

21.2.7; 26b (משנה ד) → 28a (בחפיסה הוא דמנח ליה)

1. לא תראה את שור אחיד או את שני נדחים והתעלמת מהם השב תשיבם לאחיד: דברים פרק כב פסוק א
 2. ואם לא קרוב אחיד אליך ולא ידעתו ואספתו אל תוך ביתך והיה עמך עד דרש אחיד אתו והשבתו לו: דברים פרק כב פסוק ב
 3. וכן תעשה לקמרו וכן תעשה לשמלתו וכן תעשה לכל אבדת אחיד אשר תאבד ממנו ומצאתה לא תוכל להתעלם: דברים פרק כב ג

I משנה ד' found money in different contexts

- a If: he found money in a store – he may keep it
 i But: if he found it between the storekeeper and his cashbox – belongs to storekeeper
- b If: he found it in front of a money-changer – he may keep it
 i א"ל. even if found on the שלחן itself
 1 Source: cannot be from משנה, as conflicted implication of רישא/סיפא aren't informative
 2 Rather: notice that משנה mentioned כסא and בין שלחן and not על השלחן or "at the moneychanger's" (as in בחנות)
- ii But: if he found it between the moneychanger and the table – belongs to moneychanger
- c If: someone buys fruit from another or receives fruit as a gift and money was inside – he may keep it
 i However: if the coins were tied (סימן) he must take and declare
 ii Note: תנא taught – only true if he bought from salesman; if bought from בעה"ב, must return
 1 Challenge: does the בעה"ב process and clean fruit (it was cleaned and picked by workers)
 2 Answer: if his own slaves cleaned it out, return it to him (else, keep it)

II משנה ה' General ruling hermeneutically derived from v. 1/v. 3

- a Rule: anything that was part of a stated rubric and was, nonetheless, explicated – has implications for entire rubric
- b Application: שמלה subsumed under אחיד; כל אבדת אחיד; explicated → השבת אבדה only applies if item has סימנים and claimants
- c Further (דבא): justification for שמלה ושמה, שה, חמור ושמה:
 i שמלה alone would have taught that if there are סימנים in the item itself, it is liable for אבדה השבת
 1 But: a donkey, which is identified by its saddle (extrinsic to it) – no מצוה
 ii Therefore: חמור teaches that even סימנים that are extrinsic are valid.
 iii שור teaches that even the tail-hair must be returned
 iv שה: no explanation (as we have no explanation for חמור's listing in בור נזקי בור according to יהודה)
 1 Justification: cannot be שה לגיזותי – שה לגיזתו from ק"ו; שור לגיזתו זנבו ק"ו; cannot be גללים, since they are הפקר
 (a) suggestion: perhaps שה teaches סימנים → סימנים דאורייתא
 (b) Rejection: from wording of משנה that uses סימנים as a basis for extension to others from שמלה

III Assorted הלכות of אבדה

- a ש"פ worth less than אבדה: ברייתא
 i ומצאתה – ר' יהודה; אשר תאבד – ת"ק
 1 Split the difference:
 (a) משמעות דורשין אבוי (no practical difference)
 (i) ת"ק uses ומצאתה → even if it "falls into your lap"; nonetheless, if של נכרי, no מצוות השבה, של נכרי
 1. ומצאתה ת"י infers this also from ומצאתה
 (ii) ת"י uses אשר תאבד as per יוחנן – excludes something lost to everyone (e.g. taken by river)
 1. ת"ק from ממנו (which יהודה ר' sees as insignificant)
 (b) דבא: if the coin was ש"פ at time of loss, lost value and regained it:
 (i) ת"ק inclusion determined as per value at time of loss (אשר תאבד)
 (ii) ת"י inclusion determined by constant value from time of loss until recovery (ומצאתה)
- b Discussion – are סימנים דאורייתא or דרבנן?
 i Split the difference: whether we return a גט based on סימנים (if מה"ת – return; if מד"ס, only made for ממונא)
 1 Attempted proof: our משנה – סימנים inferred from שמלה
 (a) Rejection: main point is claimants, not סימנים (mentioned as an afterthought)
 2 Attempted proof: from ברייתא – a donkey is returned via סימנים on saddle
 (a) Rejection: means witnesses as to ownership of saddle
 3 Attempted proof: exegesis of v. 2 – check in order to return it (meaning סימנים?)
 (a) Rejection: means – עדים
 4 Attempted proof: משנה יבמות טז:ג: that in spite of סימנים, may not testify to death of husband without seeing face
 (a) Rejection: body - tall or short (unspecific); כלים – may be borrowed (or just white or red – unspecific)
 (i) Block: if we are concerned about שאלה, how can we return donkey based on saddle?
 1. Answer: people don't borrow saddles as they hurt the donkeys (if not properly fitted)

- (ii) *challenge*: a גט may be returned – even after a long while – if it was tied to the שליח's money pouch, wallet, ring or found among his own vessels
 - 1. *answer*: these are *never* borrowed, each for its own reason (witchcraft, identity theft etc.)
- ii *suggestion*: perhaps this is subject of Tannaitic dispute; if a body is found with a mole:
 - 1 חכמים may not testify
 - 2 אלעזר בן מהבאי may testify to his death
 - (a) *Suggestion*: their dispute is whether סימנים דאורייתא (if דאורייתא, we'll permit איש אשת based on סימנים)
 - (i) *Rejection* (רבא): all agree that סימנים דאורייתא
 - 1. *Dispute*: whether a mole is found among men born at the same time, OR
 - a. *All agree*: mole isn't common, but
 - 2. *Dispute*: whether a mole typically changes posthumously OR
 - a. *All agree*: moles typically do not change and סימנים דרבנן, but
 - 3. *Dispute*: is a mole considered סימן מובהק (which, even if סימנים דרבנן, we would use)
- iii רבא סימנים דאורייתא: רבא, else how could we return an אבדה based on סימנים?
 - 1 *Answer*: social contract:
 - (a) *Version 1*: people are happy to return it as they'll get their own אבדות when they lose them
 - (i) *Rejection*: we are not allowed to do a favor with another's property (the putative "real" owner)
 - (b) *Version 2*: all who lose items are happy to have this agreement, as no one else can provide proof
 - (i) *Challenge*: רשב"ג's ruling (ב"מ א:ח) that if the 3 שטרות all have the same lender, it is returned
 - 1. *Explanation*: the לווה is certainly not happy that his creditor gets the note back
 - 2. *Answer*: that ruling follows סברא, as explained there – all 3 are together because they belonged to the one lender
 - (ii) *Challenge*: ruling (ibid) that a bundle or roll of שטרות are returned (without above-noted סברא)
 - 2 *Answer*: סימנים are, indeed, דאורייתא as per exegesis of v. 2
- c דבא competing claims:
 - i *Assuming*: דאורייתא סימנים
 - 1 *If*: two claimants, each offering סימנים, stays in stasis
 - 2 *If*: 1 claimant who provides סימנים and another who has witnesses – witnesses trump סימנים
 - 3 *If*: 2 claimants, each providing סימנים and one who also has 1 עד; the witness ignored and it stays in stasis
 - 4 *If*: 1 has witnesses that he wove it and other has witnesses that it fell from him – given to latter
 - (a) *Reason*: former may have made it – and sold it (akin to ruling about coin found in שוק)
 - 5 *If*: 1 can identify width and other can identify length – given to one who can identify length
 - (a) *Reason*: width could be measured when he saw (real) owner wearing it
 - 6 *If*: 1 can identify width and length and other can identify total fabric – given to length/width
 - 7 *If*: 1 can identify width/length and other can identify weight – given to one who can identify weight
 - 8 *If*: husband identifies סימנים of גט and so can she – given to her
 - (a) *Meaning*: cannot mean width/length (she saw it when he held it) rather, a hole near a particular letter
 - 9 *If*: husband identifies סימנים of string tied to גט and so can she – given to her
 - (a) *Meaning*: cannot mean color, as she may have seen it; rather – the length
 - 10 *If*: husband claims the גט was found in a pouch as does she – given to **him**
 - (a) *Reason*: she knows that he keeps everything in a pouch