

Where the purchaser died

דמית לוקח –

OVERVIEW

The rule is that if the גזול purchased the field from the גזול it belongs to the לוקח who bought it initially from the גזול. The reason is either because דלא (רב אשי (the view of דליקו בהמנותיה (מר זוטרא (the view of נקרייה גזלנא. The דמית לוקח says the difference between these two reasons is in a case of דמית לוקח (according to מר זוטרא it will not revert to the לוקח's heirs, however according to רב אשי it will revert to the heirs of the לוקח). There is a dispute between רש"י and תוספות as to the meaning of דמית לוקח.

פירש רש"י¹ אחר שלקחה –

רש"י explained that the לוקח died after the גזול bought it from the גזול.

רש"י disagrees with תוספות:

ואין נראה דמיד שקנה הגזול זכה בו לוקח ואטו משום דמית ליה בתר הכי פקע כחו –
And גזול disapproves of this explanation for as soon as the גזול purchased the field from the גזול, the לוקח acquired this field, so how can we argue that because the לוקח died afterwards, his rights to this field have been abrogated?! If the לוקח died afterwards all would agree that the heirs of the לוקח keep the field which belonged to their father as of the time the גזול purchased it from the גזול.

תוספות offers his explanation:

אלא יש לומר דמית קודם שלקחה הגזול מנגזל –

Rather one can say; that the purchaser died before the גזול purchased the field from the גזול. Therefore it never belonged to the לוקח for since the לוקח died already there is no concern of גזלנא גזלנא.

תוספות responds to an anticipated question:²

(ומית גזול³) צריך לומר שהיה חולה או גוסס בשעה שלקחה מנגזל:

¹ בד"ה דמית. The reason רש"י explains דמית לוקח after the purchase, for shortly (on טו,א) the גמרא will offer an alternate נפק"מ in the case of מית גזול, where it certainly means that he died after he purchased the field, therefore it is logical to assume that מית לוקח also means after the גזול purchased it.

² See footnote # 1. [In addition, in the case of דמית גזול] since when the גזול bought the field it immediately reverted back to the לוקח, so why should it not remain by the לוקח or his heirs just because the גזול died afterwards?! The same question that תוספות asks regarding דמית לוקח. See footnote # 4.

³ In other texts the reading is: ובתר הכי מית גזול שהיה חולה וכו'; it is a continuation of the answer. The translation here (however) follows our text (see רש"י ש).

And when the גמרא later states that **the גזלן died** (it obviously means before the purchase), however **it will be necessary to assume⁴ that he was sick or dying at the time the גזלן purchased it from the נגזל.**

SUMMARY

לוקה means according to רש"י that he died after the גזלן purchased it, and according to תוספות he died beforehand. If he died afterwards, according to תוספות (everyone agrees that), it would remain by the heirs.

THINKING IT OVER

According to תוספות that the לוקה died before the גזלן purchased the fields, how is the ownership of the field transferred to the heirs of the לוקה?⁵ The לוקה never owned it and the heirs never made a מעשה קנין to acquire it!⁶

⁴ The case of מית גזלן (after the purchase) may indeed be different than מית לוקה (before the purchase), but nevertheless the reasoning remains the same. In the case of מית לוקה the reason it does not go the יורשים is because there is no concern of גזלנא דלא נקרייה גזלנא since the לוקה already passed away; the same is true in the case of מית גזלן, that the גזלן (when he purchased the field) was not concerned גזלנא דלא נקרייה גזלנא for he knew he would soon die and is not bothered by these matters.

⁵ See לוקה ד"ה בההיא that there is a retroactive קנין for the לוקה.

⁶ See בל"י אות תקלא (בד"ה והנה).