

Backyard Bounty

Harav Chaim Weg

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Q:

At a large barbecue in a friend's backyard, I noticed a man searching frantically in the grass under his chair. When he stopped, I heard him mutter, "The \$500 is gone forever." He then left early. I searched the area and found five well-camouflaged hundred-dollar bills in the grass. To whom does the money belong?

A: Because the owner experienced *yiush* (loss of hope of retrieving his money), he no longer owns the money. When a *hefker* (ownerless) object enters someone's property—even if he's unaware of it—the property automatically acquires it on his behalf via *kinyan chatzer*, provided the property is a *chatzer hamishtameres*, i.e., the item is secure and protected within it. Nevertheless, it would seem that for two reasons, *kinyan chatzer* wouldn't work in this case, even though a fenced-in backyard would qualify as *mishtameres*:

First, because the money entered the *chatzer* prior to the *yiush*, the *chatzer* wouldn't acquire it for him. (See explanation in Shach 268:2 and Nesivos Hamishpat 262:1). Second, the Mishnah states that one who finds a lost object in a store may keep it. The *Rishonim* ask, why doesn't the property owner automatically acquire it with *chatzer* before it is found? They answer that the traffic of patrons makes the store not *mishtameres*, because anyone could happen upon the object (Tosafos, Bava Metziah 26a; Shulchan Aruch Choshen Mishpat 260:5). Similarly here, when a crowd is present the *chatzer* is not *mishtameres*.

Based on the above, the money would legally be yours to keep as the finder. However, *Chazal* recommend that in a case like this, where the finder knows who lost the item, he should go *lifnim mishuras hadin* (beyond what the halacha requires) and

return it, unless the loser is rich and the finder is poor
(Shulchan Aruch Choshen Mishpat 259:5).