

אי דאפקיה לרשות הרים איסור גניבה ליכא -

If he took it out to a public domain, there is no stealing prohibition

Overview

The גמרא is discussing the case of מגרר that he is פטור from paying since the איסור and שבת גניבה happen simultaneously when the article was dragged into the רה"ר. The גמרא asked that if it was dragged into the רה"ר the גנב does not acquire the גניבה,¹ since there is no קנין משיכה in a רה"ר,² so why should he be פטור; they are not happening simultaneously. תוספות clarifies this question.

anticipates a difficulty:

אף על גב דאיכא למאן דאמר בפרק קמא דבבא מציעא (דף י, א ושם) -

Even though there is someone in the first פרק of ב"מ who maintains -

דד' אמות קונות לו לאדם³ אפילו ברשות הרבים⁴ -

That four אמות of a person acquire items for him even if he is standing in a רה"ר -

responds:

הני מילי גבי מציאה דלא ליתו לאינצויי⁵ ובגט משום עיגונא⁶ -

When is this said (that ד"א is קונה ברה"ר), only regarding a found object, lest people come to fight over it, or by עיגונא on account of גט -

אבל לגנב לא תקינו שיקנו לו ד' אמות:

However the חכמים did not institute that ד"א should acquire for a thief.

Summary

גניבה קונה ד"א where there is a reason, however not by ד"א.

Thinking it over

¹ In order for one to be considered גנב he must acquire the גניבה with the same type of קנין with which one acquires an item legally, like הגבהה or משיכה.

² See רש"י ד"ה איסור.

³ There is a rule that if something (הפקר) is found within a radius of ד' אמות around a person he acquires the item, even if he did not touch it.

⁴ It would seem obvious that there is no קנין ד"א in the רשות of the owner. However once it left the רשות of the owner and was in the רה"ר, the law of ד"א קנין should take effect (according to this מ"ד) concerning קניני גניבה; so that the גנב acquires it to the extent that he must return it or pay for it (if it cannot be returned).

⁵ The ד"א קנין is a תקנת חכמים (see ב"מ there) that a מציאה should be acquired by the first person who enters into its ד"א, so people will not quarrel and fight to try and pick it up first.

⁶ It is possible that the husband cannot give the גט into the hand of the wife; he can only throw it to her, therefore the עגונה. Otherwise she may remain an עגונה. מגורשת (רה"ר) even in a ד"א she is within her גט if the גט is within her ד"א that if the גט is within her ד"א מתקן חכמים.

1. There is a dispute (in the ראשונים) whether ד"א is effective [at all] by מכירה ומתנה, or only by מציאה. If we assume that it is not effective, only by מציאה, is there any reason that it should be effective by גניבה?

2. According to answer, what would תוספות maintain regarding ד"א by מכירה ומתנה?