For if he wants he can bend down and eat - דאי בעי גחין ואכיל

Overview[1]

The גמרא distinguishes between the case of ר' אבין (where he was זרק חץ וכו') where he is פטור for ripping the שיראים, and the case of רב חסדא (where גונב חלבו של חברו) where he is חייב for the גניבה. In the case of ר' אבין it is impossible to have a הנחה without an עקירה (therefore he is פטור),[2] however by רב חסדא it is possible to eat the חלב without a הגבהה, for he could bend down and eat the חלב without picking it up.[3] There is a dispute between רש"י and תוספות as to the meaning of דאי בעי גחין ואכיל.

פירש בקונטרס[4] למטה מג'[5] דלא הויא הגבהה -

רש"י explained that אי בעי גחין ואכיל means that he will bend down **lower than three** טפחים and (pick it up and) eat it, **for this is not** considered a **הגבהה**, since he never lifted the food higher than three טפחים –

תוספות disagrees with פרש"י:

וקשה לרבינו יצחק דמה שייך הגבהה[6] בדבר שהוא תופס בידו או בפיו[7] -

And the ר"י has a difficulty with פירש"י, **for how do** the rules of **הגבהה apply to something which he is holding in his hand or in his mouth –**

תוספות proves his point:

דונתן בידה אמר רחמנא ואמרינן בגיטין (דף עח,א) זרק לתוך קלתה מגורשת -

For the תורה writes concerning a גט **that 'he should place it in her hand', and** the

---

[1] See 'Overview' to the previous תוס' ד"ה שעקירה.

[2] Therefore since the חיוב שבת cannot occur without the עקירה, therefore it is considered as if the חיוב שבת began with the עקירה, and he is פטור on the שיראים which happened during the חיוב שבת on account of קים ליה בדרבה מיניה.

[3] Therefore since it is possible to eat the חלב without making a הגבהה, the הגבהה is not צורך אכילה, so (even) if he picked it up first, (nevertheless) he is חייב for the גניבה since it was not simultaneous with the אכילה.

[4] בד"ה דאי.

[5] Generally any item which is within three טפחים of the ground is considered לבוד as if it is on the ground. Therefore רש"י assumes that if he picked up the חלב less than three טפחים from the ground it is not considered as if he acquired the חלב through הגבהה (for it is as if he never picked it up from the ground). Therefore since it is possible to eat the חלב without acquiring it, we cannot say that the הגבהה is צורך אכילה, and therefore in the case of רב חסדא he is חייב for the גניבה, since it is not done simultaneously with the אכילה. The two (גניבה ואכילה) are not associated.

[6] תוספות maintains that this rule of תוך ג' is considered לבוד does not apply if the item is in one's hand (or mouth). Once the item is in a person's hand he is קונה the item even if it is תוך ג'. Presumably he is קונה because of ידו, not because of הגבהה. Therefore here too (in the case of רש"י), the הגבהה is צורך אכילה, meaning he cannot eat it unless he is קונה it first (even if he eats it תוך ג').

[7] See 'Thinking it over' # 1.

גמרא **states in גיטין** מסכת regarding the משנה which states,[8] **'he threw** the גט **into her** sewing **basket, she is divorced';** and ריש לקיש comments on this משנה; the basket -

קשורה[9] אף על פי שאינה תלויה[10] אף על גב דמיירי[11] ברשות הבעל[12] -

Is required to be **tied** to her **even though it is not hanging** on her, but rather it is being dragged on the ground, **even though** we **are discussing** where the woman is **in the domain of** her **husband -**

ואפילו מאן[13] דבעי התם תלויה[14] אינו מצריך שתהא גבוה ג' -

And even according to the one who requires there that the קלתה **be suspended** above the ground, nevertheless **he does not require that** the קלתה **be above** טפחים **ג'** –

תוספות offers his explanation why the הגבהה is not צורך אכילה:

אלא נראה לרבינו יצחק דהכי פירושו דאי בעי גחין ואכיל –

Rather it appears to the ר"י that this is the explanation of דאי בעי גחין ואכיל, that -

אם הוא בראש קנה יכול הוא לשחות ולתוחבה עד בית בליעתו -

If the חלב **is on the top of a rod, he can bend down and to insert** the חלב **into his esophagus,** in which case there is no קנין הגבהה at all, so -

אף על גב דבהך אכילה אינו עושה כן[15] והויא הגבהה זו לצורך אכילה -

Even though that in this case of **eating,** which רב חסדא discusses, **he does not do this,** but rather he eats normally, and in that case **the הגבהה is לצורך אכילה -**

מכל מקום הואיל ויכול להתחייב בלא הגבהה לאו צורך אכילה היא -

Nevertheless since it is possible that he should be liable for eating חלב **without** making a **הגבהה,** therefore we may conclude that הגבהה **is not לצורך אכילה** –

תוספות concludes

והוא הדין דהוי מצי למימר דאפשר לאכילה בלא הגבהה כגון אם תחבה לו[16] חבירו:

And in truth the גמרא **could have also said that it possible to** have **אכילה without**

---

[8] עז,א.

[9] If the basket is קשורה it is considered as if it is בידה.

[10] In any case we see that she acquires the גט while her קלתה (which is the equivalent of ידה [see footnote # 9] is on the ground less than ג' טפחים. This proves that the rule of ג' טפחים does not apply to ידה. Rather the יד is always קונה even if it is למטה מג', not like פרש"י.

[11] The גמרא there asks how can her קלתה acquire the גט for her, since she is in her husband's רשות, the קלתה is considered כליו של קונה ברשות מוכר (which is not קונה). This question of the גמרא proves that she is standing ברשות הבעל.

[12] Therefore she is not קונה the גט on account of חצרה (since she is ברשות הבעל), but rather מטעם יד.

[13] This is רב יהודה אמר שמואל and ר' אלעזר אמר ר' אושעיא.

[14] The requirement that it should be תלויה is to avoid the problem of כליו של קונה ברשות מוכר (see footnote # 11).

[15] See 'Thinking it over' # 2.

[16] The advantage of this example perhaps is that it is more likely. The main point is that eating is not dependent on הגבהה or a קנין, as opposed to חיוב שבת that there must be an עקירה.

הגבהה, if for instance his friend stuck it into his mouth.

Summary

According to רש"י we require that one's hand rises more than three טפחים from the ground to be קונה. According to תוספות if the item is in one's hand or mouth he is קונה regardless whether it is less than three טפחים. The case of גחין is where it was on a rod and he never took it with his hand, but rather placed his mouth over the rod.

Thinking it over

1. It appears from תוספות that one is קונה if the food is in his mouth (even if it is פחות מג').[17] Why therefore is it understood that he was תוחב לתוך עד בית הבליעה, but nevertheless when it came into his mouth he was קונה before there is a חיוב מיתה, so it turns out that הגבהה (or קנין) is לצורך אכילה, for he cannot be עובר on the אכילה without the קנין when it entered his mouth?![18]

2. תוספות explains that even though the case of רב חסדא is not where אי בעי גחין, but nevertheless since it is possible for אכילה without הגבהה he is חייב.[19] Why was it necessary for תוספות to say this according to his פשט, we seemingly have to say the same thing according to רש"י that ר"ח is not discussing a case of גחין ואכיל, but rather (as תוספות writes) since it is possible for אכילה without הגבהה we cannot say הגבהה צורך אכילה?!

3. What would be the ruling in the case of גחין ואכיל, would he be חייב for the גניבה or not (according to both respective שיטות)?[20]

4. Does the לשון of the גמרא that אי בעי גחין ואכיל lean more towards רש"י or תוס'?

[17] See footnote # 7.
[18] See חידושי רע"א פסחים כט,א מערכה ה' אות ז.
[19] See footnote # 15.
[20] Do you notice the irony?!