

גמרא

אלו מצילות



Name _____

Grade Five Boys

Rabbi Rodal



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INTRODUCTION

If a Jew finds something that another Jew obviously lost, he has a מצוה to return that item to its rightful owner. This מצוה is called השבת אבידה.

We learn this from the תורה. At the beginning of (פרק כ"ב) פרשת פי תצא, the תורה tells us:

⌘ You shall not see the ox of your brother or his sheep or goat cast off, and hide yourself from them; you shall surely return them to your brother. ⌘ If your brother is not near you and you do not know him, then gather it inside your house, and it shall remain with you until your brother inquires after it, and you return it to him. ⌘ So shall you do for his donkey, so shall you do for his garment, so shall you do for any lost article of your brother that may become lost from him and you find it; you shall not hide yourself.

⌘ לֹא־תִרְאֶה אֶת־שׁוֹר אָחִיךָ
אוֹ אֶת־שֵׂיוֹ נִדְחִים
וְהִתְעַלְמַתָּ מֵהֶם הַשֶּׁבַע
תָּשִׁיבֵם לְאָחִיךָ: ⌘ וְאִם־לֹא
קָרֹב אָחִיךָ אֲלֶיךָ וְלֹא
יָדַעְתָּ וְנִאֲסַפְתָּו אֶל־תּוֹךְ
בֵּיתְךָ וְהָיָה עִמָּךְ עַד דְּרֹשׁ
אָחִיךָ אֹתוֹ וְהִשְׁבִּתּוֹ לוֹ: ⌘ וְכֵן
תַּעֲשֶׂה לְחִמְרוֹ וְכֵן תַּעֲשֶׂה
לְשִׂמְלֹתוֹ וְכֵן תַּעֲשֶׂה לְכָל
אֲבֹדֹת אָחִיךָ אֲשֶׁר־תֵּאֱבֹד
מִמֶּנּוּ וּמִצֵּאתָהּ לֹא תוֹכֵל
לְהִתְעַלֵּם:

So even if you don't know who the owner is, you must hold onto the item you found until it is returned. You must also make sure that you are giving it to the real owner.

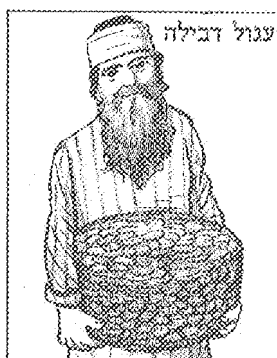
How do you know if the person claiming the item is the real owner or not? If it is really his, he will be able to describe the item (without seeing it) accurately. But in order to prove it is really his, he must describe something unusual or unique about this item. This is called a סימן. Our פרק will discuss these הלכות in detail.

Although you may always hope to find the owner and return what he lost, you only **HAVE TO** do so if the owner is still expecting or hoping to get his item back. If we know (or can reasonably assume) that the owner has given up hope of getting it back, the item becomes הַפְּקָר (ownerless), and anyone who finds it may keep it.

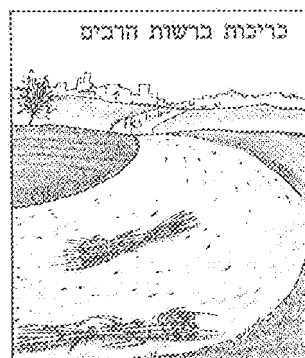
שיעור א'
דף כ"א

Our משנה first tells us that there are some items that, when found, may be kept. There are other items that, when found, may NOT be kept, but must rather be “announced” (and held until the owner is found).

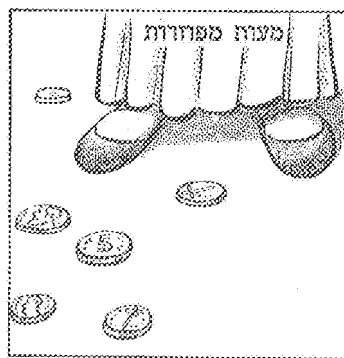
The משנה now gives us ten examples of items that may be kept if found in public property.



round cakes of
pressed figs



small bundles in
a public place



scattered money



scattered fruit

The משנה tells us a rule:

These finds belong to him (There are some finds which may be kept)

אלו מציאות שלו

and these finds he must announce. (Some finds may not be kept)

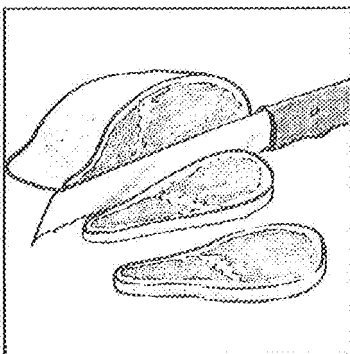
ואלו חייב להכריז

The משנה now gives us examples of the type of items which, when found, may be kept by the finder:

These finds belong to him:	אלו מציאות שלו
if he found scattered fruit,	מצא פרות מפזרין
scattered money,	מעות מפזרות
small bundles in a public place,	פריכות ברשות הרבים
and round cakes of pressed figs,	ועגולי דבלה

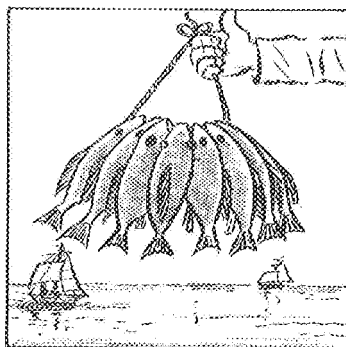
שיעור ב'
דף כ"א •

וחתיכות של בשר



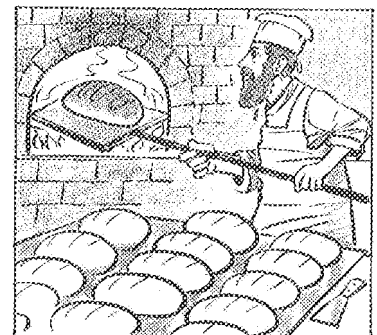
pieces of meat

מחרוזות של דגים



strings of fish

כפרות של נחתום



loaves of a baker

ולשונות של ארגמן



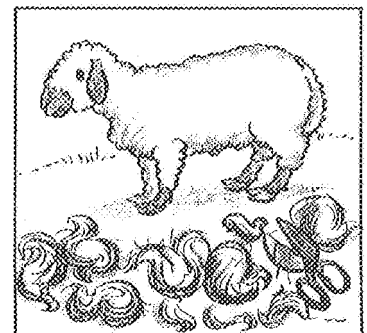
tongue shaped strips of purple wool

ואניצי פשתן



bundles of flax

וגזי צמר הלקוחין ממדינתן



cuttings of wool brought from their country

<u>loaves of a baker,</u>	כִּפּוּרֹת שֶׁל נַחְתּוּם
<u>strings of fish,</u>	מַחְרוּזוֹת שֶׁל דָּגִים
<u>and pieces of meat,</u>	וַחֲתִיכוֹת שֶׁל בָּשָׂר
<u>and cuttings of raw wool</u>	וְגִזֵי צֶמֶר
which are <u>brought from their country,</u>	הַלְקוּחִין מִמְדִּינָתָן
<u>and bundles of flax,</u>	וְאַנְיָצֵי פִּשְׁתָּן
<u>and tongue shaped strips of purple dyed wool,</u>	וּלְשׁוֹנוֹת שֶׁל אֲרָגְמָן
<u>these all belong to him</u> (the finder);	הֵרִי אֵלָיו שְׁלוֹ
these are the <u>words of R' Meir.</u>	דְּבַרֵי רַבִּי מֵאִיר

The reason why the items listed above may be kept by the one who found them is obvious. Since these things are standard and all look the same, there is no way to identify them as his, and the owner therefore gives up hope of ever getting them back.

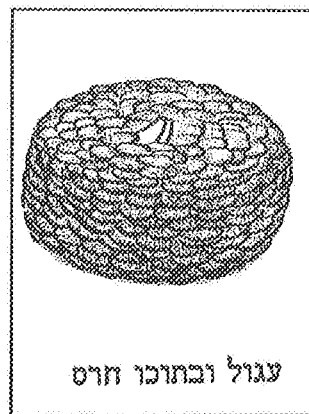
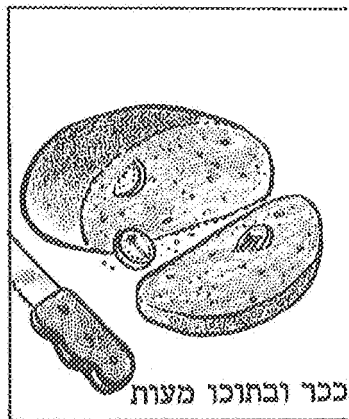
שיעור ג'
דף כ"א •

The משנה now explains that should any of these standard items be different or unusual in any way, the owner won't give up hope, and the finder may therefore NOT keep it.

<u>R' Yehuda says:</u>	רַבִּי יְהוּדָה אֹמֵר
<u>Anything that has something unusual in it</u>	כֹּל שֶׁיֵּשׁ בּוֹ שְׁנוּי
<u>he must announce.</u>	חַיֵּב לְהַכְרִיז

The משנה now gives two examples of this.

How is this?	כִּיצַד
If he <u>found a round cake</u> of pressed figs	מִצָּא עֵגוּל
<u>with pottery inside it,</u>	וּבְתוֹכוֹ חֶרֶס
or <u>a loaf of bread</u>	כֶּכֶר
<u>with money inside it.</u>	וּבְתוֹכוֹ מַעוֹת



The משנה now gives a general rule.

R' Shimon ben Elazar says:	רַבִּי שִׁמְעוֹן בֶּן אֶלְעָזָר אוֹמֵר
<u>All new things</u> which are found	כָּל כְּלֵי אֲנִפּוּרִיאַ
<u>he doesn't have to announce</u> (he may keep it).	אֵינוֹ חַיֵּב לְהַכְרִיז



שיעור ד'

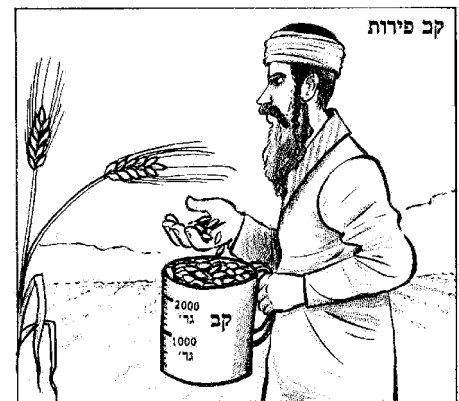
דף כ"א •

The גמרא will now discuss the first example brought in the משנה.

The משנה said that if someone finds "scattered fruit" (meaning grains), he may keep it. The גמרא wants to know how this din applies. Any amount of grain? Spread over any size area?

R' Yitzchak answers that when the משנה said "scattered fruit", it meant an amount measuring one kav which was scattered over an area measuring 4 amos by 4 amos. If the kav would be spread over a smaller area, or if there was more than one kav spread over such an area, the finder would have to announce that he found these grains.

a kav is a measurement
(like saying a cup)



an amount measuring
one kav spread over
an area measuring 4
amos by 4 amos

The Mishna Says:

זאגט די משנה:

if he found scattered fruit he may keep it.

מָצָא פְּרוֹת מְפֹזְרִין

The Gemara asks:

פרעגט די גמרא:

How much fruit scattered over how big an area is considered "scattered"?

וְכַמָּה?

The Gemara answers:

ענטפערט די גמרא:

R' Yitzchak said,

אָמַר רַבִּי יִצְחָק

One kav of grain spread over an area measuring 4 amos by 4 amos.

קַב בְּאַרְבַּע אַמּוֹת

The גמרא now questions what R' Yitzchak means.

If the משנה is talking about grains that fell accidentally, why should the amount of grain or the size of the area it's spread over make a difference? If it is obvious that the owner lost it by accident, the finder should be allowed to keep it no matter how much there is or how small of an area it's spread over. If it seems that the owner left it there on purpose (intending to return and collect it), the finder shouldn't be allowed to keep it no matter how little there is or how big of an area it's spread over. Why does R' Yitzchak specify an amount?

If it seems that the owner left it there on purpose, the finder shouldn't be allowed to keep it no matter what.



If it is obvious that the owner lost it by accident, the finder should be allowed to keep it no matter what.

The Gemara asks:

פרעגט די גמרא:

How is this (in what circumstances does this apply)?	היכי דמי
If the grain is lying in a way that makes it obvious that it fell there accidentally,	אי דרדך נפילה
then if he finds even more than a kav in 4 amos, he should also be allowed to keep it;	אפילו טובא נמי
If the grain is lying in a way that makes it obvious that it was put there on purpose,	ואי דרדך הינוח
then if he finds even less than this (a kav in 4 amos),	אפילו בציר מהכי
he should also not be allowed to keep it?	נמי לא

Test yourself

גב' מצא פירות מפורזין וכמה א"ר יצחק קב
בארבע אמות הזכי דמי אי דרדך נפילה
'אפילו טובא נמי ואי דרדך הינוח 'אפילו
בציר מהכי נמי לא

המטנא's statement

Question no. 1

Answer no. 1

Question no. 2



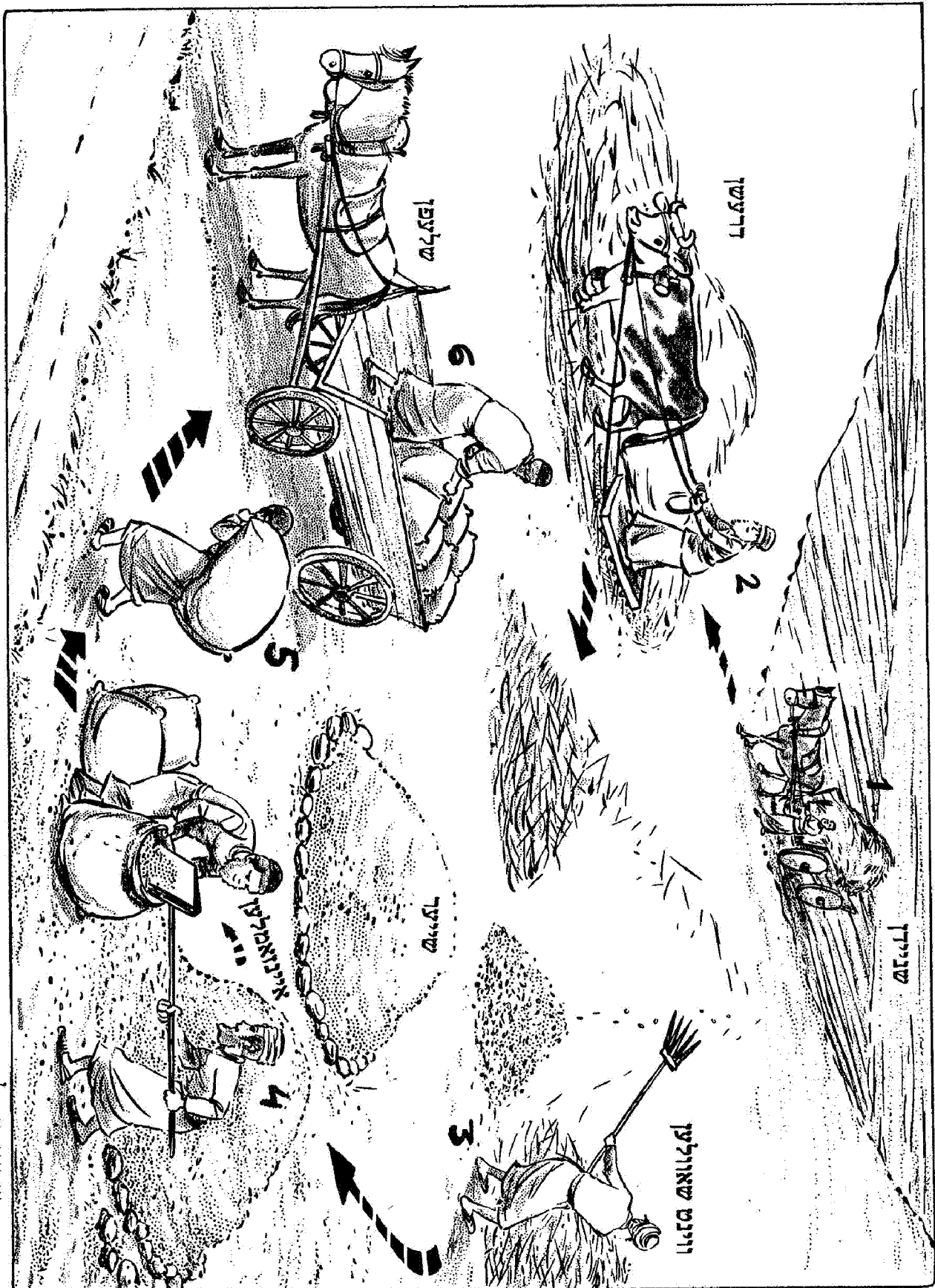
The גמרא will now answer the question posed above by explaining that when R' Yitzchak specified an amount, he was referring to a particular case.

(If someone finds scattered fruits, and it is obvious that the owner doesn't expect to get them back, of course that person may keep the fruits, no matter how much or little he found. Likewise, if it seems the owner intends to return for them, the finder may NOT keep them, no matter how much or little he found.)

When the משנה said that someone who finds scattered fruits may keep them, it wasn't talking about where the fruits were DROPPED. The משנה was talking about a case where the owner had LEFT the scattered fruits in a specific place, and doesn't intend on returning for them.

What kind of place are we talking about?

The משנה is talking about grain left on the threshing floor. Upon finishing threshing and winnowing his wheat, the owner collected his grain and left. The problem is that there was still grain left on the floor (see no. 4 on the next page). A second person now comes to the threshing floor, wanting to winnow his own wheat. Can he mix his grain with the grain left behind from the first guy, or must he wait for the first guy to come back and take his grain? R' Yitzchak explains that if there was a kav of grain spread over an area measuring 4 amos by 4 amos, the owner is mafkir his grain, and the second guy may take it for himself. If there is more than a kav in that area, or the kav is spread over an area less than 4 amos by 4 amos, the owner is not mafkir his grain, and the second guy may not keep it.



The Gemara answers:

ענטפערט די גמרא:

Rav Ukva bar Chama said, (explaining R' Yitzchak's rule)	אָמַר רַב עֻקְבָּא בַר חָמָא
<u>we are dealing with the grain left behind at the time of the clearing of the threshing floor;</u>	בְּמִכְנָשְׁתָּא דְּבֵי דָרִי עֶסְקִינָן
if there is a <u>kav</u> of grain kernels spread over an area measuring <u>4 amos</u> ,	קַב בְּאַרְבַּע אַמּוֹת
<u>that the effort</u> needed to collect it all <u>is great</u> ,	דְּנִפִישׁ טְרַחֲיִיהוּ
<u>a person will not bother</u> ,	לֹא טָרַח אִינִישׁ
<u>and he will not return</u>	וְלֹא הִדֵּר אֶתִּי
<u>and he won't take them</u> (the remaining kernels);	וְשָׁקִיל לְהוּ
<u>he makes them hefker</u> (ownerless).	אַפְקֹרֵי מִפְּקָר לְהוּ
However, if the kav of grain is spread over an area <u>less than this</u> ,	בְּצִיר מִהֶכִּי
<u>he will bother</u> ,	טָרַח
<u>and he will return</u>	וְהִדֵּר אֶתִּי
<u>and he will take them</u> ,	וְשָׁקִיל לְהוּ
<u>and he won't make them hefker</u> .	וְלֹא מִפְּקָר לְהוּ

If the kav of grain is spread over an area measuring 4 amos by 4 amos, it is not worth the effort needed to collect it all, and the owner will therefore be maffkir (make hefker) his grain. This means that it is now ownerless, and anyone who finds it may keep it.



נפיש טרחייהו

Test yourself

א"ר עוקבא בר חמא
 ל'במכנשתא דבי דרי עסקינן קב בארבע
 אמות דנפיש טרחייתו לא מרח איניש ולא
 הדר אתי ושקיל להו אפקורי מפקר להו
 בציר מהבי פרח והדר אתי ושקיל להו ולא
 מפקר להו

1. Which words of the משנה is the גמרא discussing? _____
2. What does the משנה tell us about this? _____
3. According to the גמרא's explanation, what kind of case is the משנה describing?

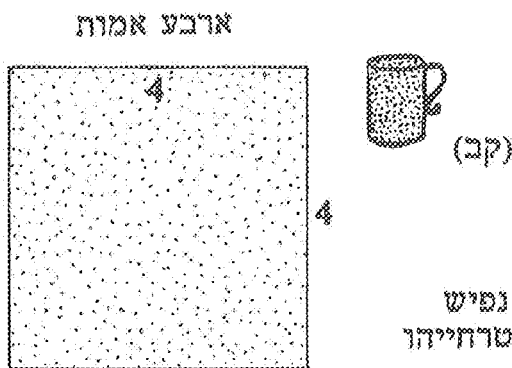
4. Why is the finder allowed to keep it? _____
5. Why would the owner be mafkir his things in this case? _____
6. What would the הלכה be if there was more than a kav in an area of 4 square
 amos? _____
7. What would the הלכה be if there was less than a kav in an area of 4 square
 amos? _____
8. What would the הלכה be if there was a kav in an area measuring less than 4
 square amos? _____
9. What would the הלכה be if there was a kav in an area measuring more than 4
 square amos? _____
10. What would the הלכה be if the grain was found scattered on the street, and why?

שיעור ו'

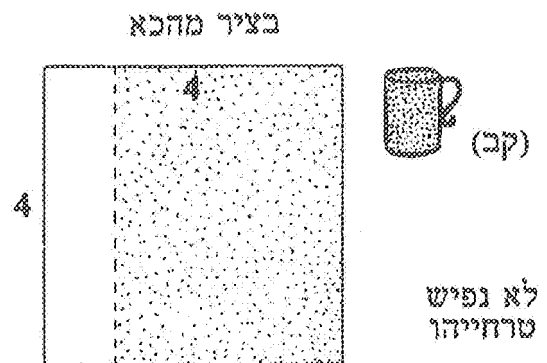
דף כ"א •

The גמרא explained that the תלמוד's ruling is for a case where the owner had left the scattered fruits in a specific place (the threshing floor), and doesn't intend on returning for them.

Although R' Yitzchak specified an amount, he didn't indicate why the owner wouldn't return for his grain. Is it because one kav's worth of grain isn't valuable enough to warrant returning for it, or is it because the owner feels it would be too much effort to collect grain spread over such a large area?



An area measuring 4 amos by 4 amos is not that small. To collect a kav of grain spread over such an area would take a lot of effort.



To collect a kav of grain spread over a smaller area would not take so much effort.

The גמרא will now ask what the halacha is in a similar case with different measurements / amounts.

The Gemara asks:

פרעגט די גמרא:

R' Yirmiyah asked,

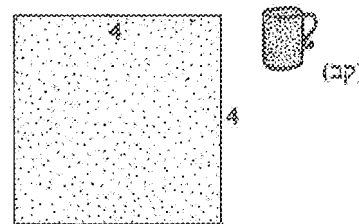
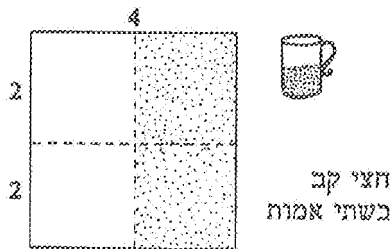
בעי רבי ירמיה

If someone finds half a kav spread over an area measuring two amos,

חצי קב בשתי אמות

what is the halacha?

מהו?



The Gemara explains the question:

a kav of grain kernels spread over an area measuring 4 amos,

קב בארבע אמות

what is the reason it belongs to the finder?

טעמא מאי

Is it because the effort needed to collect them is too great, and the owner therefore abandons them?

משום דנפיש טרחייהו

If so, then in the case of someone who finds half a kav spread over an area measuring two amos,

חצי קב בשתי אמות

since the effort needed to collect them is not that great,

כיין דלא נפיש טרחייהו

he (the owner) won't make them hefker.

לא מפקר להו

Or maybe the reason the owner abandons them is

או דלקמא

because they are not significant enough to make him want to return for them?

משום דלא חשיבי

If so, then in the case of someone who finds half a kav spread over an area measuring two amos,

וחצי קב בשתי אמות

since they are not significant enough to make him want to return for them

כיין דלא חשיבי

he (the owner) will make them hefker.

מפקר להו

Test yourself

מפקד להו בעי רבי ירמיה חצי קב בשתי
 אמות מהו קב בארבע אמות מעמא מאי
 משום הנפיש מרחייהו חצי קב בשתי אמות
 כיון דלא נפיש מרחייהו לא מפקד להו או
 דלמא משום דלא חשיבי* וחצי קב בשתי
 אמות כיון דלא חשיבי מפקד להו קביים

Measurements of
the case in the
Mishna

Measurements of
R' Yirmiyah's
question

Reason why the
finder should be
allowed to keep

Reason why the
finder shouldn't be
allowed to keep

How R' Yirmiyah's question
is similar to the Mishna's case

How R' Yirmiyah's question
is different to the Mishna's case

שיעור ז'

דף כ"א

The גמרא will now ask a similar question, changing only the measurements / amounts.

The Gemara asks:

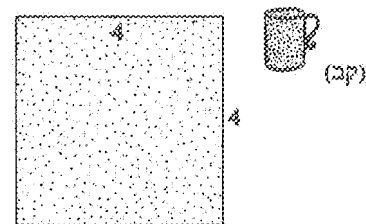
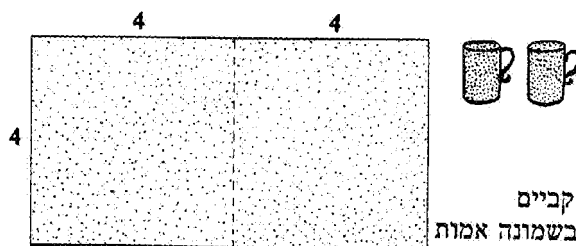
פרעגט די גמרא:

If someone finds two kavs spread over an area measuring eight amos,

קביים בשמונה אמות

what is the halacha?

מהו?



The Gemara explains the question:

a kav of grain kernels spread over an area measuring 4 amos,

קב בארבע אמות

what is the reason it belongs to the finder?

טעמא מאי

Is it because the effort needed to collect them is too great, and the owner therefore abandons them?

משום דנפיש טרחייהו

If so, then certainly,

וקל שכן

in the case of someone who finds two kavs spread over an area measuring eight amos,

קביים בשמונה אמות

since the effort needed to collect them is greater

כיון דנפישא טרחייהו טפי

he (the owner) will make them hefker.

מפקר להו

Or maybe the reason the owner abandons them is

או דלמא

because they are not significant enough to make him want to return for them?	משום דלא חשיבי
However, in the case of someone who finds two kavs spread over an area measuring eight amos,	וקביים בשמונה אמות
since they are significant enough to make him want to return for them	כיון דחשיבי
he (the owner) won't make them hefker.	לא מפקר להו

Test yourself

קביים
 בשמונה אמות מהו קב בארבע אמות
 מעמא מאי משום דנפיש טרחייהו וכ"ש
 קביים בשמונה אמות כיון דנפישא טרחייהו
 מפי מפקר להו או דלמא משום דלא חשיבי
 וקביים בשמונה אמות כיון דחשיבי לא
 מפקר להו

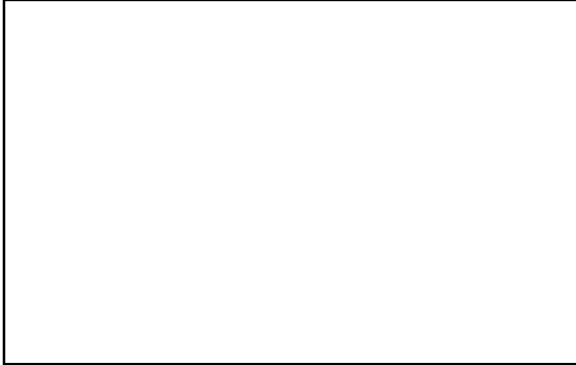
Measurements of the case in the Mishna

Measurements of R' Yirmiyah's question

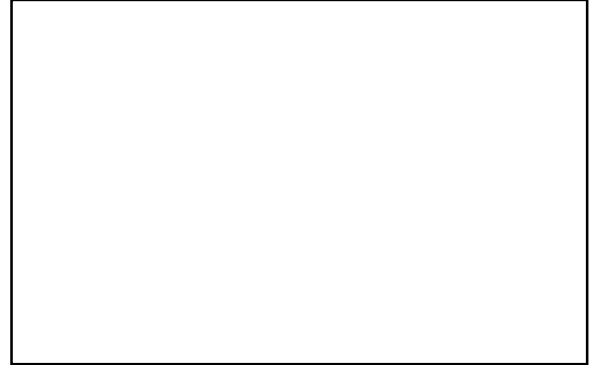
Reason why the finder should be allowed to keep

Reason why the finder shouldn't be allowed to keep

How R' Yirmiyah's question
is similar to the Mishna's case

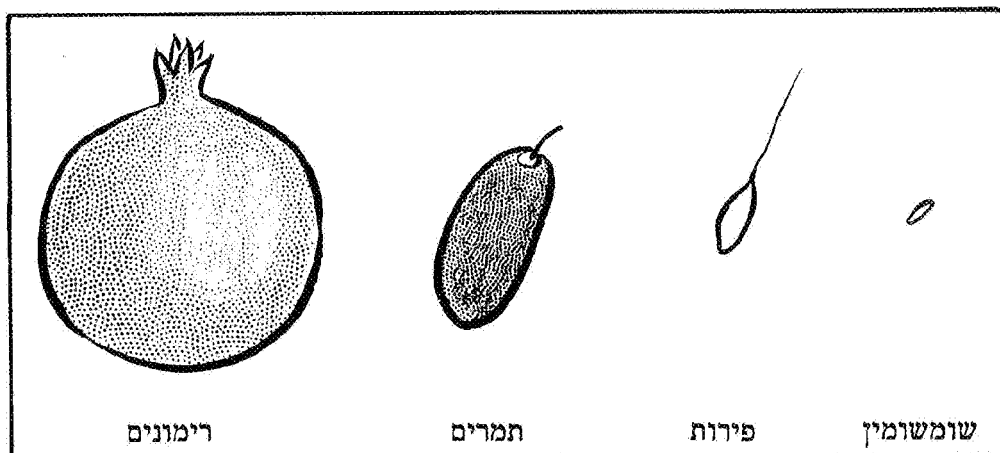


How R' Yirmiyah's question
is different to the Mishna's case



שיעור ח'
דף כ"א

The גמרא will now ask what the halacha is in a case similar to the Mishna's, but with different "fruit". Sesame seeds are smaller than kernels of grain. On the one hand, it is alot more effort to collect them; on the other hand, they are more valuable.



The Gemara asks:

פרעגט די גמרא:

If someone finds a kav of sesame seeds spread over
an area measuring four amos,

קב שומשמן בארבע
אמות

what is the halacha?

מהו?

The Gemara explains the question:

a kav of grain kernels spread over an area
measuring 4 amos,

קב בארבע אמות

what is the reason it belongs to the finder?

טעמא מאי

Is it because they are not significant enough to
make him want to return for them?

משום דלא חשיבי

If so, then in the case of sesame seeds,

ושומשמן

since they are more significant than grain,

כיון דחשיבי

he (the owner) won't make them hefker.

לא מפקר להו

Or maybe the reason the owner abandons them is

או דלמא

is because the effort needed to collect them is too
great, and the owner therefore abandons them?

משום דנפיש טרחיהו

If so, then certainly,

וכל שכן

in the case of sesame seeds, which are very small,

שומשמן

since the effort needed to collect them is greater

כיון דנפיש טרחיהו טפי

he (the owner) will make them hefker.

מפקר להו

Test yourself

קב שזמשמין בארבע אמות
 מהו קב בארבע אמות טעמא מאי משום דלא חשיבי ושזמשמין כיון
 דחשיבי לא מפקר להו או דלמא משום דנפיש מרחייהו וכ"ש שזמשמין
 כיון דנפיש מרחייהו מפי מפקר להו

Measurements of
the case in the
Mishna

Measurements of
R' Yirmiyah's
question

Reason why the
finder should be
allowed to keep

Reason why the
finder shouldn't be
allowed to keep

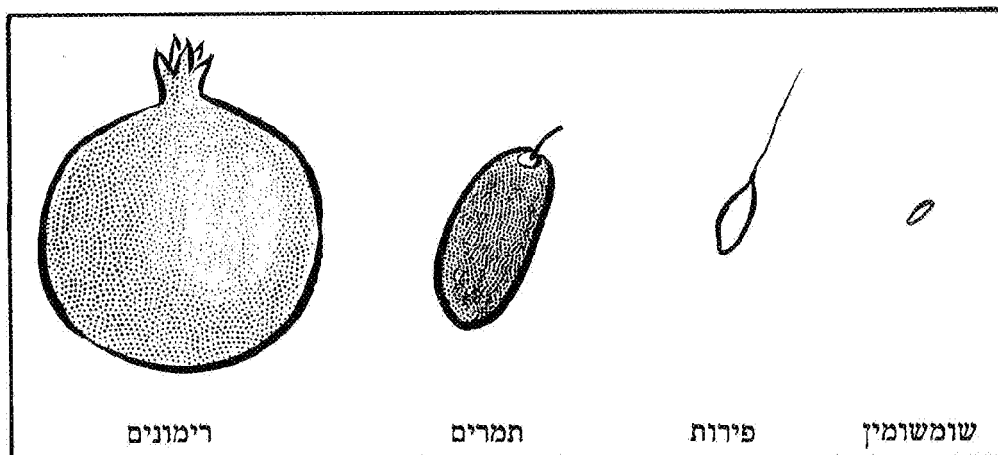
How R' Yirmiyah's question
is similar to the Mishna's case

How R' Yirmiyah's question
is different to the Mishna's case

שיעור ט'

דף כ"א

The גמרא will now ask what the halacha is in a case similar to the Mishna's, but with different fruits. Dates and pomegranites are much larger than kernels of grain. On the one hand, it takes very little effort to collect them; on the other hand, being that there are so few in a kav, it is not worth that much.



The Gemara asks:

פרעגט די גמרא:

If someone finds a kav of dates spread over an area measuring four amos,

קב תמרי בארבע אמות

If someone finds a kav of pomegranites spread over an area measuring four amos,

קב רמוני בארבע אמות

what is the halacha?

מהו?

The Gemara explains the question:

a kav of grain kernels spread <u>over</u> an area measuring <u>4 amos</u> ,	קב בארבע אמות
<u>what is the reason</u> it belongs to the finder?	טעמא מאי
Is it <u>because they are not significant</u> enough to make him want to return for them?	משום דלא חשיבי
If so, a kav of <u>dates</u> spread <u>over</u> an area measuring <u>four amos</u> ,	קב תמרי בארבע אמות
or a kav of <u>pomegranites</u> spread <u>over</u> an area measuring <u>four amos</u> ,	קב רמוני בארבע אמות
since they are not <u>significant</u> enough to make him want to return for them,	כינן דלא חשיבי
<u>he</u> (the owner) <u>will make them hefker</u> .	מפקר להו
<u>Or maybe</u> the reason the owner abandons them is	או דלמא
is <u>because the effort</u> needed to collect them <u>is too great</u> , and the owner therefore abandons them?	משום דנפישא טרחיהו
However, a kav of <u>dates</u> spread <u>over</u> an area measuring <u>four amos</u> ,	וקב תמרי בארבע אמות
or a kav of <u>pomegranites</u> spread <u>over</u> an area measuring <u>four amos</u> ,	וקב רמוני בארבע אמות
since the <u>effort</u> needed to collect them <u>is not too great</u>	כינן דלא נפיש טרחיהו
<u>he</u> (the owner) <u>won't make them hefker</u> .	לא מפקר להו
<u>What is the halacha</u> in the four cases we mentioned?	מאי

The Gemara answers:

ענטפערט די גמרא:

Let it stand unanswered until Moshiach comes.

תיקו

The word תיקו stands for "תשבי יתרוץ קושיות ואבעיות" which means, "Eliyahu (called Tishbi because he comes from Toshav) will answer all the difficulties and questions" when Moshiach comes.

Test yourself

קב תמרי בארבע אמות קב רמוני
 בארבע אמות מהו קב בארבע אמות טעמא מאי משום דלא חשיבי קב
 תמרי בארבע אמות קב רמוני בארבע אמות נמי כיון דלא חשיבי מפקד
 להו או דלמא משום דנפישא טרחייהו וקב תמרי בארבע אמות וקב רמוני
 בארבע אמות כיון דלא נפיש טרחייהו לא מפקד להו מאי יתיקי:

Measurements of
the case in the
Mishna

Measurements of
R' Yirmiyah's
question

Reason why the
finder should be
allowed to keep

Reason why the
finder shouldn't be
allowed to keep

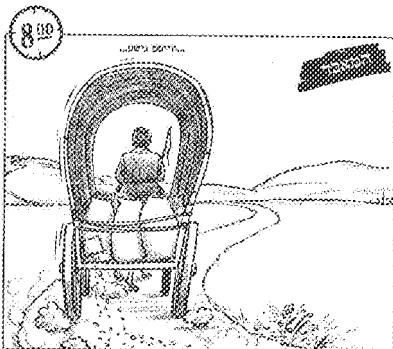
How R' Yirmiyah's question
is similar to the Mishna's case

How R' Yirmiyah's question
is different to the Mishna's case

שיעור י'
 דף כ"א •

We've learned in the גמרא that someone who finds a lost object is allowed to keep it **ONLY** if the owner has given up hope of getting it back. This is called יאוש. If we assume that the owner still expects to get his object back, the finder is **NOT** allowed to keep it.

The גמרא will now discuss a case where the owner would definitely give up hope of getting his object back as soon as he realizes he lost it, but it was found before he realized he lost it. Can the finder keep the object in such a case?



The owner doesn't realize that he lost something



Someone finds it before the owner is aware that he lost it.



The owner realizes he lost his object, and not expecting to get it back, he gives up hope.

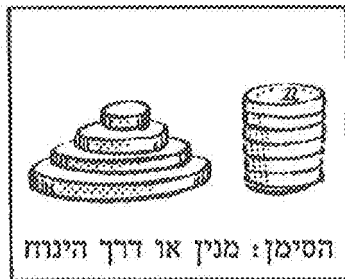
It was said:	איתמר
יאוש (giving up hope) <u>without</u> the owner <u>knowing</u> about it:	יאוש שלא מדעת
אביי says,	אביי אמר
"It is <u>not</u> considered יאוש"	לא הוי יאוש
רבא says,	ורבא אמר
"It is considered יאוש"	הוי יאוש

The גמרא now tells us of a case where both, אביי and רבא, would agree that יאוש ש'לא (Someone found the object before the owner realized that he lost it. Even though he eventually gave up hope of getting it back, it is still not considered יאוש, and the finder may NOT keep it.)

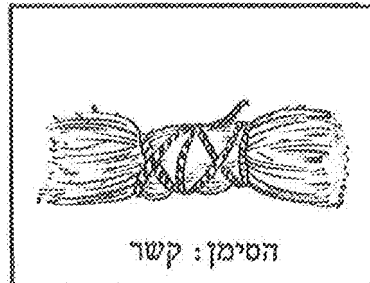
<u>With something that has a סימן (identifying feature),</u>	בְּדָבָר שֶׁישׁ בוֹ סִימָן
<u>the whole world</u>	כּוֹלֵי עֲלָמָא
<u>doesn't argue</u>	לֹא פְּלִיגִי
<u>that it is not considered יאוש (the owner hasn't given up hope).</u>	דְּלֹא הָוֵי יֵאוּשׁ
<u>And even though</u>	וְאַף עַל גַּב
<u>we hear</u>	דְּשִׁמְעִינִיה
<u>that in the end he gave up hope,</u>	דְּמִיֵּאֵשׁ לְסוּף
<u>it is still not considered יאוש,</u>	לֹא הָוֵי יֵאוּשׁ
<u>because when it came into his (the finder's) hand,</u>	דְּכִי אֶתְנָא לְיָדֵיה
<u>it was in a forbidden state</u>	בְּאִיסוּרָא הוּא
<u>that it came into his hand,</u>	דְּאֶתְנָא לְיָדֵיה
<u>for when he (the owner) will know</u>	דְּלְכִי יָדַע
<u>that it has fallen from him,</u>	דְּנָפַל מִיָּנִיה
<u>he will not give up hope of getting it back.</u>	לֹא מִיֵּאֵשׁ
Because <u>he says</u> to himself,	מִימַר אָמַר
<u>I have a סימן in it to identify it;</u>	סִימָנָא אֵית לִי בְּגוּיָה
<u>I will give the סימן</u>	יְהַבְנָא סִימָנָא
<u>and take it back from the finder.</u>	וְשִׁקְלֵנָא לִיה



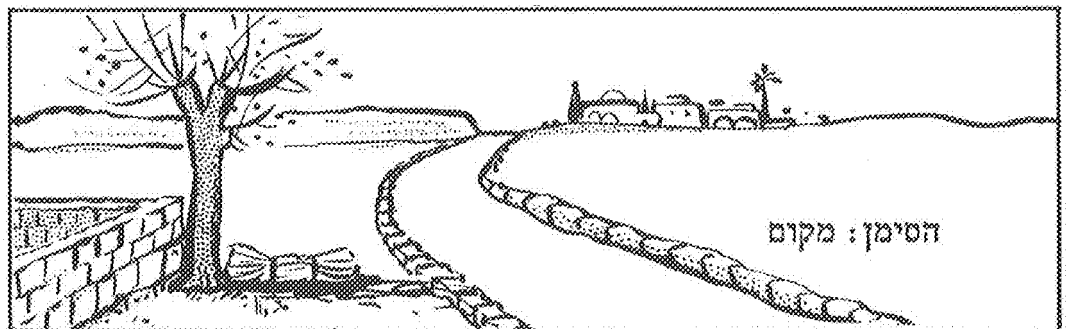
Since the object that was lost has a סימן, the owner expects to get it back, and therefore both, אבני and רבא, agree that יאוש שלא מדעת, לא הוי יאוש, and the finder may NOT keep the object.



The סימן could be how many there were or the way it was put or left there.



As everyone ties knots differently, the סימן could be the way it was tied.



If it was in a specific place, the סימן could be the place where he left it.

Test yourself

יאוש שלא מדעת אביו אמר לא הוי יאוש
 ורבא אמר הוי יאוש בדבר שיש בו סימן
 כלי עלמא לא פליגי דלא הוי יאוש ואף
 על גב דשמעניה דמיאש (א) לסוף לא הוי
 יאוש דכיון אתא לדידה באיסורא הוא דאיתא
 לדידה דלכיון דידע דנפול מניה לא מיאש
 מצד אמר סימנא אית לי בגויה יהבנא
 סימנא ושקילנא ליה

1. What does יאוש mean? _____
2. What does יאוש שלא מדעת mean? Give an example of such a case. _____

3. According to אבוי, what is the הלכה in such a case? _____
4. According to רבא, what is the הלכה in such a case? _____
5. In which case do אבוי and רבא both agree that לא הוי יאוש? _____

6. Why? _____

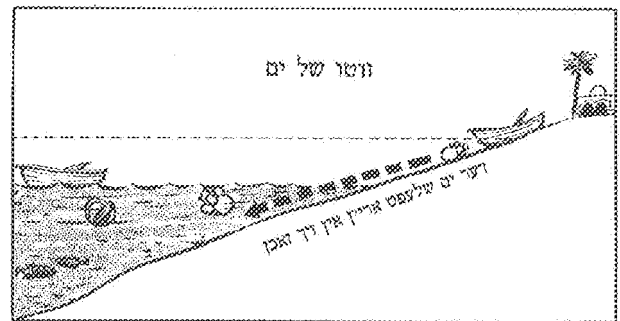
7. Give 4 examples of a סימן. _____

שיעור י"א
דף כ"א:

The גמרא now tells us of a case where both, רבא and אבבי, would agree that לאו שפלא הוא. (Someone found the object before the owner realized that he lost it. Even though the owner hasn't given up hope of getting it back yet, it is still considered לאו, and the finder MAY keep it.)



The object gets swallowed by the flooding of a river and is then washed up on shore



The object gets swept away by the tide of the sea

If the object was swept away <u>by the tides of the sea,</u>	בזוטו של ים
or <u>by the flooding of a river</u> and was later washed up on shore and was found,	ובשולחיתו של גהר
then <u>even though</u>	אף על גב
it has a סימן,	דאית ביה סימן
The <u>תורה permits</u> the finder to keep it,	רחמנא שרייה
as <u>we will say further on</u> in the Gemara.	כדבעינן למימר לקמן

Since the Torah considers an object in these circumstances to be הפקר (ownerless), even אבבי agrees that the finder may keep it.

Now that the גמרא described cases where אבוי and רבא agree, the גמרא will now describe the case where they argue.

<u>Where they argue is</u>	כי פליגי
<u>With something that doesn't have a סימן (identifying feature),</u>	בדבר שאין בו סימן
<u>אבוי says</u>	אבוי אמר
<u>it is not considered יאוש (the owner hasn't given up hope).</u>	לא הוי יאוש
<u>because he (the owner) doesn't know that it has fallen from him (and therefore hasn't yet given up hope).</u>	דקא לא ידע דנפל מיניה
<u>רבא says</u>	רבא אמר
<u>it is considered יאוש (the owner has given up hope)</u>	הוי יאוש
<u>for when he (the owner) will know</u>	דלכי ידע
<u>that it has fallen from him,</u>	דנפל מיניה
<u>he will give up hope of getting it back.</u>	מיאש
<u>He says to himself,</u>	מימר אמר
<u>I don't have a סימן in it to identify it;</u>	סימנא לית לי בגויה
<u>so it is therefore considered as if he has given up hope from now (when he lost it).</u>	מהשתא הוא דמיאש

אבוי and רבא argue in a case where the lost object doesn't have a סימן. אבוי says that since it was found before he realized he lost it, the owner hasn't had a chance to be מיאש, and therefore the finder may not keep it. רבא says that since there is no way of identifying his object, the owner would definitely give up hope of getting it back as soon as he realizes he lost it, and therefore we can consider it as if he was already מיאש.

Test yourself

בוטחו של ים וכשלו ליתו
 של גזר אע"ג דאית ביה סימן דחבנא שרייה
 כדבעינן למימר לקמן כי פליגי בדברי שאן
 בו סימן אב"י אמר "לא הוי יאוש דהא לא
 ידע דנפל מיניה רבא אמר הוי יאוש דלכי
 ידע דנפל מיניה מיאש מימר אמר סימנא
 לית לי בגויה מהשתא הוא דמיאש

1. In which case do אב"י and רבא both agree that הוי יאוש? _____

2. Why? _____

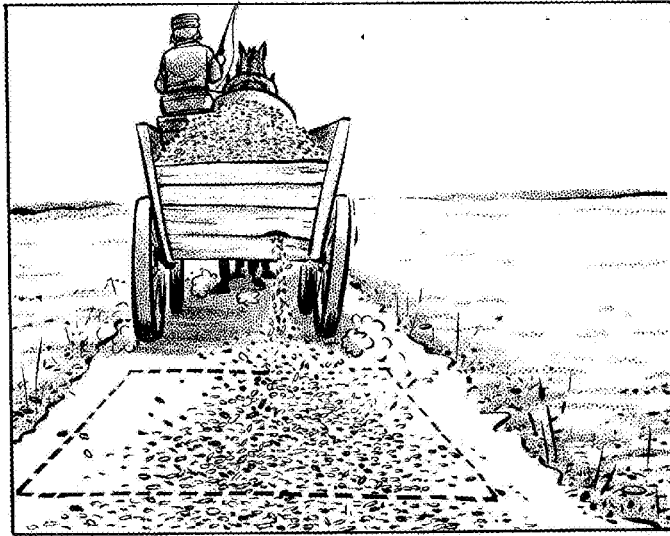
3. In which case do אב"י and רבא argue about הוי יאוש? _____

4. What does each say, and why? _____

שיעור י"ב

דף כ"א:

The גמרא will now quote a משנה and try to use it as a proof that רבא's opinion is the correct one.



The owner doesn't realize that he lost "scattered fruit".

The Gemara asks:

פרעגט די גמרא:

Come, hear a proof for רבא's opinion:

תא שמע:

We learned in the משנה that scattered fruit belongs to the finder;

פירות מפורזין

But he (the owner) doesn't necessarily know that it fell from him?

הא לא ידע דנפל מיניה

We learned in the משנה that if someone finds scattered fruits, he may keep them (even though it is possible that when the person finds the fruits, the owner doesn't know yet that he lost them). This משנה seems to "agree" with רבא who says, "יאוש שלא" "יאוש שלא מדעת, לא הוי, לא הוי אביי" who says, "יאוש שלא מדעת, הוי יאוש".

“יאוש” .

The Gemara answers:

ענטפערט די גמרא:

But רב עוקבא בר חמא has already said,

הא אמר רב עוקבא
בר חמא

“Here, in the משנה’s case of scattered fruit,

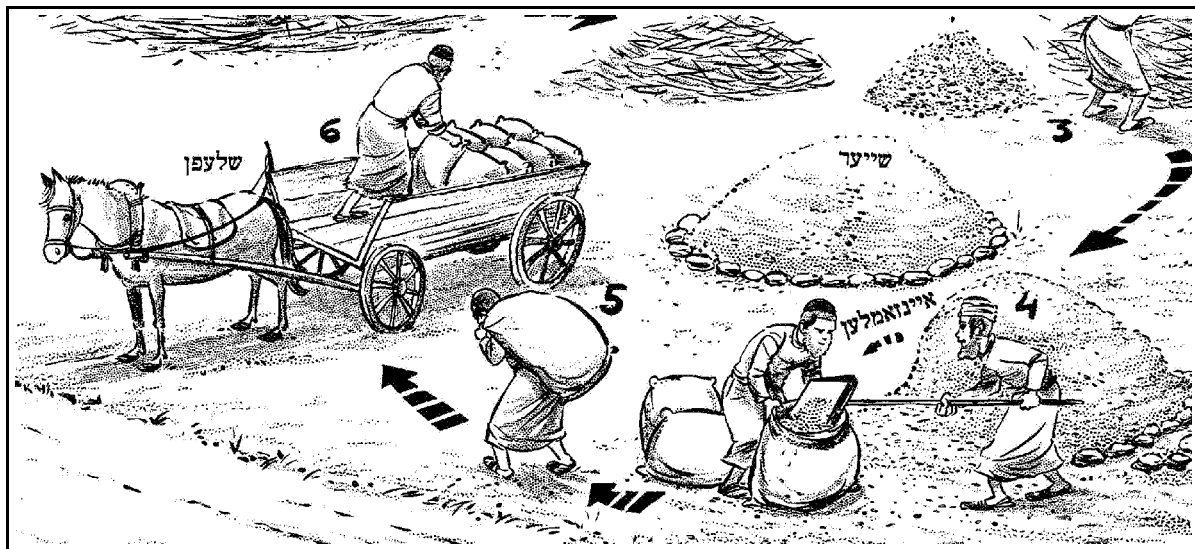
הכא

we are dealing with the grains left behind at the clearing of the threshing floor,”

במכונשתא דבידרי
עסקינן

which is a loss that the owner knows about.

דאבידה מדעת היא



The גמרא answers that רב עוקבא בר חמא said that the משנה is talking about grain left on the threshing floor. If so, the owner obviously knows about his “loss” and it is not a case of יאוש שלא מדעת. Accordingly, we can’t use this משנה as a proof for רבא’s opinion.

The גמרא will now quote another הלכה from the משנה and try to use it as a proof that רבא’s opinion is the correct one.

The Gemara asks:

פרעגט די גמרא:

Come, hear a proof for רבא's opinion:

תא שמע:

We learned in the משנה that scattered money

מעות מפוזרות

belongs to him (the finder).

הרי אלו שלו

Why is this the הלכה?

אמאי

But he (the owner) doesn't necessarily know that it fell from him?

הא לא ידע דנפל מיניה

We learned in the משנה that if someone finds scattered money, he may keep it (even though it is possible that when the person finds the money, the owner doesn't know yet that he lost it). This משנה seems to "agree" with רבא who says, הוי מדעת, הוי "אויש שלא מדעת, לא הוי אויש". The משנה seems to challenge אבוי who says, "אויש שלא מדעת, לא הוי אויש".

The Gemara answers:

ענטפערט די גמרא:

There, also, the משנה can be explained

התם נמי

like רבי יצחק

כדברי יצחק

who said (in connection with a ברייתא quoted later)

דאמר

" A person usually touches his purse

אדם עשוי למשמש בכיסו

every few moments."

בכל שעה ושעה

Here also (in our משנה's case),

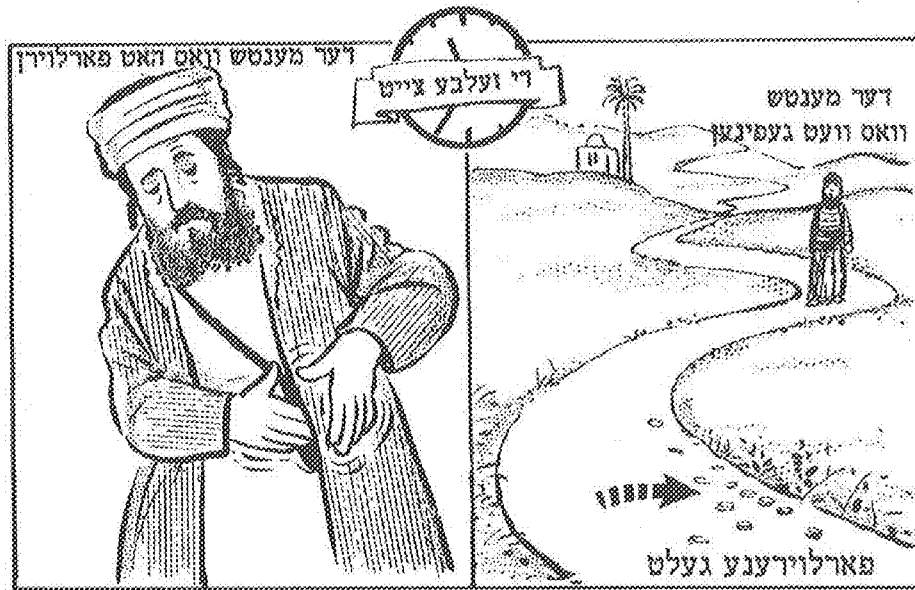
הכא נמי

A person usually touches his purse

אדם עשוי למשמש בכיסו

every few moments.

בכל שעה ושעה



A Person usually touches / checks his purse / wallet every few moments.

The גמרא answers that the משנה can be explained according to רבי יצחק who (commenting on a ברייתא brought later) says that a person usually checks his wallet quite often to make sure that his money is safe and still there. If so, the owner will realize his loss almost immediately and it is therefore not a case of גאוש שלא מדעת. Accordingly, we can't use this משנה as a proof for רבא's opinion.

Test yourself

תא שמע פירות
 מפורזין הא לא ידע דנפל מיניה הא אמר
 רב עוקבא בר חמא הכא במבגשחא (ג) דביורי
 עסקנן דאבדה מרעת היא ח"ש מעות
 מפורזות דרי אלו שלו אמאי הא לא ידע
 דנפל מיניה החם נמי כדרכי *יצחק דאמר
 'אדם עשוי למשמש בביטו בכל שעה
 ושעה יחכא נמי אדם עשוי למשמש בביטו
 בכל שעה ושעה

1. Whose opinion does the גמרא think the case of מפורזין proves? _____
2. Explain the "proof" from the case of מפורזין. _____

3. Why can't the case of מפורזין serve as a proof? _____

4. How is the case of מפורזין different than אביי and רבא's case? _____

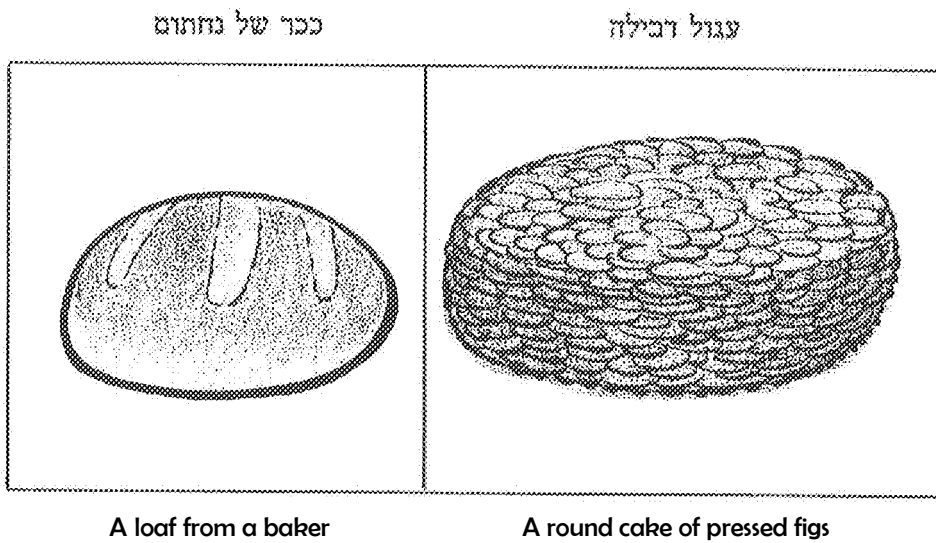
5. Whose opinion does the גמרא think the case of מפורזות proves? _____
6. Explain the "proof" from the case of מפורזות. _____

7. Why can't the case of מפורזות serve as a proof? _____

8. How is the case of מפורזות different than אביי and רבא's case? _____

שיעור י"ג
דף כ"א:

The גמרא will now quote another הלכה from the משנה and try to use it as a proof that רבא's opinion is the correct one.



The Gemara asks:

פרעגט די גמרא:

<u>Come, hear</u> a proof for רבא's opinion:	תא שמע:
We learned in the משנה that <u>round cakes of pressed figs</u>	עיגולי דבילה
<u>and loaves of a baker</u>	וכפרות של נחתום
<u>belongs to him</u> (the finder).	הרי אלו שלו
<u>Why</u> is this the הלכה?	אמאי
<u>But he</u> (the owner) <u>doesn't necessarily know</u> that it fell from <u>him</u> ?	הא לא ידע דנפל מיניה

We learned in the משנה that if someone finds round cakes of pressed figs or loaves of

a baker, he may keep them (even though it is possible that when the person finds these items, the owner doesn't know yet that he lost them). This משנה seems to "agree" with רבא who says, "איאוש שלא מדעת, הוי איאוש". The משנה seems to challenge אביי who says, "איאוש שלא מדעת, לא הוי איאוש".

The Gemara answers:

ענטפערט די גמרא:

There, also, the משנה can be explained that

התם נמי

since they (the cakes of pressed figs and loaves) are heavy,

אגב דיקירי

he (the owner) knows that he lost them.

מידע ידע בהו



The גמרא answers that cakes of pressed figs and baker's loaves are heavy, and the owner will therefore notice that his package has become lighter. If so, the owner will

realize his loss almost immediately and it is therefore not a case of *גאוש שלא מדעת*. Accordingly, we can't use this *משנה* as a proof for *רבא*'s opinion.

The *גמרא* will now quote another *הלכה* from the *משנה* and try to use it as a proof that *רבא*'s opinion is the correct one.

The Gemara asks:

פרעגט די גמרא:

Come, hear a proof for <i>רבא</i> 's opinion:	תא שמע:
We learned in the <i>משנה</i> that <u>tongue shapes strips of purple dyed wool</u>	ולשונות של ארגמן
<u>belongs to him</u> (the finder).	הרי אלו שלו
But why is this the <i>הלכה</i> ?	ואמאי
But he (the owner) <u>doesn't necessarily know that it fell from him?</u>	הא לא ידע דנפל מיניה

The Gemara answers:

ענטפערט די גמרא:

There, also, the <i>משנה</i> can be explained that	התם נמי
<u>since they are valuable,</u>	אגב דחשיבי
<u>he</u> (the owner) <u>constantly touches</u> and checks them,	משמושי ממשמש בהו
<u>like רבי יצחק</u> said (about money).	וכד רבי יצחק

The *גמרא* answers that since purple dyed wool is quite expensive, (as *רבי יצחק* explained) a person usually checks on them quite often to make sure that they are ok. If so, the owner will realize his loss almost immediately and it is therefore not a case of *גאוש שלא מדעת*. Accordingly, we can't use this *משנה* as a proof for *רבא*'s opinion.

Test yourself

ת"ש עיגולי דבילה וכברות
 של נחתום הרי אלו שלו אמאי ותא לא ידע
 דנפל מיניה דתם נמי [א]אגב דיקרי מידע
 ידע בזה ת"ש ולשונות של ארנמן הרי אלו
 שלו ואמאי הא לא ידע דנפל מיניה דתם
 נמי אגב דחשיבי משמושי ממשמש בתו
 וכדרי יצחק

1. Whose opinion does the גמרא think the case of נחתום / כפרות של נחתום / עיגולי דבילה proves?

2. Explain the "proof" from the case of נחתום / כפרות של נחתום / עיגולי דבילה. _____

3. Why can't the case of נחתום / כפרות של נחתום / עיגולי דבילה serve as a proof? _____

4. How is the case of נחתום / כפרות של נחתום / עיגולי דבילה different than אבבי and ארנמן's case?

5. Whose opinion does the גמרא think the case of ארנמן / לשונות של ארנמן proves? _____

6. Explain the "proof" from the case of ארנמן / לשונות של ארנמן. _____

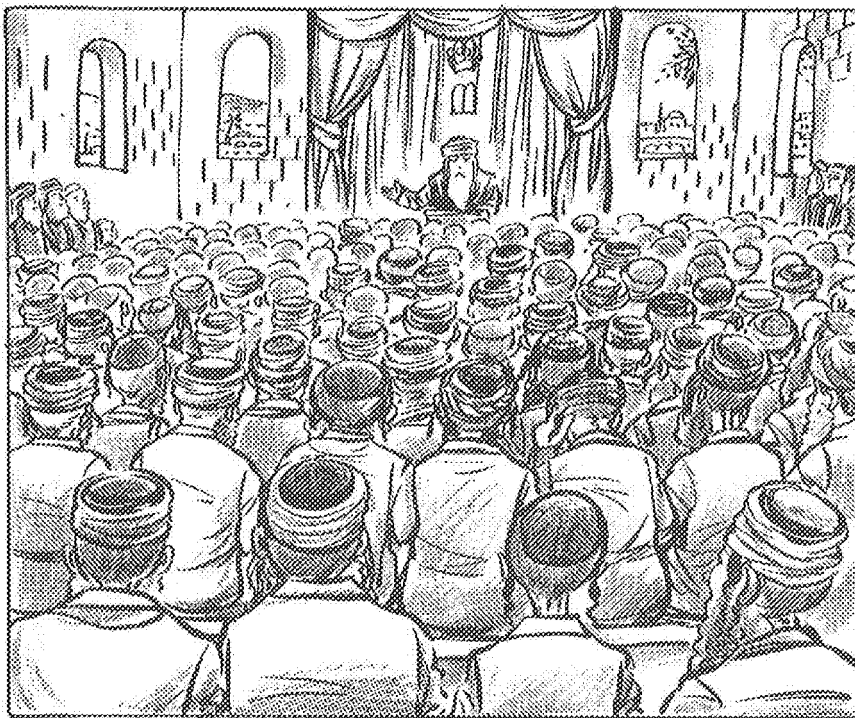
7. Why can't the case of ארנמן / לשונות של ארנמן serve as a proof? _____

8. How is the case of ארנמן / לשונות של ארנמן different than אבבי and ארנמן's case? _____

שיעור י"ד

דף כ"א

The Gemara will now quote a ברייתא and try to use it as a proof that רבא's opinion is the correct one.



A shul and a place of learning are examples of places where a lot of people are often found.

The Gemara asks:

פרעגט די גמרא:

Come, hear a proof for רבא's opinion:

תא שמע:

The ברייתא says that one who finds money

המוצא מעות

in shuls

בבתי כנסיות

or in places of learning

ובבתי מדרשות

and in all places

ובכל מקום

<u>where many people are found,</u>	שְׁהַרְבִּים מְצוּיִן שָׁם
the money <u>belongs to him</u> (the finder)	הָרִי אֵלוֹ שָׁלוֹ
<u>because</u>	מִפְּנֵי
<u>the owners</u>	שְׁהַבְעָלִים
<u>give up hope of getting them back.</u>	מִתְאַשִּׁין מֵהוֹן
<u>But he</u> (the owner) <u>doesn't necessarily know that it fell from him?</u>	וְהָא לֹא יָדַע דְּנָפַל מִיָּנְיָה

We learned in the בְּרִייתָא that if someone finds coins in a place with a lot of people, he may keep it (even though it is possible that when the person finds the money, the owner doesn't know yet that he lost it). This מִשְׁנָה seems to "agree" with רַבָּא who says, "יֵאוּשׁ שְׁלֵא מִדְּעַת, הוּי יֵאוּשׁ". The מִשְׁנָה seems to challenge אַבְיֵי who says, "יֵאוּשׁ שְׁלֵא מִדְּעַת, הוּי יֵאוּשׁ".

The Gemara answers:

ענטפערט די גמרא:

<u>רבי יצחק</u> said,	אָמַר רַבִּי יִצְחָק
<u>"A person usually touches his purse</u>	אָדָם עָשׂוּי לְמִשְׁמֵשׁ
<u>every once in a while."</u>	בְּכִיסוֹ בְּכָל שָׁעָה

The גמרא answers that רַבִּי יִצְחָק explained that this בְּרִייתָא teaches that a person usually checks his wallet quite often to make sure that his money is safe and still there. If so, the owner will realize his loss almost immediately and it is therefore not a case of יֵאוּשׁ שְׁלֵא מִדְּעַת. Accordingly, we can't use this מִשְׁנָה as a proof for רַבָּא's opinion.

Test yourself

ת"ש 'המוצא מעות בבתי
 מנסיות ובבתי מדרשות ובכל מקום שחורבים
 מצויין שם הרי אלו שלו מפני שהבעלים
 מתיאשין מהן והוא לא ידע דנפל מיניה אמר
 רבי יצחק אדם עשוי למשמש בכיסו בכל
 שעה

1. Whose opinion does the גמרא think the case of המוצא מעות proves? _____

2. Explain the "proof" from the case of המוצא מעות. _____

3. Why can't the case of המוצא מעות serve as a proof? _____

4. How is the case of המוצא מעות different than אביי and רבא's case? _____

שיעור ט"ו

דף כ"א :

The גמרא will now quote a משנה (in מס' פאה) and try to use it as a proof that רבא's opinion is the correct one.

The תורה (in ויקרא, י"ט:ט"ו) tells us that a farmer must leave certain things for the poor people to collect. One of these things is called "לקט". This is when a stalk or two of grain fall from the farmer's hand while he is reaping (cutting) his grain. The תורה says that the farmer may not pick them up, but must rather leave them for the poor.



Leket means the stalk or two of grain that fall from the farmer's hand while he is reaping.

The משנה (in מס' פאה) explains that once the poor people are מְאַשׁ (they've given up hope of getting it any more), everyone is allowed to come and take. How do we know when the poor people are מְאַשׁ? So the משנה explains that once the נְמוּשׁוֹת (searchers) have gone through the field, the poor people expect that everything of worth has already been found and taken, and they are therefore מְאַשׁ. Now, anyone can take.

Our גמרא brings a discussion (from גמרא תענית) about the translation of "נְמוּשׁוֹת". Most poor people won't spend too much time picking up individual stalks which may be spread out. They will run from field to field to try and get as much as they can before it is all taken by others. But there are some poor people who are older, slower or

more desperate than the others. They go through the fields slowly, trying to find any stalks which may still be lying there. These people are called “נְמוּשׁוֹת”. רַבִּי יוֹחָנָן says these are the old people who walk with canes or sticks. רִישׁ לְקִישׁ says these are the more desperate people who come back and comb through the field after the first group of people have left.



“The collectors after the of collectors”



“Old people who walk with a stick”

The Gemara asks:

פרעגט די גמרא:

Come, hear a proof for רַבָּא's opinion:	תָּא שְׂמַע:
We learned in the משנה, <u>from when</u>	מֵאִימְתֵי
<u>is every person</u>	כָּל אָדָם
<u>allowed to keep the לקט?</u>	מוֹתְרִים בְּלֶקֶט
They may keep the לקט <u>from when the searchers have gone</u>	מֵשִׁילְכוּ בְּהַ הַנְמוּשׁוֹת
<u>through the field.</u>	
<u>And we said</u> (discussing this משנה)	וְאָמְרִין
What is meant by the word, “ <u>searchers</u> ”?	מֵאִי נְמוּשׁוֹת
And רַבִּי יוֹחָנָן said,	וְאָמַר רַבִּי יוֹחָנָן

<u>"Old people</u>	סְבִי
<u>who walk with a stick."</u>	דְּאֲזֵלֵי אֲתִיגְרָא
<u>ריש לקיש said,</u>	רִישׁ לְקִישׁ אָמַר
<u>"The collectors who come after the first wave of collectors."</u>	לְקוּטֵי בְּתַר לְקוּטֵי
<u>But why can anyone take the</u> לְקֹט?	וְאִמְאֵי
<u>Granted</u>	נְהִי
<u>that the poor people here (of this place) have given up hope,</u>	דְּעֲנִיִּים דְּהִכָּא מְיָאֲשִׁי
<u>but there are poor people</u>	אִיכָּא עֲנִיִּים
<u>in other places</u>	בְּדוּכְתָּא אַחֲרִיתָּא
<u>who haven't given up hope (since they don't know exactly when the searchers have gone through the field)?</u>	דְּלֹא מְיָאֲשִׁי

The משנה explained that once the נמושות (searchers) have gone through the field, the poor people are מְיָאֲשׁ, and consequently, anyone can now take the לְקֹט which previously belonged to the poor. The poor people living nearby know when the נמושות have gone by, so of course they are מְיָאֲשׁ. But the לְקֹט belongs to all poor people, even those living far away. Being that those poor people are far away, they don't know when the נמושות have gone by, so how can they be מְיָאֲשׁ? This משנה seems to "agree" with רבא who says, "יאוש שְׁלֹא מִדְּעַת, הוּי יאוש". The משנה seems to challenge אבֵיי who says, "יאוש שְׁלֹא מִדְּעַת, לֹא הוּי יאוש".

The Gemara answers:

ענטפערט די גמרא:

<u>They (the Chachomim) said,</u>	אָמְרֵי
<u>Since</u>	כִּיּוֹן
<u>there are poor people here,</u>	דְּאִיכָּא עֲנִיִּים הִכָּא

<u>those</u> (poor people in other places),	הַנֶּךָ
<u>from the beginning</u>	מֵעִיקְרָא
<u>give up hope</u> of getting any of the לָקֵט,	אִי־אֹשֵׁי מִיָּאֵשׁ
<u>and they say</u> to themselves,	וְאָמְרֵי
“ <u>The poor people there</u> (in that place)	עֲנִיִּים דְּהֵתָם
<u>will collect it all.</u> ”	מְלַקְטֵי לִיה

The גמרא answers that poor people living far away don't expect to get לָקֵט from here at all, because the local poor will obviously collect it all first. Realizing this, the out-of-town poor are of course מִיָּאֵשׁ straight away. If so, this isn't a case of שְׁלֵא נִאֹשׁ שְׁלֵא. Accordingly, we can't use this משנה as a proof for רבא's opinion.

Test yourself

ת"ש (*'מאימתי כל אדם מותרים
בלקט משילכו בה הנמושות ואמרינן מאי
נמושות וא"ר יוחנן סבי דאולי (**)) אחיגרא
ריש לקיש אמר לקטו בתר לקוטו ואמאי
נהי דעניים דהכא מיאשי איכא עניים
בדוכתא אודיתא דלא מיאשי אמרי בין
דאיכא עניים הכא הנך ° מעיקרא איאוש
מיאש ואמרי עניים דהתם מלקטי ליה

1. Whose opinion does the גמרא think the case of לָקֵט proves? _____

2. Explain the “proof” from the case of לָקֵט. _____

3. Explain the two opinions regarding the meaning of “נמושות”. _____

4. Why can't the case of לקט serve as a proof? _____

5. How is the case of לקט different than אביי and רבא's case? _____

שיעורים ט"ז - י"ז

דף כ"א :

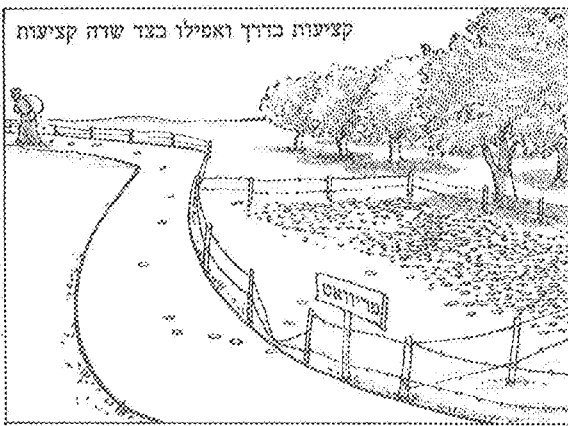
The גמרא will now quote a משנה (in מעשרות מס) and try to use it as a proof that אביי's opinion is the correct one.

We learned earlier about עגולי דבלה (round cakes of pressed figs). The farmer would cut the stems of the figs so that the juice would ooze out. He would then spread them out in a field to dry in the sun. Once dried, the figs would be pressed into a “cake” and then sold.

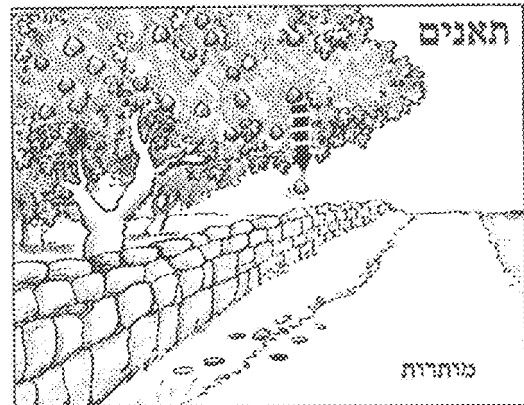


The משנה (in מעשרות מס) teaches that if someone found these cut figs lying on the road, he may keep them, even if there was a field full of such figs right next to the road. The משנה then talks about a fig tree on private property with some of the branches hanging over the road. If someone found figs (that had obviously fallen

from this tree) on the road, he may keep the figs. These figs don't even need מעשך taken from them, because they are הפקר (ownerless), and are therefore פטור (exempt) from מעשך. If the tree was an olive or carob tree, and someone found olives or carobs (that had obviously fallen from this tree) on the road, he may NOT keep them.



cut figs found on the road next to a field of cut figs



a fig tree hanging over the road

The Gemara asks:

פרעגט די גמרא:

Come, hear a proof for אבבי's opinion:	תא שמע:
We learned in the משנה, <u>cut figs found on the road</u> ,	קציעות בדרך
<u>and even if they were found next to a field of cut figs</u> ,	ואפילו בצד שדה קציעות
<u>and similarly</u>	וכן
if there's <u>a fig tree that hangs over the road</u>	תאנה הנוטה לדרך
<u>and he found figs under it</u> ,	ומצא תאנים תחתיה
<u>they are permitted to be taken</u>	מותרות
without worrying about <u>stealing</u> ,	משום גזל

<u>and they are exempt from</u> having to take מעשר from them.	וּפְטוּרוֹת מִן הַמַּעֲשֵׂר
In the case of <u>olives and carobs</u> found under their tree,	בְּזֵיתִים וּבְחֲרוֹבִים
<u>it is forbidden</u> for the finder to keep them.	אָסוּר
<u>It is understandable that the</u> רישא (first part of the mishna)	בְּשִׁלְמָא רִישָׁא
<u>is not a contradiction to</u> אבבי's opinion,	לְאַבְיִי לֹא קִשְׁיָא
<u>since they</u> (the cut figs) <u>are valuable</u> ,	אֲגַב דְּחֲשִׁיבֵי
<u>he checks on them</u> often and will know about his loss.	מִמְשַׁמֵּשׁ בְּהוּ
In the case of the <u>fig tree as well</u> ,	וְתַאנְה נְמוּי
<u>it is known that they fall off</u> the tree, and he will be מציאש.	מִיֵּדַע יָדִיעַ דְּנִתְרָא
<u>But the</u> סיפא (end part of the mishna)	אֲלֵא סִיפָא
<u>is a contradiction to</u> רבא's opinion,	לְרַבָּא קִשְׁיָא
<u>because it says</u>	דְּקִתְנִי
In the case of <u>olives and carobs</u> found under their tree,	בְּזֵיתִים וּבְחֲרוֹבִים
<u>it is forbidden</u> for the finder to keep them.	אָסוּר

The משנה taught different הלכות for different kinds of fruits. Figs found on the road are considered הֶפְקֵר (ownerless), while olives or carobs found on the road are not הֶפְקֵר. Obviously there has to be a reason for the difference in הלכה.

The גמרא explains that the רישא (first part of the משנה) is understandable based on what we learned earlier. Because the cut figs are valuable, the owner will check on them often, and realizing his loss, he will be מציאש straight away. In the case of a fig tree hanging over the road, since the owner knows that figs often drop onto the ground, he is already מציאש over those figs. Since the owner has given up hope, the finder may keep the figs.

But the סיפא (end part of the משנה) makes it clear that olives or carobs found under their tree are not הפקר, even though the owner would surely be מנאש as soon as he finds out about them. This seems to "agree" with אבוי who says, "לא הוי גאוש שלא מדעת, לא הוי גאוש" and seems to challenge רבא who says, "גאוש שלא מדעת, הוי גאוש".

<i>The Gemara answers:</i>	<i>ענטפערט די גמרא:</i>
<u>רבא said,</u>	אמר רבי אבהו
<u>an olive is different</u>	שאני זית
<u>because its appearance proves whose it is</u>	הואיל ונחזותו מוכיח עליו
<u>and even though</u>	ואף על גב
<u>the olives fall off the tree</u>	דנתרין זיתי
<u>it is known</u>	מידע ידיע
<u>the place of a person</u> (the fruits found in the person's place)	דוכתא דאיניש
<u>is like that person</u> (everyone realizes that the fruits belong to him).	איניש הוא

The גמרא answers that the reason why olives or carobs found under their tree are not הפקר is because the owner knows that since the olives or carobs are easily identifiable as his, no-one will take them, and he is therefore not מנאש over them.

If so, this isn't a case of גאוש שלא מדעת. Accordingly, we can't use this משנה as a proof for אבוי's opinion.

The Gemara asks:

פרעגט די גמרא:

<u>If so,</u>	אי קבי
<u>the even the the רישא</u> (first part of the mishna)	אפילו רישא
should follow the same הלכה <u>as well?</u>	נמי

If the owner knows that the fruits that have fallen into the road are easily identifiable as his and therefore no-one will take them, he will obviously not be מציאט over them. The גמרא asks why this doesn't apply to the רישא (first part of the משנה). Why are the figs considered הפקר (ownerless) if the owner knows that no-one will take them and is therefore not מציאט?

The Gemara answers:

ענטפערט די גמרא:

<u>אמר רב פפא</u> said,	אמר רב פפא
<u>a fig,</u>	היאנה
<u>when it falls</u> to the ground,	עם נפילתה
<u>is ruined.</u>	נמאסת

The גמרא answers that the הלכה is different by figs because as soon as they hit the ground, they aren't nice anymore. Knowing this, and knowing that that figs often drop onto the ground, the owner is מציאט straight away over those figs. (Olives and carobs are tougher and don't get ruined when they fall.)

Test yourself

ת"ש
 *קציעות בדרך ואפילו בצד שדה קציעות
 *וכן תאנה הנומה לדרך ומצא תאנים
 תחתיה מותרות משום גזל ופסורות מן
 המעשר בזהב ובכרובים אמר בשלמא
 רישא לאבי לא קשיא אנב דחשיבי
 ממשמש בהו תאנה נבי מדע ידיע דנחרא

אלא סיפא לרבא קשיא דקתני בזהב
 ובכרובים אמר רבי אבהו שאני זית
 הואיל וחזתו מכיח עליו ואע"ג דנחרין
 זתי מדע ידיע *דחבתא דאניש אניש
 הוא א הכי אפילו רישא נבי אמר רב
 פפא תאנה עם נפילתה נמאסת

1. Whose opinion does the גמרא think the משנה in מעשרות proves? _____
2. Why is the finder allowed to keep the figs? _____

3. Why doesn't the finder have to take מעשר from the figs? _____

4. Why would the רישא be a contradiction to אבבי? _____

5. Why isn't the רישא a contradiction to אבבי? _____

6. Why does the גמרא see the סיפא as a contradiction to רבא? _____

7. How does the גמרא answer the contradiction to רבא? _____

8. Why does the גמרא ask that the רישא should have the same הלכה as the סיפא? _____

9. Why is the הלכה different for figs and olives / carobs? _____

10. How is this משנה different than אבוי and רבא's case? _____
