

נימא הגבהה צורך הוצאה היא –

Let us say, picking up is necessary for carrying out

Overview¹

The גמרא is asking on רב אבין (who maintains הנחה צורך עקירה), why is it that if someone steals a wallet on שבת he has to pay, since he was קונה the wallet בהגבהה before the הוצאה; let us say הגבהה is צורך הוצאה and he should be פטור. Our תוספות clarifies the question.

תוספות asks:

תימה לפירוש רבינו תם² דהגבהה קונה פחות משלשה טפחים מאי פריך -

It is astounding; according to the view of the ר"ת that הגבהה acquires the item even if it was picked up less than three טפחים from the ground, what is the question that we should say by גונב כיס בשבת that הגבהה צורך הוצאה -

והא כיון דקנאה קודם התחלת העקירה -

For since the גנב acquired the כיס before the beginning of the עקירה -

דעקירה לא הויא עד שיגביה שלשה³ דלמטה משלשה הוי כלבוד⁴ -

For it is not considered an עקירה until he picks it up three טפחים above the ground, for less than three טפחים from the ground it is considered לבד (attached to the ground) -

כדאמרינן בהמוציא⁵ (שבת דף פ,א ושם) העביר חצי גרוגרת דרך עליה חייב -

As רבא states in פרק המוציא if he passed over it an item the size of a half dried fig, he is חייב -

ואם כן דין הוא שיתחייב כמו לבן עזאי דאמר מהלך כעומד דמי⁶ -

¹ See 'Overview' to the previous תוס' ד"ה הכא,

² See תוס' ד"ה אי כי, according to the ר"ת one needs to make a הגבהה of a טפה to be קונה, and see previously on this עמוד in ד"ה דאי כי that there is no need at all to pick up something aboveground to be קונה, if it is in your hand.

³ Therefore as soon as he picked it up he is immediately קונה the item and is חייב for גניבה; however the שבת איסור begins later when he raised it more than three טפחים, so the איסור גניבה came before the beginning of the שבת איסור.

⁴ See 'Thinking it over'.

⁵ The ruling there is where one was מוציא food the size of a גרוגרת, he is פטור, for the שיעור הוצאה for certain foods is a גרוגרת. However if after he was מוציא a גרוגרת, he took out another (בהעלם אחד) חצי גרוגרת and he passed it over the first גרוגרת within three טפחים he is חייב, since it is considered לבד and resting together with the first גרוגרת, so there is a sufficient שיעור for חיוב הוצאה. We see that less than three טפחים is considered at rest on the ground, so it cannot be an עקירה.

⁶ According to עזאי if one walks from a רה"י into another רה"י and there was a רה"ר in between (or vice versa), so even though he never stopped in the רה"ר (and according to the חכמים he will be פטור, for there was never a הנחה in the רה"ר), nevertheless he is חייב since כעומד דמי, so it is as if he stopped in the רה"ר and that is considered הנחה. The opposite is also true that if one walked from a רה"י to a רה"ר and passing a כרמלית in between, according to the חכמים he will be חייב, however according to עזאי he will be פטור for since כעומד דמי, it is considered as if he made an "ב"ע according to הגונב כיס וכו' חייב establishes the case of חייב on the גמרא. The הנחה בכרמלית and a עקירה ברה"י

So therefore the rule should be in this case of גונב כיס **that he should be חייב, just like according to בן עזאי who maintains walking is like he is standing,**⁷ in which case -

דחייב לפי שקנאה קודם⁸ שהתחיל העקירה -

The גונב כיס will be חייב since the גונב acquired it before the עקירה began –

answers: תוספות

ואומר רבינו שמשון בן אברהם דמשמע ליה בכל ענין גונב כיס -

And the רשב"א says that it seemed to this questioner that the ruling of גונב כיס (that he is חייב) is any manner that he stole, he will always be חייב -

אפילו מונח על גבי מקל שהוא גבוה שלשה טפחים שבא הקנין והעקירה בבת אחת:

Even in a case where the stolen item was lying on top of a rod, which is three טפחים high above the ground in which case the קנין of גניבה and the עקירה for שבת happen simultaneously. Therefore the גמרא properly asks, why is he חייב, we should say הגבהה צורך הוצאה.

Summary

According to the ר"ת who does not require טפחים ג' for קנין (while עקירה requires ג' טפחים), we need to say that the ruling of גונב כיס is (even) where he picked it up from a rod which was ג' טפחים aboveground.

Thinking it over

maintains that if the item is less than three טפחים from the ground it is not considered an עקירה.⁹ How can we then explain the סיפא of the ברייתא that 'היה מגרר עקירה' seemingly why is there a חיוב since there never was an עקירה? ¹⁰!למעלה מג'

⁷ finds it necessary to cite בן עזאי, for otherwise there may be a difficulty with תוספות question; granted that the begins only after he lifted it more than three טפחים, but nevertheless in order to lift it up ג' טפחים he had to first lift it of the ground (when the קנין was accomplished) so we should say here also הגבהה צורך הוצאה, and he should be פטור. Therefore תוספות cites בן עזאי where we could seemingly argue that even though the עקירה begins with the last step out of the רה"י, nevertheless he could not take this step unless he took the previous steps so he should be חייב by עקירה that initiates the חיוב שבת, but not other actions which do not cause חיוב שבת. See פני יהושע ועוד (ע"ב on the גמרא). This proves that we only take into account the עקירה that initiates the חיוב שבת, but not other actions which do not cause חיוב שבת. תוס' הרא"ש, מהר"ם שי"ף, פני יהושע ועוד.

⁸ According to בן עזאי in the case of גונב כיס בשבת the גונב would certainly be חייב, since the actual עקירה is the last step he takes going out of the רה"י into the רה"ה, the previous עקירה (the הגבהה) was canceled during his walk, since מהלך חיוב שבת, so every step is a new עקירה והנחה. The גונב acquired the item when he picked it up, however the חיוב שבת begins later when he steps out of the רה"י into the רה"ה. Similarly according to us since the עקירה begins after he picked it up more than three טפחים and the קנין גניבה happened before, we cannot say הגבהה צורך הוצאה.

⁹ See footnote # 4.

¹⁰ See (כסא שלמה and) קובץ שיעורים אות קג.