



Returning Found Loan Documents

The *Mishnah* (1:6) teaches that if one finds a loan contract, it should not be returned to either the lender or borrower. If returned to the lender, it could be used to claim money that has already been paid. The law would be the same even if the borrower admitted that the loan has not yet been paid. The *Bartenura* explains that since in the event that the borrower cannot pay back the loan, the contract can be used to seize land that the borrower sold after the time of the loan.¹ Consequently, we are concerned that the loan was indeed paid, and the lender and the borrower are scheming with one another to extract land from the purchasers.

The *Tosfot Yom Tov* cites the *Gemara* that asks that if we are concerned for such collusion then even under normal circumstances, where the document was not lost, would she also be concerned that the loan had been paid and the contract should never be used to seize the purchased lands. The *Gemara* explains that this case is different because since the document was lost, its credibility is called into question. *Rashi* explains that if the document was valid then one would expect that the lender would have taken better care of the document. Consequently, concerns of collusion are only raised once the credibility of the contract is questioned.

The *Mishnah* (1:8) however teaches that if document was found in a satchel or case then the document can be returned. One might ask, how is this case differs from the previous one? The document in this case was also lost. Furthermore, why are we not concerned that the borrower may have told the lender the distinguishing features of the satchel? The *Tosfot R' Akiva Eiger* cites the *Rosh* who explains that in this case the validity is not questioned and we are not concerned for collusion, because the satchel has a distinguishing mark through which we know who the satchel belonged to and from who the satchel fell. How do we understand the answer of the *Rosh*?

The *Shita Mekubetzet* explains that in the previous case, when found uncased, its validity is questioned since it appears it has been discarded. In this case however, since it is in a satchel, it is clear it simply fell from the person that was carrying it – consequently the validity of the document is not questioned. This explanation appears to be in line with our understanding thus far that concerns of collusion are only raised once the credibility of the contract is questioned.

The *Shita Mekubetzet* continues citing the *Gilyon* who explains that in the previous case, the ownership of the document is completely dependent on the borrower's admission. Consequently, in that case suspicion of collusion is enough to discount relying on the borrower's word. In this case however, we are not reliant on admission at all, but rather the *simanim* (distinguishing marks) of the satchel. This understanding appears to be somewhat different. It is not the circumstance in which the document is found that creates the suspicion, but the fact that in the first case we have no other way of identifying the owner other than their admission.²

A practical difference between these two understandings may be found in the *Ketzot HaChoshen* (65:9). The *Ketzot* cites *Rashi* that explains in the first case where the document fell, the document cannot be returned to either party until *Eliyahu HaNavi* comes to clarify the ownership or until two witnesses can testify who dropped the document. The *Ketzot* asks, if we say that once an uncased document is lost, its validity is questioned, then witnesses should not help and the suspicion of collusion should still be present. The question of the *Ketzot* appears to be based on the first understanding we presented in this article. According to the second understanding however, that suspicion is only raised if ownership is solely dependant on their admission, we can understand that if witnesses saw the document fall, it can safely be returned to the person that dropped it.³

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¹ According to *R' Meir* this is only if *achrayut nechasim* was stipulated in the document, while the *Chachamim* maintain that this would be the case even if *achrayut nechasim* was absent.

² The *Shita Mekubetzet* also cite *H"R Yohonatan* who explains in a similar manner that since in this case the satchel has *simanim* we are obligated to return the satchel to the owner (that provides those

simanim). Once the ownership of the satchel is confirmed, its contents, including the contract, likewise belongs to the owner of the satchel. One could argue that this explanation is slightly different to that of the *Gilyon's*. Note that the *Tosfot HaRosh* also provides these two different explanations.

³ This answer would not explain *Rashi* – see *Rashi* (12b, s.v. *hani*)

Revision Questions

בבא מציעא א' ד' – ב' ט'

- If a person saw an (ownerless) object and jumped on top of it, yet another person came and grabbed it, to who does it belong? (א' ד')
- When can a person claim ownership of a stray animal by virtue of it being in his property? (א' ד')
- If an adult child who still lives at home finds an object, is it considered his? (א' ה')
- Consider a woman who is divorced but has not yet received her *ketubah*, if she found an object, to who does it belong? (א' ה')
- What should one do if he found a loan contract? In what case is there a debate? (א' ו')
- What should one do if he found a *get* in the street? (א' ו')
- What five documents listed in the *Mishnah* are returned if they are found? (א' ו')
- In what situation are all documents returned? (א' ו')
- According to *Rabban Shimon ben Gamliel* when are loan contracts returned to the borrower? (א' ו')
- Provide a number of examples of objects if found, can be kept. (א' ז')
- According to *R' Yehuda* what principle does he state regarding which object must be announced (in order to find the original owner)? (א' ז')
- Provide a number of examples of objects if found, one is obligated announce. (ב' ז')
- What should one do if he found an object behind a fence? (ב' ז')
- Can a person keep an object that he found:
 - Amongst rubble?
 - Tucked into a wall? (ב' ז')
 - In a shop? (ב' ז')
- Can one keep money that he found in his shopping bag? (ב' ז')
- Why was a “*simla*” singled out when the *Torah* discussed the law of returning lost objects? (ב' ז')
- For how long is one obligated to try to identify the owner of the lost object he found? (Include both opinions.) (ב' ז')
- When is the object not returned even if the person claiming it provides the identifying marks? (ב' ז')
- What should one do while trying to identify the owner of the lost object if the object itself requires upkeep? (Include both cases.) (ב' ז')
- What should one do while trying to identify the owner of a lost object if he found:
 - A book?
 - Clothing?
 - Glassware? (ב' ז')
- Which objects is one not required to take in order to find its owner? (ב' ז')
- When can one assume that an animal (that he found) is indeed lost? (ב' ז')
- Is there a limit to how many times a person must return an animal that keeps running away from its owner? (ב' ז')
- Can a person claim compensation from the owner of the lost object for the time spent trying to return the object? (ב' ז')

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Melbourne, Australia

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
30 December כ"ב טבת	31 December כ"ג טבת	1 January כ"ד טבת	2 January כ"ה טבת	3 January כ"ו טבת	4 January כ"ז טבת	5 January כ"ח טבת
Bava Metzia 2:10-11	Bava Metzia 3:1-2	Bava Metzia 3:3-4	Bava Metzia 3:5-6	Bava Metzia 3:7-8	Bava Metzia 3:9-10	Bava Metzia 3:11-12

