ ע' אג"מ או"ח ח"ה ס"ט אות ח' דרך הדין אם נמצא חוץ לביהכ"נ, ובנמצא בביהכ"נ עצמו סגי להניח מודעה רק שם, וע"ע חו"מ ח"ב ס'

מ"ה

woman, the sign should be placed in the Ezras Nashim as well. The signs should remain posted long enough for most people who frequent the area to see them. Some Poskim say this is a period of one week²⁰.

One is not required to spend money on announcing the Aveidah²¹. He is therefore not required to place an ad in the paper if this costs money. Furthermore, if one will miss the train or bus if he deals with the Aveidah, he is not required to do so²². The only exception to this is, if the object is of such that the owner would be willing to reimburse the finder for his costs. In such case, one should place an ad at the owner's expense. On the other hand, one is also not allowed to charge for his services. If the owner offers a reward the finder should say that he is returning it only for the sake of the Mitzva. If after this, the owner still insists that he accept a reward, he may take it²³.

One may only return the object to someone who can provide proper Simanim (see above #3). However, a Talmid Chacham who does not speak falsely (this is assumed unless known otherwise) is believed to claim an object by visual recognition alone. Therefore if one finds an object that does not have any Simanim, however it has been used a little and is therefore possible that the owner will be able to recognize it as his own, the Mechaber paskens that it must be treated as an ordinary Aveidah with Simanim. However, the Rama stipulates that this is only the case if it is found in a place of Talmidei Chachamim, such as a Yeshiva. Otherwise he is not obligated to return it²⁴.

If nobody comes to claim the item after the announcement period has elapsed; if the object is one that can be easily replaced (e.g. a common Sefer, a pen etc.), one may evaluate the object²⁵, and record its value and Simanim in a safe place. One may then use the Aveidah for himself or sell it. In the event that the owner comes, the finder will reimburse him for the value of the Aveidah. If the object is one that cannot be replaced for sentimental reasons, or due to its scarcity, the finder is required to store it in his house עד שיבוא אליהו. He must care for it that it does not get damaged, like a regular Shomer²⁶.

III. So far we have discussed Hashovas Aveidah in the form of returning a lost object to its owner. However, this Mitzva has several other ways that it can be performed. If a person is lost and requires directions, there is a Mitzva of Hashovas Aveidah to direct him on the proper road. This is considered Aveidas Gufo²⁷. If a person sees another person not acting in the proper way, there is a Mitzva to help him correct his ways, and is considered Hashovas Aveidah of Aveidas Nafsho²⁸. These are of course aside from the specific Mitzvos of הוכח תוכיח, חסד, and תעמוד על דם רעך.

Another form of Hashovas Aveidah is to prevent another person from loss. For example, if one sees a fire burning in his neighbor's house, he is required to call the fire department. The same would apply if one knows that an employee is cheating his company, that one must inform the employer, or if one witnesses a hit-and-run accident, recording the license plate number of the offender is a Mitzva of Hashovas Aveidah²⁹.

IV. The Ben Ish Chai (פי כי תבוא) writes, that the very concept of Teshuvah – that which Hashem accepts us back after going astray, is in itself a form of Hashovas Aveidah by Hakadosh Baruch Hu. Just as someone who helps another go in the right direction is accomplishing Hashovas Aveidah, in the same way Hashem helps us return to the correct path. If in this Zman of Tshuvah, we sincerely try to strengthen our meticulousness in this Mitzva, Hashem will certainly perform his Hashava with all of us. השיבנו ה' אליך ונשובה.

Good Shabbos.

מאיר הלוי הלמן
פעיה"ק תובב"א

²⁰תשובות והנהגות ח"ג ס' תס"ד

²¹סנהדרין ע"ג

²²ס' השבת אבידה כהלכה בשם הגרי"ש אלישיב שליט"א דהפסד זמן נחשב להפסד ממון לענין זה

²³תשובות והנהגות ח"ג ס' תס"ג

²⁴רס"ב ס' כ"א

²⁵אם ידוע ערכו ישום בעצמו וא"ל ישום לפני ג' היודעים בדבר, אג"מ חו"מ ח"ב ס' מ"ה

²⁶ופטור מגניבה ואבידה. שו"ע רס"ז ס' ט"ו וט"ז וכו' ובסמ"ע סק"ל ע"ש. וע' שו"ת חת"ס חו"מ ס' קכ"ב וערוה"ש ס' י"ד

²⁷ב"ק פ"א

²⁸מנ"ח מצוה רל"ט ס"ד בק"ו מאבידת גופו, וכ"כ המהרשד"ם יו"ד ס' ר"ד

²⁹דכל זה נכלל במניעת נזק ע' שו"ע רנ"ט ס' ט' ובערוה"ש דגם יש איסור ד"לא תוכל להתעלם"