

**He found it in a *Chafeesoh* – ומכירו³ כשר –
or in a *D'looskmoh*, and he recognizes it, it is *Kosher***

OVERVIEW

The משנה taught that if one found the גט (which he lost) in a חפיסא וכו' and he recognizes it, the גט is כשר. Our תוספות will clarify this ruling.

כשמצאו הוא עצמו איירי מדסמכינן אהכרתו -

The משנה is discussing a case where he himself (the one who lost it) found it, since we rely on his recognition -

ואף על גב דלאו צורבא מדרבנן הוא נאמן במיגו דאי בעי אמר לא אבדתי⁴ -

And even though the finder is not a Torah scholar, nevertheless he is believed, for he has a מיגו that he could have said, 'I never lost it' -

דכולי עלמא אית להו טביעות עינא כדפירשנו לעיל⁵ -

Since everyone has a טביעות עין as we explained previously -

ומכירו אחפיסה ואדלוסקמא קאי ואף על פי שאינו מכיר את הגט⁶ -

And the word 'ומכירו', which the משנה states, is referring to the חפיסא ודלוסקמא, and that is sufficient even though he does not recognize the גט –

גט: הגט proves that מכירו refers to the חפיסא and not the תוספות

דאי מכיר את הגט למה לי שמצאו בחפיסה⁷ -

For if he recognizes the גט why does the משנה need to tell us that he found it in a חפיסא; he recognizes the גט, that is certainly just as good as recognizing the חפיסא –

תוספות asks:

ואם תאמר וניחוש לשאלה כדאמרינן בפרק בתרא דיבמות (דף קב, ב) -

¹ A marginal note indicates that this תוספות is referencing the משנה on כז, א. It seems (from the continuation in this תוספות) that the חפיסה was not in its usual place when he found it.

² The גמרא explains חפיסה to mean a small jug and דלוסקמא to mean a purse for elder people.

³ See רש"י on the חפיסה וד"ה אה אמר רש"י. The משנה is teaching us two separate laws, if he has a סימן in the חפיסא כו', or he recognizes the גט (wherever it was found), the גט is כשר.

⁴ The one who found it, is the one who informed us that he lost it, so when he says, 'I recognize it', he is believed because he could have never told us that he (lost it and) found it. However if someone else found it he would not be believed even if he said it was in a חפיסא.

⁵ כז, ב תוד"ה ודוקא. It is only by a צורבא מרבנן where we believe him with טביעות עין (even without a מיגו) however a 'regular' person also has טביעות עין and if he has a מיגו he is believed.

⁶ This means he cannot identify the גט with certainty, since he is unaware what the גט looked like, but (obviously) it does not mean that he knows it is not the correct גט.

⁷ The same מיגו that applies to the חפיסא (לא אבדתי) applies to the גט as well. There is no need to mention מצאו בחפיסה.

And if you will say; but let us be concerned that it was borrowed⁸ as the גמרא states⁹ in the last פרק of יבמות –

answers: תוספות

ויש לומר דקים ליה בנפשיה שלא השאילה לשום אדם -

And one can say; that the finder is certain in his knowledge that he never lent the חפיסה to anyone. Therefore it must certainly be his גט –

offers an alternate solution: תוספות

אי נמי ביודע שבחפיסה או בדלוסקמא איבדו¹⁰ -

Or you may also answer that he knows that he lost it in a חפיסה or a דלוסקמא -

ומכל מקום¹¹ צריך שיהא מכיר חפיסה או דלוסקמא בטביעות עינא -

But nevertheless (even according to this answer) it is necessary that he recognizes the חפיסה or the דלוסקמא with טביעות עין that it is his -

דמה שיודע שבחפיסה או בדלוסקמא איבדו אין זה סימן -

For this which he knows that it was lost in a חפיסה or in a דלוסקמא, that is not a sufficient סימן that this is the one he lost.

anticipates a difficulty: תוספות

והא דתנן בפרק קמא דבבא מציעא (דף כ, א) -

And this which the משנה teaches in the first פרק of ב"מ -

מצא בחפיסה או בדלוסקמא תכריך של שטרות או אגודה של שטרות כולי¹² -

‘He found a bundle of notes or a bunch of notes in a חפיסה or in a דלוסקמא, etc., he should return it’ to the owner of the דלוסקמא –

replies: תוספות

התם מיירי שנותן סימן בחפיסה או בדלוסקמא עצמו ועל ידו מחזיר לו מה שבתוכו -

There it is in a case where he gives a סימן in the חפיסה or the דלוסקמא itself (he

⁸ Perhaps someone (with the same names) borrowed the חפיסה and placed his גט in the חפיסה and when he returned it he forgot to remove his גט. Previously תוספות maintained that he recognizes only the חפיסה, but not the גט.

⁹ The גמרא there states that we cannot identify a corpse, by its clothing, because perhaps he borrowed it from someone. See ‘Thinking it over’.

¹⁰ See משה נחלת משה who maintains that (according to this answer [of ביודע וכו' איבדו]) he must know that he lost the גט in this חפיסה (not just in any חפיסה [and he recognizes it as his חפיסה with עין [טביעות עין]])

¹¹ It is not sufficient that he knows he lost it in a חפיסה (meaning he remembers placing it in the חפיסה), but he must recognize this חפיסה as being his, for otherwise even though he lost it in a חפיסה, nevertheless another יב"ש may have lost his גט in a חפיסה as well, since (as תוספות mentions shortly), people generally place items in the חפיסה.

¹² תוספות assumes that the owner only needs to state that the שטרות were found in a חפיסה. The same should apply here by a גט that if he says the גט was in a חפיסה that should be sufficient to return the גט to him, even without טביעות עין (or a סימן) in the חפיסה.

describes its uniqueness) **and through** this סימן **we return to him its content**, but not that he merely states in was in a הפיסא -

ולא¹³ חיישינן לשאלה לענין ממון -

And we are not concerned for lending it out regarding a monetary issue -

אבל מה שאומר שאבדה בדלוסקמא לא הוי סימן דדרך להניח שטרות בדלוסקמא -

However this which he says that he lost it in a דלוסקמא, that is not a סימן, since it is customary to store שטרות in a דלוסקמא -

כדתניא בתוספתא עשר דלוסקמאות שטרות מסרתי לך -

As the שטרות דלוסקמאות of 'I deposited by you ten ברייתא states in the תוספתא; -

תוספות adds:

ואפילו הוי סימן סימן מובהק להחזיר הגט לא הוי -

And even if we will assume that merely saying that it was in a הפיסא **is a סימן** (regarding returning the שטרות) nevertheless regarding **returning the גט, this is not considered a סימן מובהק** and the גט will not be returned on this basis -

תוספות responds to an anticipated difficulty:

והא דאמר באלו מציאות (בבא מציעא דף כח, א) הוא אומר בחפיסה והיא אומרת בחפיסה¹⁴ -

And this which the גמרא states in מציאות, פרק אלו מציאות, he says the גט was in a הפיסא (and I lost it, and I did not give it to you yet, so the wife is not divorced yet) **and she says the גט was in a הפיסא** (and I lost it after it was given to me as a divorce), the rule is -

ינתן לו דמידע ידעה דכל דאית ליה¹⁵ בחפיסה מנח ליה¹⁶ -

It should be given to him and not to her, since she knows that whatever he has he places it in the הפיסא -

תוספות responds:

אפילו תימצי לומר דינתן לו לגרש בו קאמר¹⁷ לא משום דחשיב סימן מובהק -

¹³ תוספות is explaining why we return the שטרות, perhaps he lent out this הפיסא to another person and the borrower, placed his שטרות in the הפיסא. תוספות responds that the concern for borrowing is only regarding the issue of איש אשת איש (where if a mistake is made there is no recourse), but not regarding monetary issues.

¹⁴ The husband and wife are arguing whether she received this (found) גט and she is divorced, or not. Each one claims that they lost the גט, and they both give the same סימן.

¹⁵ The fact that she claims it was in a הפיסא is not sufficient proof that she actually received the גט and placed it in a הפיסא, but rather it is possible that she never received the גט, and she is merely guessing that it was found in a הפיסא, since that is where her husband places all his documents, etc.

¹⁶ The husband and wife are not giving a סימן in the הפיסא, they are merely saying it was found in a הפיסא; indicating that merely saying that it was found in the הפיסא is enough of a סימן to return it to the husband, however תוספות just concluded that merely saying it was found in a הפיסא is an insufficient סימן to return the גט!

¹⁷ We could interpret 'ינתן לך' to mean that we [do not give it to her so she should be considered divorced, but rather we] give it to him, but he cannot use it to divorce her, for we are not sure that this is his גט which he lost. If we

Even if you are able to say that when the גמרא rules 'it should be returned to him', the גמרא means it should be returned to him so he can divorce his wife with this גט, nevertheless the reason we return it to him is not because saying that it was in a חפיסה is a סימן מובהק (which would contradict this which תוספות maintained previously) -

דהתם מיירי בשלא הוחזק יוסף בן שמעון אחר ואותו הגט ודאי נכתב לשמו -

For the case there is that it was not established that another יב"ש exists, and this גט, which was found, was certainly written לשמו for this couple -

אלא שאין ידוע אם נפל מן הבעל או מן האשה -

But it is not known whether the husband or the wife lost it, and we rule that we do not assume that she was divorced, so we give it to the husband and if he wishes he divorces her with it now. This concludes one explanation of תוספות.

In summation; the משנה states if it was found בחפיסה and he recognizes the חפיסה with עין, טביעות עין, he may use this גט (even if he does not recognize the גט).

תוספות offers an alternate explanation:

אי נמי¹⁸ ומכירו פירוש או מכירו¹⁹ ויש ספרים דגרסי בהדיא או מכירו -

Or you may also say; when the משנה writes 'ומכירו' it means, 'or he recognizes it, and there are texts which read explicitly 'או מכירו' (or he recognizes it) -

והכי פירושו מצאו בחפיסה או בדלוסקמא וידוע שהוא שלו וגם שבתוכה²⁰ איבדו -

And this is the explanation (according to this גירסא); 'he found it in a חפיסה or in a דלוסקמא' and he knows that the חפיסה is his and he also knows that he lost it inside this חפיסה, so -

אף על פי שאינו מכיר הגט -

Even though he does not recognize the גט, it is a כשר. The משנה continues -

או מכירו שמכיר הגט אפילו בלא חפיסה -

'or he recognizes it', meaning he recognizes the גט even without the חפיסה, it is כשר -

assume that interpretation then there is no question at all. תוספות is saying that even if we interpret 'נתן לו' to mean that he may use this גט to divorce her; indicating that we believe that this is his גט, nevertheless there is still no difficulty.

¹⁸ This seems to be another way how to explain why we are not חושש לשאלה.

¹⁹ See footnote # 3.

²⁰ See footnote # 9. This answer is the same as תוספות said previously (footnote # 9 & 10) with the variation that there תוספות says he recognizes the חפיסה, and here תוספות says it is ידוע (presumably with עדים). Previously the מכירו was referring to the חפיסה, however here the מכירו is referring to the גט; the case of חפיסה is not by מכירו. See מהרש"א and רש"י who amends it to read וידוע (instead of ידוע).

Tosfos offers a third rendition:

ויש ספרים דגרסי אם מכירו הכי פירושו -

And some texts read, אם מכירו (if he recognizes it); this means -

מצאו בחפיסה ויודע שלא בתוכה איבדו ואינו שלו ואפילו הכי אם מכירו כשר -

He found it in a חפיסה and he knows he did not lose it in this חפיסה and he knows that the חפיסה is not his, but nevertheless if he recognizes the גט it is כשר -

ולרבותא נקט מצאו בחפיסה -

And the משנה mentions he found it in a חפיסה as a novelty that even though it is not his חפיסה and he did not lose it in the חפיסה, but since he recognizes the גט it is כשר.

A different twist on this גירסא:

אי נמי דווקא אם מכירו כשר אבל מה שהוא יודע שבחפיסה או בדלוסקמא איבדו אינו מועיל -

Or you may also say the reason the משנה writes it in this manner is to teach us that it is כשר only if he recognizes the גט, but knowing that he lost it in a חפיסה or in a דלוסקמא is insufficient to make it כשר -

ולספרים דגרסי ומכירו מצי לפרש כמו²¹ אם מכירו:²²

And those texts that read 'ומכירו' can interpret it as we interpreted the texts who read אם מכירו.

SUMMARY

The משנה may be discussing one case and he is recognizing the חפיסא (but not the גט) or it may be discussing two cases, either we know the חפיסה is his or he recognizes the גט.

THINKING IT OVER

Tosfos asks why do we depend on his recognizing the חפיסה, perhaps he lent it to someone, etc.²³, just as we have this concern in יבמות²⁴. However how can we compare the two cases; by clothes it is possible that the deceased borrowed someone else's clothes, but by the חפיסה to say that he lent the חפיסה to someone else and another יב"ש placed his גט there, seems too far-fetched?²⁵

²¹ They can also interpret it in the two ways just mentioned if we are גורס אם מכירו, meaning it can be לרבותא that even if he only recognizes the גט, or he must recognize the גט as mentioned earlier.

²² If we are גורס אם מכירו then there are two cases (either the חפיסה or the גט are the סימן); if we are גורס אם מכירו there is only one case (the גט is the סימן); if we are גורס ומכירו it can be understood either like או or like אם.

²³ See footnote # 8.

²⁴ See footnote # 9.

²⁵ See רש"ש.