

# INTRODUCTION TO מִסְכַּת בְּבֵא מִצִּיעָא פֶּרֶק ב'

The second פֶּרֶק speaks about the מְצוּה of הַשְׁבֵּת אֲבִידָה. In פֶּרֶק א', we learned that someone can acquire an object to make it his. To understand the מְשָׁנִיּוֹת of פֶּרֶק ב', we need to know some basics about the ownership of an object.

## I. בְּעִלּוֹת - OWNERSHIP

☆ **The תּוֹכָה gives people the right to own property and objects.**

- A. When a person owns something, it is his! (Even if someone else is holding it, it still belongs to him.)
- B. Even if it is lost, it still belongs to the owner.
- C. Therefore, when one finds a lost object there is a מְצוּה to return it to its owner. The name of this מְצוּה is הַשְׁבֵּת אֲבִידָה - **“Returning A Lost Object”**.

## II. הַפְּקָר - “OWNERLESS”

☆ **Some objects have no owner.**

- A. **NEVER HAD AN OWNER:** Some things naturally have no owner. Sea shells on a public seashore can be taken by anyone.
- B. **THE OWNER THREW IT AWAY:** A person can remove his ownership of an object, if he wants to. He can remove it from his possession and declare (announce) that he does not want it anymore. It is then free for anyone to take. This object becomes הַפְּקָר - **Ownerless**.

\* **Once the owner makes it הַפְּקָר, it is not his. He cannot “change his mind”.** Anyone who picks it up (even the one who was מִפְּקִיר it), **now owns it**.

- C. **AN OBJECT IN YOUR POSSESSION CANNOT BE MADE הַפְּקָר:** You cannot keep an object in your hand or locked in your house and declare it הַפְּקָר. An object must be removed from your possession to be made הַפְּקָר.

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## III. סִימָנִים - “SIGNS”

☆ **If a Jew has lost an object he can get it back if he can prove it is his.**

- A. If a person loses an object, he must identify it, by giving סִימָן to prove that the object is his.
- B. If he can tell us a sign that is on the object, that only the owner would know about, we return it to him.
- C. The finder may not give back an object to anyone who cannot prove that it is his. Once I pick it up, I am responsible to take care of it for the owner; I am a שׂוֹמֵר (watchman) on the object.
- D. If the object has no סִימָנִים on it, the owner will be מְיָאֵשׁ on it. Once the owner is מְיָאֵשׁ on it, and I pick it up, I may keep it. [The גְּמָרָא will discuss what happens if there is יְאוּשׁ *after* I pick it up.]

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## IV. מִצְוַת הַשְׁבֵּת אֲבִידָה - RETURNING A LOST OBJECT

☆ If a Jew has lost an object and I see it, the תורה requires me to pick it up, find its owner, and return it to him.

### פְּרִשְׁתָּ כִּי תֵצֵא, פֶּרֶק כֵּב

(א) לֹא-תִרְאֶה אֶת-שׁוֹר אַחִיד אוֹ אֶת-שֵׂיו נִדְחִים וְהִתְעַלְמָתָּ מֵהֶם הַשֵּׁב תְּשִׁיבֵם לְאַחִיד: (ב) וְאִם-לֹא קָרוֹב אַחִיד אֵלֶיךָ וְלֹא יָדַעְתָּ וְאִסְפָּתוּ אֶל-תּוֹךְ בֵּיתְךָ וְהָיָה עִמָּךְ עַד דָּרֹשׁ אַחִיד אֹתוֹ וְהִשְׁבַּתְנוּ לוֹ: (ג) וְכֵן תַּעֲשֶׂה לְחִמְרוֹ וְכֵן תַּעֲשֶׂה לְשִׁמְלֹתוֹ וְכֵן תַּעֲשֶׂה לְכָל-אֲבִדַת אַחִיד אֲשֶׁר-תִּאֲבֹד מִמֶּנּוּ וּמִצִּאתָהּ לֹא תוּכַל לְהִתְעַלֵּם:

*You should not see the ox of your brother, or his sheep wandering and you will turn away from them. You will surely return it to your brother. And if your brother is not close to you or you do not know him, then you will take it into your house and it will be with you until your brother searches for it, and you will return it to him. And so you will do for his donkey, and so you will do for his garment, and so you will do for all the lost objects of your brother that are lost from him and you found it. You are not able to turn away.*

- A. The מצוה of השבת אבידה only applies to any lost object of a Jew. If there are mostly גוים who live in the area where the object was found, the finder may keep it.
- B. The מצוה of השבת אבידה only applies if the owner has a way of proving that the object is his. Usually, this is done with a סימן.
- C. If you know that the owner gave up hope of ever seeing it again, there is no מצוה to return it. It is not his anymore. It is like he made it הפקר.

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## IV. יְאוּשׁ - "GIVING UP HOPE"

☆ If a Jew has lost an object and gives up hope of ever getting it back, he has been "מְיָאֵשׁ" on it and anyone who finds it may keep it.

A. If a person loses an object and has no hope of ever finding it, (in fact, he replaces it,) then he no longer feels connected to that object. This feeling is called יְאוּשׁ - "Giving up hope"

[For example, he does not say "I have a watch but can't find it." Instead he says, "I *used* to have a watch, but I don't have one anymore." To him, it is gone!]

B. When an object is lost outside someone's house or property, it is not in his possession.

C. Any object that is not in his possession AND he has been מְיָאֵשׁ on, is no longer his. Anyone may come and take it.

D. There are many things, that people notice right away, that they are missing. If a person has no way of finding them, he is מְיָאֵשׁ on them right away.

E. Once someone else is קוֹנֵה this object, the original owner cannot demand the it back. It is now owned by the one who found it.