

הואיל ויכול לנתקו ולהביאו אצלו –

Since he can snatch it and bring it to him

OVERVIEW

The גמרא surmises that according to אבהו ר' if half the טלית was on the ground and half on a post, and a person lifted the half off the ground, so even if a second person later lifted half off the post the original person is קונה the entire טלית, since he could have snatched it initially off the post. The גמרא disagrees with the 'הואיל' concept; however it seems if he snatched it off the post (without anyone else taking hold of it), he would be קונה through קנין הגבהה. Our תוספות questions the effectiveness of such a קנין הגבהה.

תוספות asks:

– **תימה דמשמע דאם נתקה שהוא קונה כולי משום שעל ידו הוגבהה למעלה משלש¹**
It is astounding! For it appears from the גמרא that if he snatched it off the post, he acquires it, etc. since he caused it to be lifted higher than three טפחים; however this cannot be -

– **ומאי שנא מעני המנקף בראש הזית (גיטין דף נט,ב) שאין בו גזל אלא מפני דרכי שלום**
For why is this different from the case of a poor man who is cutting olives from the top of an olive tree², where the ruling is that concerning the olives which the עני throws to the ground, there is no prohibition of stealing them (since they do not belong to the עני; for he was not קונה them), but rather one should not take away these olives only because of שלום דרכ; not to cause strife. It is evident from that גמרא that even though the עני detached these olives and they were lifted up more than three טפחים, he is not קונה, since they will eventually fall (for he is not holding on to them). Similarly here too, even though when he snatches the טלית from the post, the טלית is מג' למעלה; however that end of the טלית will eventually fall, just like the olives.

תוספות offers an additional proof that a הגבהה which falls is not effective:

– **וכן פרק הגוזל קמא (בבא קמא דף צח,א ושם דיבור המתחיל והני מילי)**
And we find a similar case in פרק הגוזל קמא, where רבה states -
הזורק סלע של חבירו לים פטור³ ומוקי לה בדאדייה אדויי –
One who threw a סלע of his friend into the sea the thrower is exempt

¹ See תוספות קידושין כו,א that תוספות רש"י maintains three טפחים are required for הגבהה and the ר"ת maintains that one טפח is sufficient.

² The tree did not belong to the עני rather the עני was permitted to pick the olives for it was שכחה or פאה.

³ See the גמרא there that the coin was visible on the sea bed.

from paying for the סלע. And we established this in a case where the thrower (did not take the coin from the owner and then cast it into the sea⁴, but rather the thrower) **banged it out** of the owner's hand⁵ and it fell into the sea.

אלמא לא חשיב מה שהגבהה על ידו הואיל וסופו ליפול –

It is evident from these two גמרות, **that it is irrelevant that** the article was **lifted** (for in both cases he is not קונה), the reason he is not קונה is **since it will eventually fall**. Here too even though initially it is למעלה מג', but eventually the other end of the טלית (which was on the עמוד) will fall down, so why is he קונה?

answers: תוספות

ויש לומר דשאני הכא שתופס בידו אחד מן הראש⁶ –

And one can say; that here it is different (from the other two cases of the olives and the coin) **for he is holding on to one end**.

offers an alternate solution: תוספות

אי נמי הכא איירי כשניתק מן העמוד אינו ארוך כל כך שיגיע ראש השני לארץ –

Or you may also say that here we are discussing a case that when the טלית will be snatched from the post, the טלית is not so long that the second end (which was on the עמוד) will reach the ground; but rather it will remain suspended in the air, therefore it is a קנין⁷.

responds to an anticipated difficulty: תוספות

ושלהי שילוח הקן (חולין דף קמא,ב) דקאמר⁸ זיל טרוף אקן דלגבהינהו ולקנינהו⁹ –

And that which the גמרא relates in the end of פרק שילוח הקן that שמואל said 'go bang on the nest so that the pigeons will rise and you will acquire them'. תוספות explains -

התם נמי הוגבהו על ידו יותר ממה שהיה תחילה שהרי קצת מפריחים למעלה –

There too it is different from all the other cases, since they were raised

⁴ In this case the thrower would be חייב for he was קונה the coin when he took it away from the owner and held it in his hand.

⁵ In this case the thrower never took possession of the coin. He never acquired it therefore he is פטור. This is true even though the coin was lifted למעלה מג'. This proves that lifting למעלה מג' does not make a הגבהה if it will eventually fall down.

⁶ [Others amend this to הראשים [א. מן הראשים].] Therefore it is considered a הגבהה even though the other end will fall. However in the other cases, the olives and the coin fall down, and he is holding on to nothing; therefore he is not קונה there.

⁷ However there the olive and coin fall to the ground, therefore it is not a valid הגבהה.

⁸ קונה it. שמואל was given a nest of birds by לוי בר סימון and he asked שמואל how he should be קונה it.

⁹ Seemingly there too the young pigeons will rise for a moment (out of fright of the banging) and then they will settle down again. Since he is not holding the pigeons and they fall down to where they were originally, it should not be considered a הגבהה קנין.

**higher from the level which they were originally¹⁰, for they fly up a bit -
לכך קני:**

Therefore he acquires them even though eventually they come down again.

SUMMARY

A **הגבהה** קנין is effective if it cannot fall to the ground (after it was 'למעלה מג'), unless it was raised higher than its original position (then it is effective even if it returns to its original position). Alternately it is effective even if it will fall down as long as the **קונה** is holding it partly raised.

THINKING IT OVER

טלית distinguishes between the cases of the olives, the coin, and the **הגבהה** (unless he is holding on to part of it), and the case of the nest where he is **קונה** even if it falls down (since he caused them to rise).¹¹ What is the logic behind this distinction?¹²

¹⁰ In the cases of the olives, the coin and the **טלית** there was no **הגבהה** higher than it was originally; we only wanted to consider it a **הגבהה** since by detaching it, the item was 'למעלה מג'. In such cases there can be no **הגבהה** (unless it is in his hand), however if he causes it to become higher (even temporarily), then it is considered a **הגבהה**, even though it will fall down eventually. See 'Thinking it over'.

¹¹ See footnote # 10.

¹² See סוכ"ד אות כ.