אבל גנב וטבח ומכר ברשותו[1] פטור – However if he stole, and slaughtered or sold in the owner's domain he is exempt

Overview

The משנה taught that in order for there to be payment of ד' וה' one aspect of the stealing, slaughtering or selling, must have taken place outside of the owner's property; however, if everything took place within the owner's property there is no payment of ד' וה'. Our תוספות qualifies this ruling.

בשלא הגביהו עסקינן[2] דבהגביהו הוי קני[3] וחייב כדלקמן[4]:

The משנה **is discussing** cases **where the thief did not pick up** the stolen item; in those instances, there is no ד' וה', if everything occurred in the owner's property; **however,** if the thief **picked up** the stolen item, **he acquires it and is liable for** ד' וה', **as** the משנה **states shortly.**

Summary

If the thief picked up the item, there is a payment of ד' וה', even if it never left the רשות הבעלים.

Thinking it over

1. If the thief is קונה the item בהגבהה, why is he חייב for ד' וה'; why do we not say שלו הוא טובח, שלו הוא מוכר?!

2. Why is this תוספות necessary, since it says so explicitly in the משנה, as תוספות himself writes?!

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[1] In our משנה the text reads ברשות**ם** (not ברשות**ו**).

[2] He was merely dragging the object.

[3] The rule is that הגבהה (only) is קונה everywhere, even ברשות הבעלים, as opposed to משיכה, which is not קונה ברשות בעלים.

[4] At the very end of this משנה.