

And he did not say, 'acquire it for me'

ולא אמר זכי לי –

OVERVIEW

explained that ר' יוחנן does not contradict the משנה which states that the finder may keep the מציאה if he says 'I acquired it for myself', before he gives it to the person riding the donkey. The reason is because the finder never picked it up with the intent to be זוכה this מציאה for the rider, since the rider merely told him, 'give it to me', but he did not say 'acquire it for me'; meaning that the rider intended that the finder should merely hand it over to him, without making any type of קנין.¹ Our תוספות reconciles our גמרא with one in גיטין which seem to contradict each other.

תוספות asks:

ואם תאמר דבפרק קמא דגיטין (שם) קאמר רבי יוחנן כל האומר תנו כאומר זכו² –
And if you will say; but in the first פרק of גיטין, מסכת ר' יוחנן, ruled that whoever says 'give', it is as if he says 'acquire'; so here too, granted that the person on the donkey (merely) said 'give it to me'; however according to ר"י it is considered as if he would have said 'acquire it for me', so the rider should acquire it.³

תוספות answers:

ויש לומר דשאני התם דדעת אחרת מקנה אותו⁴ :
And one can say that there (in מסכת גיטין) where ר"י rules תן כזכי it is different; for there is another mind that is transferring the ownership of

¹ It is apparent that if the rider would say to the finder 'acquire it for me', then we would assume that the finder picked it up initially for the rider, and cannot claim that he wishes to acquire it now for himself.

² The משנה there (גיטין יא,ב) states that if a master gives a שטר שחרור to a שליח, saying, 'give this to my עבד', the owner cannot retract once the שליח is in possession of the שטר שחרור (even if the עבד did not receive it yet). Becoming free is a זכות for the עבד and we say that the שליח was זוכה the שטר שחרור for the עבד. ר' יוחנן there explains that this does not contradict the rule of קנה לא אחרים (for seemingly the תופס לבע"ח במקום שחב לאחרים לא קנה). It is therefore not חב לאחרים for the master wants the slave to be freed as of now.

³ See footnote # 1 that if the rider said לי זכה, the rider acquires the מציאה.

⁴ In the case of the עבד, the one who is saying תנו is the one who is granting the שטר שחרור to the עבד (the master is the דעת אחרת מקנה אותו); in such a case we assume that תן כזכי. However here by מציאה the one who is saying תנה לי (the rider) is not granting anything to anyone; he is merely requesting that an object be handed over to him; in such a case we do not say תן כזכי. One (simple) explanation may be that since the master (the מקנה) has the power to be מזכה, we assume that he was, for we see that he intends to free the slave (why should we assume that he intends to hinder the process). However the rider has no power to enforce that the finder be זוכה for the rider; we cannot assume therefore that by saying תנה לי he meant זכה לי. See 'Thinking it over' # 2.

the item **to him**.

SUMMARY

We say תן only when the מקנה says תן כזכי.

THINKING IT OVER

1. How did תוספות understand the phrase 'כל האומר תנו כאומר זכו' in the question; and how does תוספות understand it in the answer?

2. דעת אחרת מקנה אותו.⁵ However (seemingly) logic dictates the opposite; by the עבד the owner is not gaining anything if the שליח will be זוכה for the עבד (in fact he loses the right to retract the שטר שחרור and retain the עבד), and nevertheless we assume that when the master said תן he meant זכי, so certainly here by the מציאה where the רוכב will gain if we assume תן כזכי (for then the finder cannot say later [after he picked it up], אני זכיתי בה, we should surely assume that when he said לי תנה he meant לי זכה!⁶

⁵ See footnote # 4.

⁶ See נח"מ.