

הא דלא מסיק אלא שיעור ארעא¹ –

This is when he is owed the amount of the land only

OVERVIEW

ruled that a בע"ה collects the שבה from the לוקח (indicating that he takes away the entire field including the שבה and does not even reimburse the לוקח for his expenses). The גמרא challenges this from a ברייתא which states that the בע"ה pays the לוקח for the יציאה. The גמרא (now) answers that if the loan equals to the value of the field and the entire שבה then the בע"ה does not pay anything to the לוקח. This is the ruling of שמואל. However, when the loan equals the value of the original field only, without the שבה, then the מלוה pays the לוקח for his expenses and retains the entire field with the שבה (even if after paying the expenses to the לוקח it is still more than his loan).² תוספות discusses the logic of this answer (and ruling).

asks: תוספות

תנימה כיון דלא מסיק אלא שיעור ארעא אמאי נוטל שבה היתר על היציאה –

It is astounding! Since the מלוה has a claim for the amount of land only without the שבה, why then does the מלוה collect the שבה which is more than the expense?!³ The מלוה should be permitted to collect the amount of his loan only, but no more!

answers: תוספות

ויש לומר דבלאו הכי פריך שפיר הניחא כולי –

And one can say; that without this question which תוספות poses, the גמרא properly challenges the previous explanation, by asking, 'הניחה כו' [the aforementioned explanation is appropriate, etc.] if we maintain the לוקח cannot deflect the בע"ה, but not if we maintain that the לוקח can prevent the בע"ה from collecting

¹ Others are גורס here 'הא דלא מסיק ביה כשיעור ארעא ושבחא'; see רש"י ד"ה הא. See בל"י אות תקטו.

² Let us assume the loan is for a hundred זוז. The field when it was sold was worth a hundred זוז. The לוקח spent twenty זוז improving this field, and it is now worth a hundred thirty זוז. The מלוה takes the entire field of a hundred thirty זוז (for this field was משועבד to his loan) and pays the לוקח twenty זוז for his expenses; netting him a hundred ten זוז for his hundred זוז loan. תוספות assumes that this is so, since the ברייתא (which discusses a case of ארעא שיעור אלא מסיק) states that the לוקח collects the שבה from the seller and the יציאה from the בע"ה; indicating that the בע"ה collects the שבה (besides the קרן). Otherwise why is the לוקח being compensated for the שבה!

³ See previous footnote # 2. The מלוה should only take a hundred זוז worth in this field (either by paying the לוקח thirty זוז, or leaving over some property worth ten זוז, [or not paying the לוקח and leaving him property worth thirty זוז] etc.).

property by paying him off his loan.⁴

The question, however, remains how is it that the ברייתא states that a בע"ח collects the שבה
replies: תוספות. היתר על היציאה

ולפי המסקנא דמוקי באפותיקי אתי שפיר –

And according to the conclusion, where the גמרא establishes this ruling
(of היציאה על יתר את השבה יתר על היציאה) by an אפותיקי⁵, it is well understood –
דאף על פי דלא מסיק ביה אלא שיעור ארעא –

That even though the s'מלוה claim is only for the amount of the original
land, without the improvements, nevertheless the ruling is that the מלוה –

נותן לו היציאה ללוקח והשבה היתר על היציאה לוקח חנם –

Pays the לוקח (only) for the expense of improving the field; however
regarding the היציאה על יתר, the מלוה **takes it for free** without paying for
it -

כדין יורד לתוך שדה חבירו שלא ברשות:

As is the rule regarding one who enters his friend's field without
permission and improves it. The law is that the יורד receives only his expense, and the
improvements above the expense belong to the owner. The same applies to an אפותיקי
which the בע"ח collects from the לוקח.⁶

SUMMARY

The only way the בע"ח can collect the שבה above the amount of his loan is if
the field was an אפותיקי (however, he is required to pay the expenses).

THINKING IT OVER

1. שפיר (הניחא למ"ד וכו') גמרא states that the question of the (which is וכו')
indicating that it is as an appropriate question (or better) than תוספות question
(of השבה נוטל את השבה).⁷ However, the question of the גמרא is only according
to one מ"ד (that מצי מסלק ליה בזווי), but תוספות question is according to either

⁴ Since the לוקח can pay off the loan and retain the קרקע, the גמרא argues that the לוקח can demand that the
בע"ח leave over for the לוקח a piece of land (from this field) which is above and beyond the amount due for
the loan. Why can the מלוה retain the entire field? This challenge to the answer of הא דלא מסיק אלא שיעור
ארעא seems to be according to תוספות equal to, or more appropriate than תוספות question on this answer. See
'Thinking it over' # 1.

⁵ An אפותיקי is (somewhat) the equivalent of a present day mortgage, which gives the lender the right to
collect his loan from a specific property (even if it is sold) regardless of the other properties. The word
אפותיקי is a combination of אפה תהא קאי which means your claim rests on this property. See תוס' יד,ב ד"ה
תריין. When the בע"ח collects from the אפותיקי it is considered as if it is his field (and not merely a שעבוד).

⁶ See 'Thinking it over' # 2.

⁷ See footnote # 4.

ד"מ; why did not the תוספות (superior) question?!⁸

2. According to תוספות by an אפותיקי the בע"ה can collect the שבח from the לוקח even if it is more than the loan (since it is considered as if it is his field) provided he pays for the expenses. Does this reasoning and rule apply if he collects the אפותיקי from the לווה?!⁹

⁸ See בל"י אות תקטז and מהר"ם שי"ף (ברש"י ד"ה הא).

⁹ See בד"ה דהא נח"מ there footnote # 8 and כגון ד"ה. See also בל"י אות תקי"ז בסעיף המתחיל 'והנה הש"ך'.