

ארבע אמות קונות לו בכל מקום –

Four אמות acquire for him, everywhere

OVERVIEW

תוספות qualifies this rule of אמות ד' קנין, that it is not always effective.

תוספות asks:

ואם תאמר באלו נערות (כתובות דף לא,ב ושם דיבור המתחיל אי) דאמר גבי גונב כיס בשבת –

And if you will say; in פרק אלו נערות where the ברייתא states regarding stealing a purse on שבת, if the thief -

היה מגרר ויוצא פטור דאיסור שבת ואיסור גניבה באין כאחד¹ –

Was dragging the purse² and leaving the domain of the owner, the thief is exempt from paying for the purse because the violation of the prohibition of working on שבת and the violation of the prohibition of stealing occurred simultaneously. This concludes the ברייתא -

וקאמר אי דאפקיה לרשות הרבים איסור שבת איכא איסור גניבה ליכא³ –

And the גמרא asked, 'if he brought the purse out to a רה"ר, there is a prohibition of שבת, but there is no prohibition of stealing'. This concludes the גמרא there which is relevant to our discussion. תוספות concludes his question:

ואמאי הא ארבע אמות קונות לו? –

And why does the גמרא assume that if the item was taken out to the רה"ר there is no גניבה (וקנין) איסור, but nevertheless he acquires the גניבה since it is within his ד' אמות?!

תוספות answers:

ויש לומר דבגניבה לא תקינו רבנן דקני –

¹ He is פטור from paying for the purse because of בדרכה מיניה קם ליה (he is receiving a greater punishment). Violating the שבת is a capital offense. מיניה קם ליה teaches us that if one transgresses a capital offense one is not liable to pay for a monetary offense which occurred simultaneously with the capital offense. The liability of a thief to pay begins when he acquires the stolen item. If he did not pick up the item he does not acquire it as long as it is in the domain of the owner. We initially assumed that he acquires it as soon as it leaves the owners domain and is brought into the רה"ר. At that moment he is also transgressing the איסור שבת of הוצאה from a רה"י to a רה"ר for which there is a חיוב מיתה. Therefore he is פטור from paying the owner for the purse.

² If the thief picked up the purse he is חייב because the חיוב of payment began by picking it up and this preceded the רה"ר which occurred later when he carried it out to the רה"ר.

³ The גמרא there assumed that there is no משיכה in a רה"ר.

⁴ is now (seemingly) assuming (even before the answer of רב פפא) that there is no אמות ד' קנין in the domain of רה"ר when he has no permission to be there. The אמות ד' קנין begins when he takes it out to the רה"ר which makes the simultaneous with the איסור שבת.

And one can say that regarding גניבה the רבנן did not institute that אמות ד' should be קונה for the גנב. The תקנה of אמות ד' was instituted –

אלא במציאה דלא ליתי לאנצויי⁵ ובגט משום עיגונא⁶ –

only by a מציאה so there should be no fights, and also by גט to prevent עיגון⁷, but not by גניבה. Therefore the גמרא there could not have mentioned אמות ד' קנין ד'.

תוספות offers an alternate solution:

ולרב ששת דאמר בסמוך דברשות הרבים לא תקינו ארבע אמות אתי שפיר:

And according to רב ששת who shortly states that the רבנן did not institute קנין ד' אמות, the גמרא there is properly understood. There is no difficulty at all, since there is no אמות ד' קנין ד' in a רה"ר.

SUMMARY

(רב פפא according to) גניבה but not by גט and מציאה only by אמות ד' is קונה.

THINKING IT OVER

1. It seems that according to רב ששת there is אמות ד' קנין ד' by גניבה. Seemingly there is no reason of לאנצויי ליתי דלא there (nor a עיגונא); so why indeed is אמות ד' קונה by גניבה?

2. תוספות writes that they were not אמות ד' מתקן ד' by גניבה. Does תוספות mean specifically in this case, where if the גנב would be קונה with the אמות ד' he would be פטור from paying (it would be a קולא for the גנב); or does תוספות mean that in all cases (even if it is a חומרא for the גנב⁸) there is no אמות ד' קנין ד' by גניבה?⁹

⁵ The גמרא clearly states this reason; תוספות however maintains that there is אמות ד' קנין ד' by גט (see גיטין עה,א, and תוספות here on the יוהנן ר' ד"ה ר' יוחנן), and by גט the reason of לאנצויי ליתי דלא does not apply. Therefore תוספות concludes that by גט there is a different טעם of עיגונא.

⁶ An עיגונא refers to a woman whose husband is not here, but we are not certain if he is alive (or if he divorced her). This woman cannot marry and has no husband. The חכמים instituted various תקנות to prevent such a situation. The word עיגון means anchoring. This woman is anchored; she has no freedom to marry.

⁷ We want to make it as easy as possible for the woman to become divorced (when her husband is leaving, etc.). There may be an occasion that the husband cannot hand her the גט, but can only throw it into her אמות ד' (for he must leave, or is about to die [and there will be a חיוב יבום]), therefore the חכמים decreed that אמות ד' is קונה by גט as well.

⁸ Once the גנב is קונה the גניבה he is חייב even for אונסין.

⁹ See אמ"ה # 96 and בל"י אות שטו.