

## סימנין דאורייתא או דרבנן – Identifying signs; is it *Torah* or Rabbinic

### OVERVIEW

The גמרא states that רב אשי was unsure regarding the rule that we return a lost object based on סימנין; whether that is a תורה law or a rabbinic law.

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אי סימנין דרבנן<sup>1</sup> הא דמהדרינן אבדה מן התורה<sup>2</sup> היינו בעדים -

If we assume that סימנין דרבנן, **this that we return a lost object that is only with witnesses**, who testify that this object belongs to this claimant -

ורבנן הוא דעבוד במציאה תקנתא להחזיר בסימנין -

However, it is the רבנן who made an enactment by a found object to return it even with סימנין, although there are no עדים.

תוספות asks:

ואם תאמר והא דתנן בפרק אלו מציאות (בבא מציעא דף כז, א) דדבר שיש בו סימן חייב להכריז -

And if you will say; and this which the משנה taught in פרק אלו מציאות, that an object which has a סימן, one is obligated to announce it -

ושאין בו סימן הרי אלו שלו ואפילו מדרבנן -

But if it has no סימן, it belongs to the finder, even מדרבנן; the question is -

למה הוא שלו יכריז וזה יביא עדים דמן התורה מה לי זה ומה לי זה<sup>3</sup> -

Why can the finder keep it; let him announce it, and the owner will bring witnesses, for מה"ת what difference is there whether or not it has סימנין, for -

כיון דבעי עדים כך ימצא עדים בזה כמו בזה -

Since we require עדים to return it, he will find witnesses where there is no סימן, just as he will find witnesses when there is a סימן?!

תוספות answers:

ויש לומר דעל ידי סימן מכירים העדים בטביעות עין<sup>4</sup> -

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<sup>1</sup> The Tosfos is clarifying; how can there be a question whether סימנין is מה"ת or מדרבנן, since the תורה requires us to return a lost object (see footnote # 2). Seemingly the (only) way to return is through סימנין.

<sup>2</sup> The תורה writes (in א-ג, בבא מציעא [תצא]) that one is required to return a lost object (even if he does not know who the owner is). תוספות explains that if we maintain מדרבנן, the only way we can return it מה"ת, is if the person who lost it, brings witnesses that it belongs to him (otherwise a סימן is insufficient מה"ת, since סימנין is only valid מדרבנן).

<sup>3</sup> The תורה requires us to return a lost object. We are maintaining מדרבנן, therefore we return it only if the owner brings עדים (the סימנין are irrelevant). How can then the רבנן rule that if the מציאה has no סימנין the finder may keep it; why is he not obligated to wait until the owner brings witnesses. It is seemingly just as easy (or difficult) to find עדים that it belong to the owner, whether the object has a סימן or not. The תורה never said to return an object which has a סימן; merely that one is obligated to return any object as long as there are witnesses who testify that it belongs to the owner. See 'Thinking it over' # 2.

**And one can say that through the סימן, the עדים recognize<sup>5</sup> that it belongs to the owner by טביעות עין –**

ועוד דעל ידי סימן שואלים<sup>6</sup> אם יש שמכיר אותו דבר שיש בו סימן כך וכך -

**And furthermore through the סימן, people ask around if there is someone who recognizes that object which has this particular סימן -**

**דעל ידי כך ימצא עדים אבל כשאין בו סימן אין יודע היאך לישאל ומתייאש:**

**So that through mentioning the סימן, witnesses will be found, however when it does not have a סימן, he does not know how to ask, so he gives up hope, and therefore the finder may keep it.**

## **SUMMARY**

The עדים remember better when there is a סימן and people ask around more if there is a סימן, otherwise the owner is מתייאש from finding עדים.

## **THINKING IT OVER**

1. If we maintain סימנין דרבנן, will a סימן מובהק be sufficient מה"ת to return an אבידה?<sup>7</sup>

2. Why cannot תוספות ask the same question even if we maintain דאורייתא; we should have to announce every item even if it does not have a סימן, because perhaps he will find עדים to identify it as his?<sup>8</sup>

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<sup>4</sup> טביעת עין refers to a type of recognition that cannot be defined verbally by offering a description, rather it is a familiarity with the item; i.e. the way one recognizes his (black) hat among many hats.

<sup>5</sup> It seems (from this answer) that the עדים must testify that they recognize that this item belongs to the owner. However they cannot say that the owner had an item with this סימן, so therefore it must belong to him (even though they do not actually recognize it as being his); for in this case, מה"ת it will not be returned since סימנין דרבנן. The סימנין will (seemingly) jog the memory of the עדים and will cause them to remember that it was his item. However when there is no סימן it will be very difficult for the עדים to be able to identify it, therefore (as תוספות shortly concludes) the owner will be מתייאש, for he realizes he will never be able to find proper עדים.

<sup>6</sup> This plural term may refer to both the finder and the loser (owner).

<sup>7</sup> See מהרש"א.

<sup>8</sup> See נחלת משה.