



ERETZ HEMDAH

ASK THE RABBI SERVICE

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Returning Unclaimed Items

Question: Balls and other items land in our yard. I am happy to return them, but I do not know from which of five surrounding properties, from multiple buildings, each came. Sometimes objects remain in our yard for months, and get damaged by the elements. Am I responsible to track down the owner, some of whom I do not know? Does the fact that they do not care enough to retrieve their items absolve me of the responsibility to store them somewhere safe and proactively return them?

Answer: There are two questions – about returning and about protecting the objects. They are, though, quite related.


In the past (Living the Halachic Process, V, I-6), we have brought the question that


Acharonim have discussed – whether it is enough for one to inform the owner that his item is available by you, or whether you must actively return it. Regarding the *mitzva* to return that which he stole, it suffices to tell the victim that he can come get his object (Shulchan Aruch, Choshen Mishpat 367:1). It is unclear whether this is the standard *halacha* regarding *mitzvot* of returning or a special dispensation to promote *teshuva* (see Shach ad loc. 2). There are different possible ways to read the *p'sukim* (Devarim 22:1-3) in this regard. The more accepted approach is that informing suffices (Pitchei Choshen, Aveida 7:(2)).


Along with the obligation to return, there is an obligation to protect the object until you have succeeded to return it (see Devarim 22:2 and Shulchan Aruch, CM 267:17). If informing him counts as returning, it should also remove the requirement to guard them (see Torat Ha'veida (Tzabari) 12:11). The main point is that at this point, the item is no longer lost, and therefore its welfare is the owner's responsibility.


This is in line with the Rama's opinion (CM 261:4) on *aveida mida'at* (one who knowingly leaves his object in a precarious situation). Even though he holds that this does not make the object *hefker* (ownerless), the finder does not have to care for it. Also, one could argue that your yard is not considered a precarious place, as you would not take someone's property. However, it is still likely in a precarious position regarding protection from the elements.


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Nevertheless, in this case, it does not appear clear that all of the items' owners are aware where their object is. Sometimes the owner did not know the object "flew" over a fence. Especially if we can assume that for example, parents own the family's balls, if a child kicks the ball over the fence and does not tell them, from the owners' perspective, it is an *aveida*. Another scenario is that they originally knew where the item is but procrastinated about getting it until they forgot its whereabouts. Once they forget, it is an *aveida* (see Bava Metzia 25b).

The *gemara* (ibid. 26b) says that the positive *mitzva* begins from the time the finder takes the object. Could it be that if the things are where they fell, you have no obligation? Halachically, in many ways, things that are in one's property are as if they are in his hand (ibid. 10b). The Ra'avad (Aveida 7:14) says that the fact that the lost item is in the finder's property creates an obligation of *hashavat aveida* (in his context, it prevents the finder from claiming it after the owner's subsequent *yeiush*). Even Haezel (ad loc.) clarifies that this obligation without moving the object begins

only from the time the property owner knows it is in his domain. But from that point, which you are already at, the obligation exists until the loser receives it or finds out about it and can get it.

Therefore, we suggest the following. Be in touch with the neighbors who could own things in your yard. Come to an agreement about their expectations of you. If they all agree, you can leave them where they are, or set them aside in a convenient place for them to claim. Only if (common these days) the people trust each other not to take that which is not theirs (Bava Metzia 27b), we have modern arrangements to more easily share with a group of people what is missing so they can come and claim their lost items. ■

Having a dispute?



For a Din Torah in English or Hebrew contact:

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