

The payment of the 'double'

תשלום דכפל -

Overview

The גמרא cites a case where עדים testified that someone stole, and the accused replied, 'I stole the animal and I slaughtered it, however you (the עדים) did not observe it, rather 'other' עדים saw it', and the thief brought witnesses who were מזים the first עדים, and the 'other' עדים testified that he was גנב וטבח, the rule is that the זוממין pay כפל, and the גנב pays the remainder of the ד' וה' (which is ג' וג'). The question is, since the thief admitted to stealing, why should the ע"ז pay for the קרן also. The גמרא answered that indeed the ע"ז only pay for the כפל (one payment), but not for the קרן. תוספות comments that this answer needs to be applied elsewhere as well.

תוספות anticipates a difficulty:

ולעיל (דף סח,ב) דמוקי ריש לקיש מתניתין דגנב והקדיש ואחר כך טבח משלם תשלומי כפל -
And previously when ר"ל established the משנה which states, 'if one stole an animal, and the animal was sanctified, and afterwards he slaughtered it, he pays כפל', but not ד' וה' (since it was already הקדש); so ר"ל established this משנה in a case -
כשהקדיש¹ בעלים ביד גנב² -

Where the owner sanctified the animal when it was in the possession of the thief –

תוספות responds:

צריך לומר נמי תשלום דכפל:

It will be necessary to say there also that the גנב pays only the כפל, but not the קרן.

Summary

The answer of תשלום כפל needs to be applied elsewhere.

Thinking it over

Seemingly תוספות should have made this comment there, why did he wait to write it here?!

¹ The simple reading may have been interpreted to mean that the גנב was מקדיש it. However, this would present a problem for ריש לקיש. He, therefore interpreted it to mean that the owner was מקדיש it.

² The difficulty is why does the גנב have to pay כפל, since the owner was מקדיש the animal, he does not owe the owner for the animal, since it belongs to הקדש.