

It acquired it for him

זכתה לו –

OVERVIEW

Our משנה states that if a person saw a wounded deer on his property and said זכתה לי שדי, he acquires it; however if a (healthy) deer was running through his property and he said זכתה לי שדי, he does not acquire it. One might think that in order to acquire the wounded deer it is necessary to verbalize זכתה לי שדי, otherwise he is not קונה. Our תוספות rejects this notion.

נראה אף על גב דלא אמר זכתה לי דזכתה לו –

It is the view of תוספות that **even though** the owner of the field **did not say**, 'it acquired it for me', nevertheless his field **acquires** the מציאה **for him**.

תוספות proves his point that verbalizing is not necessary:

כדאמרין לעיל (דף יא,א) אי תקון רבנן דלקני כי לא אמר מאי הוי¹ –

As the גמרא stated previously, 'if the רבנן instituted that אמות של אדם acquire for him, so what of it if he did not say, 'I wish to acquire it through קנין אמות (with a specific קנין); indicating that it is not necessary to verbalize the intent to be קונה.

תוספות anticipates a difficulty:

ואין לומר דהתם היינו משום דנפל לו עליה דגלי בדעתיה שרוצה לקנות –

And one cannot say, that there (by the אמות ד') the reason he does not have to verbalize is because he fell upon it, indicating his intent that he wants to acquire it -

אבל הכא מי יימר דרוצה לקנות –

However here by חצר קנין חצר who will say that he wants to acquire it, therefore in this case it is necessary to verbalize זכתה לי שדי –

תוספות refutes this reasoning:

דאדרבה משמע לעיל דאי לא נפל קנה טפי ואף על גב דלא אמר אקני –

For on the contrary it is implied previously in that גמרא that had he not fallen on the מציאה he would certainly acquire it and even if he did not say 'I will acquire it'.² Here too it is not necessary to verbalize זכתה לי שדי.

¹ תוספות maintains if אמירה is not necessary by אמות ד' (as the cited גמרא indicates) which is an extension of חצר, then חצר (also) does not require אמירה. See 'Thinking it over' #2.

² The גמרא there initially said he is not קונה through אמות ד', since he did not say אקני. The גמרא responded since it is a תק"ח that אמות ד' is קונה it is irrelevant that he did not say אקני (proving תוספות point that אמירה is not necessary). The גמרא explained that since he fell on it he was מגלה דעת that he does not want the קנין ד'.

זכתה לי שדי offers an additional proof that it is not necessary to say שדי:

ועוד דאמר רבי יוסי ברבי חנינא חצרו של אדם קונה לו שלא מדעתו³ –

And an additional proof; for ר"י בר"ה ruled that a person's yard acquires for him (even) without his knowledge -

אלמא⁴ אף על גב דלא אמר קני –

It is evident that it acquires for him even if he did not say, 'acquire'.

The question arises why does our משנה state, 'he said לי זכתה'

והכא נקט משום סיפא דאפילו אמר כיון דרץ כדרכו לא קני:

And here the משנה mentions that he said לי זכתה because of the סיפא, that there even if he said לי זכתה he does not acquire the מציאה since the animal is running naturally.

SUMMARY

זכתה לי שדי can be קונה for its owner even if he did not say שדי.

THINKING IT OVER

1. What are the reasons to differentiate between קנין ד' אמות and חצר המשתמרת as opposed to חצר שאינה משתמרת (that the former require no אמירה while the latter does)⁵ and what are the reasons to equate them?⁶

2. Can we infer from this תוספות regarding קנין ד' אמות⁷ whether it must be משתמר or not?⁸

אמות. We cannot assume that when the גמרא responded that saying אקני is not necessary, the גמרא meant that it is not necessary only because he fell on it, for the גמרא explains that falling is a hindrance to the קנין. It would be difficult to assume that the one who argued that saying אקני is irrelevant maintains that falling helps קנין ד' אמות, and the other maintains that falling is a hindrance for קנין ד' אמות, for then they would be at two opposite extremes. Rather it is more likely to assume that initially the גמרא maintained that falling is neutral, proving therefore that אמירה is not necessary. The גמרא concluded that נפילה is not neutral but rather it is detrimental to אמות ד' קנין. [See גאון צבי See (בשם ש"מ) for an alternate explanation.]

³ The case of the משנה (where he said לי זכתה) is by a חצר שאינה משתמרת (and he was standing שדהו), the ruling of ריב"ה is by a חצר המשתמרת; nevertheless תוספות maintains (in this second proof) that there is no difference between a חצר המשתמרת and a חצר שאינה משתמרת (if he is עומד בצדו), regarding saying לי זכתה. See: See. בל"י אות שנה and מהרש"א, מהר"ם שי"ף, (here), הגהות הגר"א

⁴ If it is without his knowledge he certainly did not say לי זכתה.

⁵ See footnote # 3.

⁶ See ואלך # 6 אמ"ה.

⁷ See footnote # 1.

⁸ See # 18 אמ"ה.