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WHAT'S MINE IS MINE: DOES A SALE INCLUDE THE UNKNOWN?

Adapted from the writings of Dayan Yitzhak Grossman

Business Insider reports:

In 2011, Randall Atkins, a former Wall Street banker, bought a mine outside of Sheridan, Wyoming, sight unseen, the Wall Street Journal reported.

Originally, the plan was to sell coal to power plants, the Casper Star-Tribune reported.

However, in collaboration with the DOE's National Energy Technology Laboratory and geologists at Weir International, Inc., Atkins's company, Ramaco Resources, discovered there was more than just coal to be mined from Atkins's land.

In May, Ramaco announced that Atkins's Brook Mine contains one of the largest unconventional deposits of rare earth elements in the US. Because of that, the mine is worth an estimated \$37 billion—significantly more than the roughly \$2 million he bought it for, per the Wall Street Journal.¹

In this article, we consider the question of whether the seller of the mine to Ramaco would have a claim against Ramaco for the value of the rare earth deposits, for which it had not been properly compensated.

The Mishnah states:

If one found objects in a heap of stones or in an old wall, these belong to him.

The Gemara explains:

A *breisa* taught that this is because the finder can say to the owner of the heap or wall: These belonged to the Emori'im (the ancient inhabitants of Eretz Yisrael). The Gemara asks: Is it only Emori'im that hide things in walls, and Jews do not hide things in walls? The Gemara answers: The Mishnah is necessary where the object is extremely rusty (so we can assume it has been there for a very long time).²

businessinsider.com/rare-earth-elements-minerals-brook-mine-wyoming-ramaco-atkins-2023-11.

2 Bava Metzia 25b.

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PARSHAS VAYISHLACH

LAWS OF WAR

Excerpted and adapted from a shiur by
Dayan Yitzhak Grossman

And it came to pass on the third day, when they were in pain, that two of Yaakov's sons, Shimon and Levi, Dinah's brothers, each took his sword, and they came upon the city confidently and killed every male.

Bereishis 34:25

If Shechem and Chamor deserved death for kidnapping Dinah, why were the rest of the men liable?

Some *mefarshim*, including the Bechor Shor and Rav Hirsch, say that Shimon and Levi were mistaken, and this is why Yaakov criticized them.

The other *mefarshim* say that the killing was justified, but they disagree about the reason.

The Rambam explains that under the *sheva mitzvos bnei No'ach*, non-Jews must appoint judges to enforce the mitzvah of *dinim* (civil laws). Because the people of Shechem did not enforce justice when Dinah was kidnapped and raped, they were *chayav misah*, because

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The *Rishonim* are puzzled by this. Even if the found object had originally belonged to the Emori'im, why would the owner of the heap or wall not have acquired ownership of the object under the rule that "a person's courtyard acquires

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Q&A from the
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Finger Painting

Q I was painting on Friday. I cleaned the paint from my hands, but I see now that a tiny spot remains on one fingernail. Does that pose a problem for *netilas yadayim*? If so, what can I do about it on Shabbos?

A Just as one who is *toveil* in a mikveh may not have a *chatzitzah* (blockage) between his body and the water, a person washing *netilas yadayim* may not have a *chatzitzah* between his hands and the water (Shulchan Aruch O.C. 161:1). The Mishnah Brurah (161:1) writes that one should check his hands for *chatzitzos* before washing. But if a *chatzitzah* on one's hand is *miut she'eino makpid* (it covers only a minority of the surface area of his hand, he doesn't mind its presence, and neither would most people).

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for him even without his knowledge (*chatzeiro shel adam koneh lo shelo midato*)³ They offer a number of answers to this question, of which the following two are widely cited by later authorities:

- The rule of *chatzeiro shel adam* does not extend to items that are not likely to be discovered.⁴
- The rule does not extend to items whose presence in a person's premises is entirely unexpected, so he couldn't anticipate it.⁵

R' Gershon Ashkenazi (the Avodas HaGershuni) points out that a practical difference between these two approaches arises in the case of an item found in a heap of stones that the owner planned to clear. According to the first approach, he acquires ownership of the item, because it would eventually have been found. According to the second approach, he does not, because the presence of the item in the heap remains unanticipated.⁶

The Mordechai discusses the case of a Jew who purchased tin from a non-Jew and resold it to another Jew, who discovered that it was actually only silver plated with tin. The first Jew argued that he had been unfairly underpaid (*nis'aneh*), because silver is more valuable than tin. The Mordechai records that R' Eliezer ben Yoel Halevi (the Ra'avyah), in a ruling endorsed by Rabeinu Tam, decided in favor of the second Jew based on our Mishnah (following the second approach above): Because the first Jew was unaware of the silver and never intended to acquire it, it did not belong to him, so he has no claim of *ona'ah*.⁷

R' Mordechai Yoffe (the Levush)⁸ and the Avodas HaGershuni⁹ extend the ruling of the Ra'avyah to the case of the sale of a silver utensil that both buyer and seller believed was tin. But R' Shmuel Wosner (the Sheivet Halevi) rules that this expansion of the Ra'avyah's ruling does not extend to the case of the sale of an antique sefer that was subsequently discovered to contain the signature of an early gaon, which dramatically increased the sefer's value: In the case of the Ra'avyah, tin and silver are two different things, and intent to acquire tin does not constitute intent to acquire

silver, whereas in the case of the Sheivet Halevi, an antique sefer without a signature and one with a signature are essentially the same thing, so the intent to acquire the sefer confers ownership of the signature too.¹⁰

A similar distinction is made by R' Yosef Sha'ul Natanson (the Sho'eil Umeishiv) in rebutting a ruling of R' Yitzchak Isaac Yehudah Yechiel Safrin (the second Komarno Rebbe). He discusses the case of a Jew who had received money from a non-Jew in payment of a debt and then gave it to a Jewish moneychanger for exchange. The non-Jew had said he was paying with ten 50-ruble notes, but he had actually handed over ten 100-ruble notes. The Komarno Rebbe ruled that the moneychanger was entitled to keep the extra money, based on the ruling of the Ra'avyah, but the Sho'eil Umeishiv endorsed the argument of a student of his that distinguished between the cases: In the Ra'avyah's case, the seller saw the tin and was unaware of the silver beneath it, so he does not gain ownership of the silver, whereas in the Komarno Rebbe's case, the seller was aware of the money and intended to acquire it; he was only unaware of its *value*, so he does gain ownership of all of it.¹¹

I am not entirely sure of the Sho'eil Umeishiv's precise intent in his distinction. It is possible that misperceiving the denomination of currency is analogous to misperceiving silver as tin, in which case it follows that the Komarno Rebbe is espousing the view of the Levush and the Avodas HaGershuni, while the Sho'eil Umeishiv is rejecting their view. Alternatively, it is possible that different denominations of currency are essentially the same thing and are analogous to *sfarim* with and without signatures, in which case it follows that the Komarno Rebbe and the Sho'eil Umeishiv are disagreeing about the argument of the Sheivet Halevi. (It is also possible that the Komarno Rebbe and the Sho'eil Umeishiv accept the positions of both the Levush and the Avodas HaGershuni on the one hand, and the Sheivet Halevi on the other, and they are just disagreeing about whether different denominations of currency are more closely analogous to two entirely different metals, or to two essentially identical *sfarim* that differ only with regard to a signature.)

In the case of the Brook Mine, according to the second approach to the Mishnah cited above, the seller would not have a claim to the mine's rare

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it doesn't pose a problem. Although for *tvilah*, we *lechat'chilah* (a priori) remove even a *chatzitzah* that is *miut she'eino makpid*, for *netilas yadayim* this isn't necessary (Shulchan Aruch *ibid.*).



Most people probably wouldn't care about a tiny spot of paint on a fingernail. But even if most people aren't *makpid* about a particular kind of *chatzitzah*, the Mishnah Brurah (161:10) maintains that if the bearer himself minds, it is a *chatzitzah* for him.

If it's unclear whether the bearer is *makpid* or not, and he can't remove it because it's Shabbos, there is room to be lenient with *netilas yadayim* on two bases:

- The Shulchan Aruch Harav argues on the Mishnah Brurah and maintains that for *netilas yadayim*, if the bearer is bothered by the *chatzitzah* but most people wouldn't be, it's not a *chatzitzah*.
- The Eishel Avraham (Butchatch) says that when one cannot remove a *chatzitzah* because of Shabbos, he is considered not to be *makpid* on it. In this he disagrees with the Mishnah Brurah (340:3).

If one has a *chatzitzah* that cannot be removed on Shabbos, he may eat bread by wearing a glove on that hand.

earth deposits. Although rare earth elements are apparently not actually all that rare, their presence in commercially viable concentrations is,¹² so our situation would seem analogous to the case of the Ra'avyah, in which the seller has no claim to the silver he didn't know about. But according to the first approach to the Mishnah cited above, the rights of the mine's prior owner would hinge on whether the rare earth deposits were likely to eventually be discovered, and only if this is unlikely would they have no claim.¹³

3 Ibid. 11a and elsewhere.

4 Tosfos *ibid.* 26a s.v. *Deshasich* (cited in Nimukei Yosef *ibid.* 14a in Rif pagination) and Bava Basra 54a end of s.v. *Ada'ata*; Piskei HaRosh Bava Metzlia *perek* 2 *siman* 9 (in his first approach).

5 Mordechai Bava Metzlia *siman* 258; Hagahos Ashri *ibid.* *siman* 9 s.v. *Vechasov Rabeinu Avi Ha'azri*. Cf. Hagahos Maimoniyos *Czeilah* Vo'veidiah 16:9. The Rosh offers another answer as well, and the Rambam and Ra'avad (Hilchos *Czeilah* Vo'veidiah 16:8) offer two further answers, and see Magid Mishneh *ibid.*; Mirkeves Hamishneh *ibid.*

6 Cf. Nesivos Hamishpat *siman* 268 *biurim* s.k. 3.

7 Shu"t Avodas HaGershuni *siman* 94.

8 Mordechai *ibid.* Cf. Shu"t Chavos Ya'ir *siman* 171.

9 Levush Ir Shushan end of *siman* 233.

9 Avodas HaGershuni *ibid.*

10 Shu"t Sheivet Halevi *cheilek* 4 *siman* 211. Mishpetei HaTorah *cheilek* 2 *siman* 26 and Bava Metzlia *siman* 24 takes the same position as the Sheivet Halevi. Cf. Ha'ichud Bechidud, *parshas* Pinchas 5767 *gilyon* 8, Meishiv Davar - *Teshuvah* leMa'aseh Rav.

11 Shu"t Sho'eil Umeishiv *mahadura revia'a cheilek* 3 end of *siman* 89.

12 See Victoria Atkinson. Why are rare earth elements so rare? Live Science. Oct. 1, 2023.

13 Cf. Nesivos Hamishpat *siman* 232 *biurim* s.k. 8.

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bnei No'ach are subject to death if they violate their mitzvos.

The Ramban maintains that the people were liable to death for other crimes, including immorality and idol worship, two of the *sheva* mitzvos.¹

The Ramban explains that Yaakov disapproved of Shimon and Levi's actions because they were not responsible for enforcing the punishment, but Shimon and Levi were permitted to kill the people because their blood was *hefker* due to their *aveiros*.

The Moshav Zekeinim Miba'alei HaTosfos says that when Shimon and Levi killed Shechem and Chamor, the rest of the population tried to kill Shimon and Levi, who then killed them as *rodfim* (pursuers).

The Maharal answers that when one nation battles another, it is permitted to kill anyone necessary

for success, including civilians.²

2 This Maharal is cited by a number of contemporary *poskim* in support of Israel engaging in military operations against its enemies even if civilians will be killed in the process.

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1 R' Shaul Yisre'elli in Amud Hayemini explains that the

machlokes between the Rambam and the Ramban is whether the mitzvah of *dinim* includes judging the leaders.

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