

## 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

Concerning **that which we learnt in a פרק השוכר את הפועלים** (בבא מציעא דף צד,א) **דתנן – פרק השוכר את הפועלים in משנה**

**a watchman without pay can be conditionally obligated to be like a borrower.** 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"ה, on the condition that the ש"ה agree to take the responsibilities of a שואל on this item. The גמרא there asks; how can the mere verbal agreement of the ש"ה obligate him to pay as a שואל?

The גמרא there answers that the משנה **is discussing** a situation **where they acquired it from his hand<sup>2</sup>**; i.e. the ש"ה obligated himself through a קנין חליפין. Seemingly the ש"ה 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"ה וכו' - תוספות

**is not considered a קנין דברים** – לאו קנין דברים הוא

**rather it is a valid קנין** – אלא קנין גמור הוא

**for he pledges himself** – שמשעבד את עצמו

**that if there will be an unforeseen accident, then he will pay.** The ש"ה is obligating himself to pay for the deposited item should anything happen. That is a שעבוד of assets, not a קנין דברים.

### Summary

A ש"ה is liable for אונסים like a שואל if he pledges, with a קנין, that he is responsible and will pay for any אונס.

### Thinking it over

1. In the תוספות question, would it seem that the קנין by the ש"ה is the same קנין דברים, as in the גמרא of our הו"א, or is it different (either better or worse)?

2. How did תוספות understand the term שקנו בידו (ב"מ) in the question, as opposed to how he understands it in the answer?

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

<sup>2</sup> A קנין חליפין is preformed by exchanging a cloth from the hand of one to the hand of the other; therefore the expression קנו מידו.