

תלמוד לומר המצא תמצא מכל מקום –

It teaches us by saying המצא תמצא; in any event

OVERVIEW

The פסוק states¹ that if the גניבה is found בידו (in his hand) he is required to pay כפל. The ברייתא teaches how we know that he is חייב even if it was found in his חצר, etc.; since the פסוק writes the general term המצא תמצא, he is always חייב regardless where it was found (in his possession). First תוספות asks questions and then resolves the manner of the interpretation of this פסוק.

תוספות asks:

ואם תאמר ונימא המצא תמצא כלל בידו פרט וכלל ופרט אין בכלל אלא מה שבפרט –
And if you will say; and let us say that the words המצא תמצא are a generalization, and the word בידו is a specific term, which makes the phrase of המצא תמצא בידו a פרט כלל where the rule is that the כלל contains no more than the פרט;² since the פרט specifies ידו, therefore the כלל cannot contain more than ידו and we cannot include anything else besides ידו. How does the ברייתא include וחצירו?!

תוספות answers:

ויש לומר שדי ידו בין המצא תמצא והוי ליה כלל ופרט וכלל³ –
And one can say; place the word ידו in between the words המצא תמצא (as if it were written המצא בידו תמצא), which makes it a כלל ופרט וכלל.

תוספות proves that we can make such a maneuver:

כדאמרין במרובה (בבא קמא דף סד,ב ושם) –

As the גמרא states in מרובה פרק concerning כלל ופרט וכלל –
כל מקום שאתה מוצא שני כללות הסמוכין זה לזה הטל פרט ביניהם –
Anywhere where you find two כללות which are adjacent to each other (such as המצא תמצא) place the פרט in between them to make a כלל ופרט וכלל.

תוספות anticipates (and responds) to a similar difficulty:

וכן בסמוך גבי גט דמרבה גגה מונתן⁴ בידה -

¹ שמות (משפטים) כב,ג.

² When the תורה writes a כלל (a general term such as המצא תמצא) followed by a פרט (a specific term such as בידו) the rule is that it we follow only the פרט to the exclusion of all else.

³ The rule by a כלל ופרט וכלל is that we include anything which is similar to the פרט; in this case בידו. Therefore we say just as בידו is his רשות, similarly anything which is his רשות such as חצירו וקרפיפו are also included in המצא תמצא בידו.

⁴ ונתן is a general term (he can give the גט anywhere) as opposed to בידה which is a specific term.

And similarly⁵ shortly in the גמרא regarding גט, where we include placing the גט on **‘her roof’** (as a proper receiving of her גט), for we derive it **from ונתן בידה**, since ונתן is a general and inclusive term it includes גגה as well. We could seemingly ask the same question there, that ונתן is a כלל and בידה is a פרט, so it should be considered as a כלל ופרט where the rule is שבפרט מה שבפרט אין בכלל אלא מה שבפרט and a גט will have to be placed only בידה and not by גגה וחצירה וכו' –

responds: תוספות

יש לומר ושלחה⁶ חזר וכלל:

one can also say that the word **ושלחה** (which follows ונתן בידה) is the **concluding כלל**; so there too we have a כלל ופרט וכלל to include גגה וחצירה.

SUMMARY

The inclusions (and additions) based on המצא תמצא בידו and (ושלחה) ונתן בידה are to be understood as cases of כלל ופרט וכלל.

THINKING IT OVER

According to תוספות why does the גמרא say that we include גג וחצירו וכו' by גט from a ריבוי (of המצא תמצא or ונתן), when really we derive it from a כלל ופרט וכלל?⁷

⁵ The similarity is that we derive them both from a כלל ופרט וכלל and not from (merely) a ריבוי as it appears from the גמרא. However, they are not completely similar, for by גג וחצירה we arrive at the כלל ופרט וכלל by inserting בידה between המצא תמצא, and by גט it is a regular כלל ופרט וכלל from ושלחה.

⁶ ושלחה (and he sends her away) is also a general term; he sends her away in any manner he chooses.

⁷ The question would seem to be even stronger by גט where the last כלל of ושלחה is not mentioned at all in the גמרא (as opposed to המצא תמצא where both כללים are at least mentioned [albeit not as a כלל ופרט וכלל]).