

## It is merely an acquisition of words

## קנין דברים בעלמא הוא -

### OVERVIEW<sup>1</sup>

The גמרא maintains that making a קנין to do something (in our case – to divide property), is not a valid קנין. Such a קנין is referred to as a קנין דברים. It does not obligate the parties to keep their agreement. A קנין is valid only where it entails a specific commitment of transferring or relinquishing assets (or rights).

anticipates a difficulty: תוספות

בפרק השוכר את הפועלים (בבא מציעא דף צד,א) דתנן מתנה שומר חנם להיות כשואל<sup>2</sup> –  
In משנה (where) the states, ‘an unpaid watchman can conditionally obligate himself to be like a borrower’. The גמרא there asks; how can the mere verbal agreement of the ש"ח obligate him to pay as a שואל? The גמרא there answers that the משנה -

ומוקי לה בקנו מידו<sup>3</sup> –

is discussing a situation where they acquired it from his hand; i.e. the ש"ח obligated himself through a קנין חליפין. Seemingly the ש"ח is making a קנין that he is to be considered a שואל. That however, is a קנין on mere words. Nothing tangible is seemingly being exchanged or granted. It should be considered a קנין דברים.

answers; the case of ש"ח וכו' - תוספות

התם לאו קנין דברים הוא אלא קנין גמור הוא שמשעבד את עצמו<sup>4</sup> שאם יאנס שישלם:  
There it is not considered a קנין דברים; rather it is a valid קנין, for he pledges himself that if there will be an unforeseen accident, then he will pay.

### SUMMARY

A ש"ח is liable for אינסים like a שואל if he pledges, with a קנין, that he is responsible and will pay for any אינס.

### THINKING IT OVER

<sup>1</sup> See previous תוספות ד"ה כי תוספות.

<sup>2</sup> A שומר חנם is not obligated to pay for unforeseen accidents to the item he is watching. A שואל however is liable for any damage that occurs to the item he borrowed. Someone can deposit an item by a ש"ח, on the condition that the ש"ח agree to take the responsibilities of a שואל on this item.

<sup>3</sup> A קנין חליפין is performed by exchanging a cloth from the hand of one to the hand of the other; therefore, the expression קנו מידו.

<sup>4</sup> The קנין is not merely that he is a שואל; rather the קנין is that the ש"ח is obligating himself to pay for the deposited item should anything happen. That is a שעבוד of assets, not a קנין דברים.

1. In Tosfos' question, would it seem that the קנין by the ש"ה is the same קנין דברים, as in the הו"א of our גמרא, or is it different (either better or worse)?
2. How did Tosfos understand the term קנו מידו (in ב"מ) in the question, as opposed to how he understands it in the answer?<sup>5</sup>

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<sup>5</sup> See בל"י אות מט.