

Mishpatim 5783

משפטים תשפ"ג

## Why Does the Torah Care About Returning Lost Property?

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When I was in kindergarten at a Jewish preschool, anytime a student would find a toy or snack of unknown provenance, they would stand up in the middle of the room and announce, “*Hashavat avedah! Hashavat avedah!*” in an attempt to return it to its rightful owner. This practice impressed upon me the importance of the mitzvah of returning lost property (called *hashavat avedah*), which is first delineated in Parashat Mishpatim, not about Koosh balls or a pack of Dunkaroos but with respect to one’s enemy’s load-bearing animal:

“When you encounter your enemy’s ox or ass wandering, you must take it back.” (Exod. 23:4)

There is no obligation in the common law to retrieve someone’s lost property and return it. So why does the Torah make a point of establishing such a requirement? Why does the Torah specify that the owner of the lost animal is the finder’s enemy, and what is the scope of the finder’s responsibilities?

The *Mekhilta de-Rabbi Ishmael* connects Exodus 23:4 with the lost property law of Deuteronomy 23:1–3, which adds more details about what to do upon finding lost property and relates not only to animals but to other inanimate, movable objects. According to Deuteronomy, the finder should not ignore the lost property, but rather return it to its owner (who is called “your brother” rather than “your enemy”). But what if the owner lives far away, or if the finder does not know who owns the property? In that case, the finder must bring the property home and wait for its owner to come and claim it (“until your brother seeks it”; Deut. 32:2). The *Mekhilta de-Rabbi Ishmael* elaborates upon these words, “until your brother seeks it” (*עד דרשות אחיך אותו*), with three statements:

Until your brother seeks: Until you seek out your brother.

Until your brother seeks: Until the public crier has gone around [announcing the discovery of the lost property].

Until your brother seeks it: You must investigate whether “your brother” is a deceiver or not a deceiver.

The most obvious interpretation of the words “until your brother seeks it” would take “your brother” as the subject of the action signified by “seeks,” so that the person doing the seeking is “your brother,” i.e., the owner. In this plain-sense reading of the text, the finder should keep the lost property in their home until the owner comes to seek it. The *Mekhilta*’s first statement, however, instead reads “your brother” as the object of seeking, and understands the finder as the subject: “until you (the finder) seek out your brother.” This reading becomes difficult when one tries to include the next word—“it”— in the translation, but the *Mekhilta* brackets that word for the purpose of this particular *derash*. Instead, the *Mekhilta* makes a point, insisting that the finder actively seek out the owner. What is the scope of this requirement? The *Mekhilta* elaborates further in its second and third comments: the finder must arrange for a public proclamation about the property, and once someone comes and alleges to be the owner, the finder is obligated to verify that that person is truly the owner and not a fraud. These obligations, which the *Mekhilta* states rather concisely, receive ample elaboration in the Mishnah and Tosefta, and even more in the Talmud, addressing details such as where, when, and how a finder ought to fulfill the obligation of public proclamation, and under what circumstances a person is considered a “deceiver.”

When compared to the *Mekhilta* and other rabbinic literature, the Torah's laws of lost property place a relatively small burden of responsibility on the finder. According to Deuteronomy, the finder should either return the property directly, or hold onto it until the owner comes. The law in Parashat Mishpatim is even more succinct and specific: The finder must return their enemy's lost property, with no further elaboration. There is no mention whatsoever in the Torah of public proclamation, nor does the Torah demand that the finder assess the credentials of a person claiming to be the owner. Rabbinic law gives the finder a good deal of work to do, well beyond what the Torah appears to envision. And beyond this, rabbinic law addresses a whole host of other questions that the Torah does not entertain: What kind of property should be returned? Can the finder ever keep the property? How long does the obligation to return lost property apply?

In order to arrive at a workable system for dealing with lost property, it is clear that one must look to halakhah, and not only at the law of the Torah. What, then, is the point of the Torah's law here, if it is so incomprehensive with regard to details of how one might carry out its obligations in practice?

The very brevity of the lost property laws in the Torah, which the detailed character of our rabbinic sources throws into relief, may help us focus our attention on what the Torah does emphasize. Exodus 23:4 establishes a requirement to return property, specifically the property of one's enemy (which one might be inclined not to return), amid a series of laws relating to the theme of justice; Deuteronomy states twice within three verses that one may not ignore the lost property, capping off the law with the statement that "you must not remain indifferent" (*לא תזכל ליהת עלם*; Deut. 22:3). This, ultimately, is the Torah's warning and plea: Even when it's hard, whether because the owner of lost property is the finder's enemy (as in Exodus) or because the owner lives far away (as in Deuteronomy), there is a right thing to do, and we are charged to do it.

It is easy to ignore lost property; after all, no one would ever know. But the Torah and Jewish law require a finder to go

out of their way, even if it is difficult or inconvenient, and even if no one would ever know the difference. This is perhaps the crux of the Torah's lost property law: though it would be easy to do nothing, we must not remain indifferent.

Shabbat shalom.