

מעידית שבה ומזיבורית שבה – From the best of it and from the worst of it

Overview

concluded that the ברייתא means that the one who did not retract can either receive the best of this designated field (when the מוכר retracted), or can give the worst of this designated field (if the לוקח retracted). תוספות explains why not (עידית instead of בינונית).

responds to an anticipated question:

והא דלא שקיל מבינונית שבה¹ משום דקנסו את החוזר בו -

And the reason he does not take the בינונית שבה (instead of the עידית שבה), is because the חכמים fined the one who retracted –

responds to the anticipated difficulty:²

אבל מעיקרא פריך שאין לקנסו כל כך³ ולהגבותו עידית דעלמא:

However, initially the גמרא asked that it is not logical that we should give him such a large fine and allow the לוקח to receive the עידית of his other properties!

Summary

We must limit fines so that they are reasonable.

Thinking it over

1. בינונית assumes that were it not for the קנס, the לוקח would receive בינונית.⁴ However in a case where one said, 'I will sell you half this field', he can give the לוקח the זיבורית. How do we distinguish between these two cases?⁵

2. Is תוספות initial question (והא דלא שקיל מבינונית), in a case where the מוכר retraced, the לוקח retracted, or in either case?

¹ In case where the מוכר retracted, why do we say that the לוקח receives עידית (worth two hundred זוז), it would seem more appropriate that he receives בינונית (worth two hundred זוז). This would be the logical compromise between what the לוקח wants (עידית) and what the מוכר is willing to give (זיבורית). See 'Thinking it over' # 1.

² If the reason the לוקח receives עידית, is because it is a fine, why was the גמרא initially astonished that he will receive עידית perhaps that is the fine; why should we limit the fine?

³ Regarding the designated field, which the לוקח would have received all of it, including the עידית, had the מוכר not retracted, it is logical that we punish the מוכר, so the לוקח receives something which he could have had. However, the לוקח has no claim at all on עידית שבנכסיו, so it is illogical that should we fine the מוכר to such an extreme.

⁴ See footnote # 2.

⁵ See # 26. אוצר מפרשי התלמוד.