



Aveida Midaat

The *Mishnah* (5:9) discusses the case of one who sends his child to the store to buy some oil. The child is sent with a glass flask to contain the oil and a *pundyon* (a coin) to purchase it. The shopkeeper pours the oil into the flask and then give the child change. The *Chachamim* argue that the shopkeeper is responsible if the flask is dropped and breaks and the change is lost on the journey home. *R' Yehuda* disagrees. The *Bartenura* explains that the *Chachamim* maintain that the child was only sent inform the shopkeeper that the parent wanted to purchase oil and not that it should be sent back with the child whose not responsible to care for it.

The *Bartenura* continues that the *Gemara* asks why the shopkeeper would be responsible for the flask. From the outset it was given to the child to look after. With respect to the flask, it should be considered an *aveida midaat* – an intentional loss. The *Gemara* answers that in this case, the shopkeeper used the flask to measure out oil for other customers. In other words, he borrowed the flask without the knowledge of the owner, which is considered robbery. Consequently, from then until it reaches the hands of the owner, the shopkeeper is responsible for any damage caused to the flask.

The *Tosfot Yom Tov* cites the *Tosfot* who explain that the *pundyon* would also be considered *aveida midaat*. Nevertheless, since the *pundyon* reached the hand of the shopkeeper, he is responsible for that which he gave in exchange.

The *Tifferet Yisrael* however explains that despite the fact that the parent gave the child the *pundyon*, he could argue that the he was not concerned that the child would lose the large coin. The change, the *issar*, which is a smaller coin however is different. He could claim that he was not happy to trust the child it. Consequently the shopkeeper is responsible for the loss. *R' Yonah* argues similarly that if the flask falls it will break. If the *pundyon* falls, the child will simply retrieve it. Consequently it is not considered an *aveida midaat*.

How do we understand *aveida midaat*?

The *Rambam* (*Gezeila VeAveida* 11:11) explains, by way of example, that if one throws their wallet into the street, even

though one is not allowed to take the wallet for themselves, they are nevertheless exempt from returning the lost object. Put simply *aveida midaat* exempts one from *hashavat aveida*.

The *Tur* (261:4) however disagrees and argues that *aveida midaat* is equivalent to *hefker*; it is considered as if the owner rendered it ownerless. The *Beit Yosef* however counters that just because one is not willing to take proper care if his belongings, this does not mean that they are rendered ownerless.

The *Ketzot* (261:1) cites our *Mishnah* as a difficulty on the *Tur*. Recall that the shopkeeper is responsible to return the *pudyon* in the event that the *issar* is lost and the *tzluchit* breaks. We cited the *Tosfot* that despite the *pundyon* being an *aveida midaat*, since it reached the shopkeeper's hand, he is responsible for that which it was exchanged for. The *Ketzot* explains that if *aveida midaat* is considered *hefker*, then once it reaches the shopkeeper's hand it should be considered his, and anything he gave to the child would then only be considered a gift for which he would not be responsible. Similarly, he should not be considered a robber when using the flask since according to the *Tur* it would be considered *hefker*. In short, according to the *Tur*, the shopkeeper should not be responsibility for any subsequently loss.

The *Ketzot* therefore reasons, that the *Tur* would agree in our case, where the items were placed in the care of a minor that they are not *hefker*. The opinion of the *Tur*, that the object is *hefker*, is only when object is placed in a completely unprotected area.

Based on the above distinction, the *Ketzot* takes issue with the *Bach*. The *Bach* rules that if one gave a ring to a child, and then another took that ring and used it for *kiddushin* (betrothal), then it would work. That is because, since the ring was given to the child to play with, it is considered an *aveida midaat* and the ring is *hefker*. Consequently, the ring used for betrothal belonged to the one performing. The *Ketzot* however argues, based on our *Mishnah*, that while the case is indeed an *aveidah midaat*, the *Tur* would agree that if it was in the child's care, it would not be considered *hefker*. Consequently the subsequent *kiddushin* would not be valid.

Revision Questions

בבא בתרא ה' ג' – ה' ח'

- Regarding the sale of wheat, when can the seller cancel the deal? When can the buyer cancel the deal? When can either cancel the deal? (List one example for each.) (ה' ג')
- In what two ways are large amounts of fruit acquired? (ה' ג')
- In what two methods is flax purchased? (ה' ג')
- During the sale of wine, at what point is the sale finished even in the face of fluctuating prices (and what is the case that the *Mishnah* describes)? (ה' ח')
- What is a *sarsur* and when is he responsible? (ה' ח')
- What is the debate regarding a case where a person sent his son with money, to a shop to purchase a oil? In what case is there agreement? (ה' ט')
- What obligations are placed on a shopkeeper based on the following *pasuk* (ה' י):

"מאזני צדק אבני צדק איפת צדק והין צדק יהיה לכם"
(ויקרא י"ט: ל"ו)

- Regarding the previous question, when does *Rabban Shimon ben Gamliel* maintain that these obligations do not apply? (ה' י"א)
- If a seller measured perfectly, what percentage must he add for dry goods? For liquids? (ה' י"א)
- Can a buyer claim *mekach ta'ut* if he purchased fruit, and using them, was not able to grow fruit? (ה' י"א)
- If someone purchased figs, what percentage of wormy figs is acceptable? (ה' י"ב)
- In what case is the purchase of wine that subsequently became vinegar considered a *mekach ta'ut*? (ה' י"ג)
- What is debated regarding the purchase of land to build a "house"? (ה' י"ד)
- What restrictions are placed on one that owns a well in the property of another person? (ה' י"ה)
- What other case is similar to the one in the previous question? (ה' י"ו)
- When do these restriction not apply in this case? (ה' י"ו)
- What is the law regarding a case where a public pathway is running through person's field, and he allocates a another pathway on the side of his field as a replacement? (ה' י"ז)
- How wide is: (ה' י"ז)
 - A private path?
 - A public path?
 - A "king's way"? What else is the same width?
- How large is a grave site? (Include both opinions) (ה' י"ח)

Melbourne, Australia

Sunday -Thursday

10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat

10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Efrat, Israel

Shiur in English

Sunday -Thursday

Rabbi Mordechai Scharf
9:00am
Kollel Magen Avraham
Reemon Neighbourhood

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mishnahyomit.com/shiurim

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rabbi E. Kornfeld
Rabbi C. Brown
http://www.dafyomi.co.il/calend
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SHIUR ON KOL HALOSHON

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
10 March ג' אדר	11 March ד' אדר	12 March ה' אדר	13 March ו' אדר	14 March ז' אדר	15 March ח' אדר	16 March ט' אדר
Bava Batra 7:1-2	Bava Batra 7:3-4	Bava Batra 8:1-2	Bava Batra 8:3-4	Bava Batra 8:5-6	Bava Batra 8:7-8	Bava Batra 9:1-2

