

Rabbi Dovid Grossman

Question: Someone went to the beach and lost an expensive watch of over \$10,000. He was not sure if it was swept away by the water or lost in the sand. He looked for a little while, couldn't find it, gave up, and left. His friend who accompanied him to the beach later decided that he would search for the watch. After searching for it in the sand, he finds it. May he keep it? Does it matter if he is having financial difficulties and the owner of the watch is wealthy and may not be particularly upset that it was lost?

Answer: The Basic halacha as explained in tractate *Bava Metzia* is that once the owner has clearly experienced *yeush* (despair at getting it back), he may keep it.

In addition, even if the owner really wants the item back and is still thinking about it, in a case of *zuto shel yam*, where the item is swept away by the river, it can be assumed that he will never find it. Therefore, the halacha considers this case as if he experienced *yeush*, even if he did not actually declare that he despairs, since it is extremely unlikely that he will ever find it again, and one who finds it may keep it.

That being said, we must also note that the Gemara introduces a concept of *lifnim midhuras hadin* (beyond the letter of the law) in the context of *hashavas aveida*. If the finder knows to whom the lost object belongs (and may have even witnessed him losing it), then even in the case of *zuto shel yam*, he should still give it back. Tosafos explain that the reason for this principle is that we do not want one person gaining from someone else's loss.

This principle of *lifnim mishuras hadin* is limited to the case where the finder is wealthy and the owner is poor or both are in similar economic conditions. If the finder is poor and the owner is wealthy, then the finder is entitled to keep it in accordance with the strict letter of the law. In our case, it seems that the finder may have been considered poor and the owner was likely wealthy.

The Ketzos Hachoshen (C.M. 259) notes that the notion of *dina d'malchusa dina* also applies to lost objects since any secular laws in this realm are generally for the benefit of society, and secular law in many countries does not recognize the notion of *yeush*. According to secular law, then, one must always return a lost object if one knows who it belongs to even if *yeush* occurred or it was a case of *zuto shel yam*. If one does not know, then the law dictates that it should be delivered to the police.

The Ketzos concludes that since halacha also recognizes a concept of *lifnim mishuras hadin*, we should follow *dina d'malchusa dina* and return it even in cases where the *lifnim mishuras hadin* does not apply. In our case, then, it would seem that the friend should indeed return the watch since even if *lifnim mishuras hadin* does not apply (since he was more needy than the owner), secular law is still binding since he knew the identity of the owner.