לא כתבינן אורכתא[1] אמטלטלי –

We do not write an authorization on movable property

Overview

The נהרדעי ruled that one cannot write a הרשאה on movable property, since it is not in his possession.[2] תוספות qualifies this ruling.

דוקא אמטלטלין דגזליה[3] אבל אמטלטלין דפקדון כתבינן[4] -

This ruling of the נהרדעי is limited **specifically to מטלטלין which** he claims **were stolen, however we may write** a הרשאה **for מטלטלין which were deposited.**

תוספות explains the difference:

דהא תלי טעמא בהקדש[5] ויש כח לאדם להקדיש פקדון שיש לו ביד חבירו[6] -

For אמימר **based the reason** of the נהרדעי **on** the ruling regarding **הקדש, and a person can be מקדיש a deposit which he placed by his friend –**

תוספות proves that one can be מקדיש his פקדון:

כדמוכח בהמוכר את הספינה (בבא בתרא דף פח,א) **גבי ההוא גברא דאייתי קרי לפומבדיתא -**

As is evident in הספינה את המוכר פרק **regarding that person who brought pumpkins to פומבדיתא -**

אתו כולי עלמא שקלי[7] חדא חדא אמר הרי הן מוקדשין לשמים -

Everyone came and took the pumpkins one by one (without paying)**,** the person **exclaimed, 'these** pumpkins **are הקדש for Hashem' -**

---

[1] אורכתא or הרשאה is delegating a power of attorney to an individual to act on your behalf to claim and collect from a litigant anything which rightfully belongs to you. This הרשאה prevents the litigant from saying to your designated agent, לאו בעל דברים דידי את (I have no business with you).

[2] A הרשאה is valid because the owner of the disputed item transfers the ownership to the designated individual (the מורשה). However since the מטלטלין are in the possession of the litigant, the owner cannot transfer it over to the מורשה, since it is not in the רשות of the owner.

[3] The owner wants to designate a מורשה to retrieve מטלטלין which he claims was stolen from him. He cannot designate him as a מורשה since the מטלטלין are not in the owner's רשות.

[4] The owner may appoint a מורשה to retrieve a מטלטלין deposit which he placed by a custodian; those מטלטלין are considered in the רשות of the owner, and can be transferred to the מורשה.

[5] אמימר said the reason a הרשאה on מטלטלין is not valid is because of the ruling of ר' יוחנן that by גזל ולא נתייאשו הבעלים, the owners cannot be מקדיש it, since the object is not ברשותו. Similarly (just as he cannot be מקדיש it) he cannot transfer the ownership to another since it is אינו ברשותו. It follows that if he could be מקדיש it, he can also transfer the ownership.

[6] The reason is that this object, even though it is physically not in my possession, but since the שומר is watching it for me, it is considered as if the place where it is kept, is considered my רשות.

[7] In ב"ב the גירסא is אמר **קרא** שקלי (instead of אמר **חדא חדא** שקלי).

ומשמע[8] התם דאי לא קיצו דמייהו[9] הוו קדשי -

And is seem from the גמרא **there, that if the price** of these pumpkins **were not fixed, they would be הקדש –**

תוספות offer an additional proof that one can be מקדיש his פקדון:

ועוד דלעיל[10] אמר אין הגונב אחר הגנב משלם כפל משום דאין בעלים יכולין להקדיש -

And additionally, previously the cited משנה **stated that one who steals from a thief does not pay כפל, since the owner cannot be מקדיש it -**

וגונב מבית הנפקד משלם כפל לבעלים[11] -

However one who steals from the custodian's house pays כפל to the owners -

כדתניא[12] בהמפקיד (בבא מציעא דף לג,ב) ועיקר קרא בגונב מבית שומר[13] כתיב:

As the משנה **teaches in המפקיד** פרק**, and** moreover **the main פסוק** regarding כפל **is written by one who steals from a custodian.**

Summary

One may write a הרשאה for a פקדון, since one can be מקדיש a פקדון.

Thinking it over

תוספות maintains that if one can be מקדיש a פקדון, he can write a הרשאה on a פקדון. תוספות proves that one can be מקדיש a פקדון, from the גמרא in ב"ב, where it explicitly states so.[14] Why was it necessary to bring an additional (indirect) proof from כפל that since one pays כפל for a פקדון, one can be מקדיש a פקדון?

---

[8] It is not clear why תוספות writes 'משמע', when it is explicit in the גמרא there which reads, אמר להו אין אדם מקדיש דבר שאינו שלו וה"מ הוא דקיצי דמייהו, **אבל לא קיצי דמייהו ברשות מרייהו קיימי ושפיר אקדיש.**

[9] If the price of the pumpkins were fixed ($1 a pumpkin), then whoever took a pumpkin acquired it through קנין הגבהה, and it is valid purchase, in which case he owes the owner money for the pumpkin. In that case the הקדש is ineffective for the pumpkin is owned by the buyer, not the owner/seller. However if the price was not fixed (it varied) there can be no sale, for no sale is valid (even if a קנין was made) unless there was agreement on the price first, therefore the status of these pumpkins in the hands of the people is like a פקדון (the people had no intent of stealing the pumpkins); they are obligated to return it to the owner. In that case the הקדש is valid. This proves that הקדש is valid for a פקדון.

[10] ב,סט.

[11] We must therefore assume (since stealing from the נפקד obligates one to pay כפל) that the מפקיד can be מקדיש it. Otherwise why is the ruling different by stealing מבית הנפקד than from בית הגנב.

[12] Seemingly this should read **כדתנן** (not כדתניא), for this is the first משנה in המפקיד.

[13] The פסוק in שמות (משפטים) כב,ו writes, כִּי יִתֵּן אִישׁ אֶל רֵעֵהוּ כֶּסֶף אוֹ כֵלִים לִשְׁמֹר וְגֻנַּב מִבֵּית הָאִישׁ אִם יִמָּצֵא הַגַּנָּב יְשַׁלֵּם שְׁנָיִם. This shows that one is חייב כפל for stealing a פקדון.

[14] See footnote # 8.