

I will go and harvest the date palm

איזיל ואגדריה לדיקלא –

OVERVIEW

The גמרא relates that if someone proclaimed איזיל ואגדריה לדיקלא, he is believed and תוספות will not prevent him from doing so in the absence of the owner. תוספות clarifies what אגדריה means.

פירוש לגדור תמרים שעל הדקל דגדירה שייכא בתמרים¹ –

The explanation of איזיל ואגדריה לדיקלא is to harvest the dates which are on the date palm, for the term דגדירה applies to dates -

ולא איירי בקציצת הדקל דאם כן הוה ליה למימר ואיקטליה –

However we are not discussing a case regarding chopping down the דקל, for if indeed that was so, the person should have said ואקטליה (and I will 'kill' the tree), for that is the word that is used in chopping down a tree -

כדאמרין בפרק כל הנשבעין (שבועות דף מו,א ושם) אמר רב נחמן –

As the גמרא states in דגדירה כל הנשבעין - said ר"נ; פרק כל הנשבעין

האי מאן דנקיט נרגא ואמר איזיל ואקטליה לדיקלא דפלניא כולי² –

This person who is holding an ax and says, 'I will go and chop down that person's tree', etc. It is evident from that גמרא that the term איקטליה is used for chopping down a tree, but not the word אגדריה which means harvesting the dates.

תוספות discusses what would be the rule if indeed he said, 'I intend to chop down the tree':³

ונראה לרבינו יצחק ולרבינו יצחק בן מרדכי שאם היה בא לקצוץ הדקל עצמו לא היה נאמן –

And it is the view of the ר"י and the ריב"ם that if he would come to chop down the דקל itself, he would not be believed that he bought the rights to chop down the tree⁴ -

דדוקא פירות הוא דעבדי אינשי דמזבני אבל דקל אין דרך בני אדם למכור לקוץ –

¹ In הלכות הקדוש the harvesting of grapes is called דגדירה, of olives is מסיקה, of dates is דגדירה, etc.

² ר"נ concludes there that if after this person made this 'threat', we found that indeed that tree was chopped down, nevertheless the person who made the threat is פטור (if there are no witnesses), for we assume that his threat was merely an exaggeration and someone else may have chopped down the tree..

³ Do we apply the rule of דיליה דלאו דיליה דקל? In fact it would seem that cutting down a דקל is a greater חוצפה than harvesting its fruit; thereby proving that indeed he had רשות to chop down the tree. It would seem that since חוצפה is the criterion for assuming he has permission, then the greater the חוצפה the more reason to assume he has permission.

⁴ It would seem from the conclusion of תוספות (see footnote # 6) that not only do we not allow him to chop down the tree, but even if he already chopped it down, he will be liable and we will not accept his claim of לי אתה מכרת לי. The reason תוספות writes בא לקצוץ which indicates that we (merely) do not allow him, is because we are discussing here a case where the original tree owner is not present. It is incumbent upon ר"ד to prevent him from chopping down the tree (even without the protest of the owner), however if the owner is present and claims that he chopped it down without his permission, he will have to pay.

For it is only specifically regarding פירות that it is usual for people to sell the fruit of the tree, however it is unusual for people to sell the rights to chop down their tree.⁵

תוספות proves his point:

תדע דאמרינן בפרק החובל (בבא קמא דף צא,ב ושם) –

You know that this is so for the ברייתא in פרק החובל states; if one accuses his friend -

שורי הרגת נטיעותי קצצת אתה אמרת לי להרוג אתה אמרת לי לקצצו פטור –

‘You killed my ox; you chopped down my trees’ and his friend responded; you told me to kill him; you told me to chop it down the rule is that the accused is פטור from paying -

ופריך אם כן לא שבקת חיי לכל בריה וכולי –

And ברייתא challenged this רב; if indeed this is so, you will not let anyone live, etc. The conclusion therefore is that he is liable to pay and we do not believe the accused that he was told to destroy the ox or the tree.

משמע דאינו נאמן במיגו דאי בעי אמר מכרת לי לקצצו:⁶

It seems that the accused is not believed that he was told to do it, with a מיגו that he could have said you sold me the tree to chop it down. The reason this מיגו is not effective proves that even if he claimed that he bought it, he will not be believed, since it is unusual for people to sell their (fruit bearing) trees to be chopped down.

SUMMARY

One is believed to claim that he bought the right for the fruit, but not that he bought the rights to destroy (the tree).

THINKING IT OVER

1. What is a better claim; אתה מכרת לי לקצצו or אתה אמרת לי לקצצו; why?

2. Can we infer from this תוספות, what causes the נאמנות of לא חציף; is it the act of חציפות or the proclaiming of his intention to do this act?⁷

⁵ The unlikelihood that permission would be granted to chop down a tree is more persuasive than the חוצפה which supports his claim of receiving permission.

⁶ If he would be believed if he claimed לי מכרת, אתה, why then is he not believed when he claims לי אתה אמרת with a מיגו of אתה מכרת לי. See footnote # 4. See ‘Thinking it over’ # 1.

⁷ See תוס' ד"ה לא following בל"י אות רא.