

פרק שני- אלו גזירות

The 2nd chapter picks up with a definition of parameters of the מצוה of אבדה; השבת אבדה; under what circumstances someone who finds goods must seek to identify the original owner and, once assured of his ownership, return them; and when he may keep them. In addition, various laws of guarding a מצוה will be presented, which will be a natural segue into the laws of שומרים, which is the focus of the next פרק – המפקיד. Here is the relevant פירוש of אגדה – comprising the first 3 פסוקים of בבא מציעא:

לא תראה את שור אחיך או את שיו נדחים והתעלמת מהם השב תשיבם לאחיד: ואם לא קרוב אחיך אליך ולא ידעתו ואספתו אל תוך ביתך והיה עמך עד דרש אחיך אתו והשבתו לו: וכן תעשה לחמרו וכן תעשה לשמלתו וכן תעשה לכל אבדת אחיך אשר תאבד ממנו ומצאתה לא תוכל להתעלם:

21.2.1

21a (משנה א') → 22b (אמר ליה אסירן)

1. כן תרימו גם אתם תרומת ה' מכל מעשרתיכם אשר תקחו מאת בני ישראל ונתתם ממנו את תרומת ה' לאהרן הכהן: במדבר פרק יח פסוק כח
2. וְכִי יִתֵּן מִיָּם עַל זֶרַע וְנָפַל מִנְּבִלְתָּם עָלָיו טֶמֶא הוּא לָכֶם: ויקרא פרק יא פסוק לח

- I 'משנה א': those items which, if found in these contexts, may be kept and there is no need for הכרזה
- a Dispersed coins, dispersed fruit
 - i ר' יצחק: range of dispersion of fruit – 1 קב over 4 אמות
 - 1 Challenge: if they fell, more fruit would need no הכרזה; if placed there, even less fruit would require הכרזה
 - 2 Answer: it was at the time of cleaning out the גורן (after threshing); a person would trouble himself to pick them up if not this amount spread over this range
 - (a) Questions (ר' ירמיה): what if the ratio is the same but the range is larger or smaller; what if the fruit is larger (but worth less) or smaller (but worth more) i.e. is the שיעור based on significance or טירחא?
 - b Small sheaves (in ר"ה)
 - c Fig-cakes, loaves of (baker's) bread, strings of fish and pieces of meat
 - d Wool strips that are imported, bundles of flax and strips of purple wool
 - i Dissent: ר' יהודה – anything that has something unusual about it requires הכרזה
 - 1 Example: a fig-cake with a shard of pottery inside, or a loaf of bread with money inside
 - ii addendum: רשב"א: newly manufactured goods need no הכרזה (kept by finder)
 - II יע"ל קג"ם of "ו" – this is the "ו" – ייאוש – considered רבא; ייאוש – not considered רבא/אביי – dispute – ייאוש שלא מדעת
 - a Meaning: if someone lost an item without סימנים but wasn't yet aware of his loss – is this considered ייאוש such that the finder may take possession?
 - i Clarification: no dispute if there is a סימן; when he realizes it was lost, he assumes he'll recover
 - ii And: no dispute if it fell into the sea or the river – even if it has a סימן – he gives up on recovery
 - iii Rather: dispute if something without a סימן is lost in a retrievable area
 - 1 אביי: since he doesn't yet know it was lost, he doesn't give up on it
 - 2 רבא: since, when he realizes that it's gone (w/o סימן), he gives up, that ייאוש is retroactive to moment of loss
 - iv Challenges to אביי: (#1-4 from our משנה, #5-6 from other rulings)
 - 1 Dispersed fruit: (answer) – we established it as being at threshing floor – אבדה מדעת
 - 2 Dispersed coins: (answer) – follows ר' יצחק, that a person is always checking his כיס → אבדה מדעת
 - 3 Figcakes and baker's loaves: (answer) since these are heavy, he's aware of it right away → אבדה מדעת
 - 4 Purple strips of wool: (answer) – since they are expensive, he's attending to it → אבדה מדעת \
 - 5 Money found in בית המדרש, בית הכנסת, or any public area: (answer) – as per ר' יצחק (above)
 - 6 Full גמלוש of הפקר (answer) elsewhere always despaired, since the local עניים would take it
 - v Challenge to רבא: גז: מעשרות גז: - fallen olives or carobs are גז, אסור משום גז, even though בעלים will surely be מתייאש
 - 1 Answer: he won't be מתייאש, as he can see from empty spots where they fell and will recover them
 - (a) Challenge: if so, why isn't this true about figs (in רישא of that משנה)
 - (b) Answer: figs become dirty (no interest in recovering) when they fall

- vi *Challenge to אב"י*: ruling that transactions from גנב, גולן, or what the river sweeps away are valid
- 1 *Explanation*: why is that taken by a גנב valid? The owner doesn't yet know it's gone?
 - 2 *Answer*: referent is an armed robber (אברה מדעת) – 2 forms of גולן are taught (armed and unarmed)
- vii *Challenge to רבא*: if a river sweeps away someone's beams and they land in another's property – they are his
- 1 *Reason*: we know that the owners have despaired (→ if we didn't know, we wouldn't grant them – כאב"י)
 - 2 *Answer*: this is a case where the owner could've saved the beams
 - (a) *Challenge*: the רבא rules that if the owner was running after them, no יאוש; but if he could save them, even if he wasn't running after them, we shouldn't assume יאוש
 - (b) *Answer*: in this case, he could save them with great difficulty; if running after them, we see no יאוש
- viii *Challenge to אב"י*: explanation of תורם שלא מדעת בעלים (which is invalid – cf. תרומות א:א)
- 1 *If*: he took תרומות without owner's permission and suspects that it may be גזל – invalid
 - (a) *Explanation*: he knows it may be גזל if בעה"ב, when he finds out, tells him to go to better quality crop –
 - (i) *If*: there is better quality crop – valid; *If*: there isn't – invalid
 - (ii) *If*: owner joined him and added on to his תרומה, in either case it's valid
 1. *Challenge*: when he took the תרומה, the בעה"ב didn't know about it (יאוש שלא מדעת) – so it should never be valid
 2. *Defense* (רבא to defend אב"י's position!): in this case, the תורם must've been appointed שליח by בעה"ב
 - a. *Support*: else, the תרומה would be invalid in any case, as per v. 1
 - b. *And*: in this case, בעה"ב didn't indicate which grains to use but he usually uses middle-grade, the שליח went and took from high grade...if בעה"ב tells him to take from nicer, that confirms his choice (but only if there is better quality, else his statement is facetious)
 3. *Caveat*: the retroactive clarification of כלך אצל יפות may only be valid for תרומה, since giving תרומה is a מצוה; in re: גזילה it may not "clean up" anything, as per story with מרי בר איסק's sharecrop-per who gave מרי זוטרא, מרי זוטרא, מרי זוטרא, מרי זוטרא and מרי זוטרא fruit (belonging to מרי); מרי זוטרא refused to eat, concerned that it was גזילה; when מרי בר איסק saw them and said כלך אצל יפות, he still abstained
- ix *Challenge to רבא*: ruling in re: הכשר פירות (v. 2)
- 1 *If*: dew fell on them and he was happy about it – כי יותן applies
 - 2 *But if*: they dried off and he learned afterwards about the dew and was happy – כי יותן doesn't apply
 - (a) *Explanation*: why don't we use current state of mind to define, retroactively, his intent
 - (b) *Answer*: this is unique, due to requirement of כי יתן – he must place it
 - (i) *If so*: why does it work in the first case?
 - (ii) *Answer*: as per ר' פפא's resolution to כי יתן vs. כי יותן; must fit his intent as if he watered it himself
- x *Challenge to רבא*: ר' יוחנן's ruling that if the river sweeps an אבידה away it is permissible to all as per דברים כב:ג
- 1 *Interpretation*: only if it was lost to the owner but in a place where it could be found by others – as opposed to this case, where it is lost to him and unavailable to everyone else
 - (a) *And*: the prohibition of keeping it if it is lost in the normal fashion is parallel to this
 - (b) *Therefore*: if it is lost in the usual fashion, even if it has no סימן, he may not keep it (unless יאוש has already happened) → יאוש שלא מדעת is not יאוש and the finder may not keep it
- xi *QED*: הלכה follows אב"י (יע"ל קג"ם)
- 1 *Challenge* (to ר' אשי): since רבא has been refuted, how are we allowed to eat dates that are blown off of trees (but owner doesn't yet know about them)?
 - 2 *Answer*: these fruit are infested and the owner is מתיאש as a blanket rule
 - (a) *Challenge*: what if they are owned by orphans, who are not בני מחילה?
 - (b) *Answer*: we don't have to suspect that any particular tree or plot is owned by יתמי
 - (i) *However*: if it is known to be owned by an orphan
 - (ii) *Or*: the tree is fenced in (indicating that the owner isn't מוחל these fruit) – prohibited to take them