

To return to him a lost object

להחזיר לו אבידה -

OVERVIEW

The גמרא stated that the rule of **רוב ישראל** requires us to return an object which was lost by the abandoned child. תוספות will (first) discuss why the גמרא did not mention a more relevant issue; that since **רוב ישראל**, we are obligated to sustain this child.

הוה מצי למימר להחיותו כדאמר רב -

The גמרא **could have answered** that the ruling of **רוב ישראל** teaches us that we are obligated **to support him**; as רב stated previously –

אלא נקט להחזיר לו אבידה דהוי רבותא טפי -

However the גמרא chose to **mention** that the ruling pertains to the obligation **to return a lost object to him**; for that is a **greater novelty** than להחיותו –

דאיסור גדול הוא משום¹ למען² ספות הרוה וגומר³ -

For there is a severe prohibition to return an אבידה to an עכו"ם; **for one** transgresses the פסוק which declares **‘in order to increase the satiated, etc.’**

אבל להחיותו לא הוי רבותא כל כך דהא מפרנסין עניי עובדי כוכבים עם עניי ישראל⁴ -

However the obligation להחיותו is no so much of a novelty; **for we sustain the gentile poor together with the Jewish poor.** The גמרא teaches us that we are permitted to return an אבידה to this child, even though there is a possibility that he is a gentile; in which case it would be a grave transgression to return the אבידה to him; nevertheless we follow the רוב and return the אבידה. It follows that we are certainly required to sustain him; for even if he is a gentile, nothing untoward occurred; for it is permissible to support the gentile poor together with the Jewish poor.

anticipates a difficulty with the ruling that if there is a **רוב ישראל** then we return an אבידה to this child on account of the רוב:

ואפילו לשמואל דאמר אין הולכין בממון אחר הרוב -

And even according to שמואל, who maintains that in monetary matters,

¹ See סנהדרין עו,ב.

² והתברך בלבבו לאמר שלום יהיה לי כי בשרירות לבי אלך למען ספות הרוה את. The פסוק reads דברים (נצבים) כט,יח. and continues לו סלוח ה' יאבה ה'. The word צמאה refers to ישראל who are thirsty and desirous to do the will of ה'.

³ The word רוה refers to עכו"ם who are satiated; and are not thirsty to do the will of ה'. When one returns an אבידה to an עכו"ם he is increasing and supporting the רוה. The severity of this transgression is evident from the phrase of לו סלוח ה' יאבה ה'; לא יאבה ה' סלוח לו. See רש"י ד"ה להחזיר.

⁴ See גיטין סא,א, that we feed then so there should be no enmity between the עכו"ם and ישראל.

we **do not follow the majority**; therefore even if there is a רוב ישראל, we should seemingly not return this child's אבידה, nevertheless שמואל will agree to this ruling. תוספות will differentiate between the ruling here and the ruling of שמואל. The ruling of שמואל that – אין הולכין בממון אחר הרוב –

היינו במוכר שור לחבירו ונמצא נגחן -

That is in the case where one sold an ox to his friend and it turned out to be a goring ox. שמואל rules that even if the majority purchase oxen for plowing (for which this goring ox is unfit) nevertheless the seller can claim 'I sold it to you for slaughtering' (since the buyer did not specify that he is purchasing it for plowing) and it is a valid sale. We do not say that since the majority purchase for plowing it is a טעות. The reason why there we do not follow the majority is -

שבהיתר באו המעות לידי ומדעתו נתנם לו הלוקח -

For the money came into the hands of the seller legally; and the buyer gave him the money willingly. Now if the buyer has regrets and wants to extract the money from the seller (who acquired it legally) he must bring evidence that he purchased it for plowing (and made it known to the seller); otherwise we do not follow the רוב, and the seller retains the money –

אבל הכא מודי דאזלינן בתר רובא:

However here in our case of אבידה, השבת שמואל (even) **admits that we follow the רוב.** In our case we cannot say that the אבידה came to him בהיתר.⁵ We certainly cannot say that it was given to him willingly. The finder is not that much of a מוחזק in the אבידה,⁶ therefore we follow the רוב.

SUMMARY

The גמרא prefers to interpret that the rule of רוב ישראל teaches that we are obligated להחזיר לו אבידה, rather than להחיותו. On the chance that he is an עכו"ם it would be more problematic להחזיר לו אבידה than להחיותו.

שמואל agrees that the rule of אין הולכין בממון אחר הרוב applies only where the money came to him בהיתר ובדעת הנותן; but not by אבידה.

THINKING IT OVER

Why does not תוספות explain, that the גמרא prefers the חידוש of אבידה לו להחזיר, since it is valid even though הרוב (להחיותו)?⁷

⁵ It is possible that the child is a ישראל and the finder must return the אבידה to him.

⁶ See רמב"ן who states מאריה דממונא הוא אבל מוצא אבידה לאו מאריה דממונא הוא. The finder of an אבידה is not the owner of the money.

⁷ See סוכ"ד אות צ'.