

And he receives the improvement

ויש לו שבה¹ -

OVERVIEW

rules that when a person buys a field and it turns out that it was stolen; when the נגזל² retakes his field, the buyer collects from the seller (the thief) his original investment plus the increased value of the field if the buyer improved it. תוספות explains that the buyer does not collect the (entire) שבה from the נגזל, therefore he collects the remainder from the גזולן.

is³ (the גזולן) מוכר the שבה collects the לוקח תוספות explains the reason the

שהנגזל לוקח הקרקע עם השבח ואינו משלם ללוקח רק הציאה –

Because the נגזל takes the קרקע with the שבה and he only pays the לוקח the expense the לוקח invested in the field to improve it -

כדין יורד לתוך שדה חבירו שלא ברשות –

As the rule is regarding one who enters his friend's field without permission and improves the field; the rule there is -

דאם השבח יתר על הציאה נותן לו את הציאה –

That if the שבה is more than the יציאה, the owner pays him the יציאה (but not the שבה which exceeds the יציאה; the owner gets to keep that); similarly here too the לוקח is לוקח without רשות, so the נגזל pays him only for the יציאה -

ואותו שבה היתר יקח הלוקח מן הגזולן –

And the remaining שבה, which exceeds the יציאה, the buyer collects it from the thief (the seller). That is the meaning of יש לו שבה; the הציאה על השבח היתר.

תוספות concludes:

ומיירי שנגזלה ריקנית:

And we are (even⁴) discussing a case that it was barren when it was

¹ שבה is the improvement which the buyer improved the field and thereby increased its value.

² The נגזל is the true and original owner of the field from whom it was stolen.

³ See רש"י ד"ה ויש for a different interpretation why the נגזל does not pay the שבה. According to רש"י we are discussing a case where for instance the field was worth a hundred זוזים when it was stolen. The גזולן depreciated it to eighty זוזים when the לוקח bought it. The לוקח invested five זוזים and it appreciated to the original hundred זוזים when the נגזל collected the field. רש"י maintains that the נגזל takes the entire field and pays nothing to the לוקח since his field was originally worth a hundred זוזים. The לוקח collects the entire hundred זוזים (eighty of the purchase price and twenty of the appreciation) from the גזולן. Our תוספות disagrees with רש"י. [If the field that was returned to the נגזל appreciated more than it was worth when it was initially stolen, there is a dispute (according to רש"י) whether the נגזל would be required to pay the לוקח the entire appreciation, or only the יציאה See אמ"ה # 19-21.]

⁴ According to תוספות the rule is the same whether the property appreciated compared to its value when it was stolen, or the לוקח merely appreciated it to the same value as it was worth when it was stolen. In all cases the נגזל pays the לוקח for the יציאה and if there is הציאה על השבח the לוקח collects it from the מוכר.

stolen; meaning that the field at present (when the גזול retrieves it) appreciated in value compared to when it was stolen. Nevertheless the גזול pays only the יציאה.

SUMMARY

The יורד לשדה של חבירו שלא ברשות גזול is considered a לוקח and collects the יציאה from the גזול regardless of what the original state of the field was, and the לוקח collect the היציאה על היתר שבה היתר from the seller.

THINKING IT OVER

According to תוספות the גזול pays the לוקח (for the יציאה) even if the field he receives is worth no more (or even worth less) than his field was worth initially (before it was stolen).⁵ Why cannot the גזול argue with the לוקח (as רש"י does) that my field had this value initially, why should I pay you. The לוקח should go to the מוכר for the entire compensation; why should the גזול pay?!⁶

See (however) תפ and בל"י אות תפ # 57-58 (that תוספות means only by a ריקנית). [The גזול can claim compensation from the מוכר if (after paying the לוקח) the גזול did not receive the entire value of the original field, as it was worth when it was stolen, in full.] See 'Thinking it over'.

⁵ See footnote # 4.

⁶ See בנ"י דוד לר' דוד טאוב and נה"מ.