

And it exited from another entryway

ויצא בפתח אחר –

OVERVIEW

רבא posed a query; if someone threw a wallet into a house and it exited the house without landing there; does the owner of the house acquire the wallet (since it was in his house), or not [and the wallet will belong to whomever finds it eventually]. It seems that the owner relinquished his ownership over this wallet, otherwise how could anyone acquire it. תוספות explains in what manner the owner relinquished his ownership.

לא גרסינן ואפקריה¹ דהא חשיב ליה דעת אחרת מקנה אותו –

Our text do not read 'ואפקריה' (and he abandoned it), for the גמרא considered this case as an instance of דעת אחרת מקנה אותו –

דמייתי ראיה ממתנה² –

For the גמרא brings proof to resolve this case from a case of מתנה, where there is a דעת אחרת מקנה אותו –

ואי אפקריה אם כן מיד כשיצא הארנקי מידו היה הפקר –

But if this is a case where he made it הפקר, then immediately when the wallet left his hand it was הפקר –

ובשעת זכייה ליכא דעת אחרת –

So that at the time of acquisition there was no דעת אחרת, so how can the גמרא compare it to מתנה where there is a דעת אחרת מקנה אותו –

אלא לא גרסינן ואפקריה ולעולם היא שלו עד שיזכה בה אחר³:

Rather we must conclude that the texts do not read 'ואפקריה', and it is always the thrower's until someone else will acquire it.

SUMMARY

The case of זרק ארנקי is where the owner retains ownership until anyone is able to be קונה.

THINKING IT OVER

Is the query of whether לא או דמי סופו לנוח כמונח דמי או לא dependent whether we are discussing מתנה or הפקר?⁴

¹ This seems to be ש"י view רש"י בד"ה זרק where he explains 'והפקירו לכל הקודם'. See however footnote # 3.

² The גמרא attempted to resolve the query of רבא from the ruling of רבי אבה בר כהנא that by חצר מתנה his חצר is קונה even if he cannot manage to reach the מתנה before it leaves his רשות; indicating that רבא is discussing a case of מתנה. See 'Thinking it over'.

³ We assume the thrower's intentions were, 'I am granting this to whoever acquires it'. The owner never relinquishes his ownership until a קנין is made by the receiving party. Therefore there is a דעת אחרת מקנה. This may be ש"י intent as well (see נח"מ and אמ"ה # 39 ואילך).

⁴ See סוכ"ד אות יט, כ.