

בעל בנכסי אשתו לא שואל הוי ולא שוכר הוי –

A husband is neither a borrower nor a renter in his wife's assets

OVERVIEW

רבא ruled that the status of the husband regarding the נכסי מלוג of his wife, is neither that of a שואל nor of a שוכר, but rather of a buyer (לוקח); meaning that he is not liable for גז"א and certainly not for אונסין which happened to the נכסי מלוג. Our תוס' qualifies this ruling.

ומיהו נראה לרבינו יצחק דשומר חנם הוי וחייב בפשיעה¹ -

The ר"י maintains, however, that the husband is a ש"ח in the נכסי מלוג, and is liable for פשיעה; if he neglected to protect the נכסי מלוג.

ולפי זה² הלוקח בהמה לשלשים יום אף על גב דלאו שואל הוי ולא שוכר³ דבלשון מקח לקח -

So according to this, one who buys a cow for thirty days, even though he is neither a שואל nor a שוכר since he acquired it using the term of purchase -

מכל מקום שומר חנם⁴ הוי:

Nevertheless he is a ש"ח and will be liable for פשיעה.

SUMMARY

A husband חנם as well as a לוקח לזמן are בנכסי מלוג.

THINKING IT OVER

It seems that תוספות derives the ruling by a ש"ח (that he is a ש"ח) from the ruling of בעל בנכסי אשתו⁵. תוספות did not explain how he derived his ruling regarding נכסי מלוג, but it would seem that the same reason that applies by נכסי מלוג should equally apply to ש"ח⁶. הלוקח בהמה לל' יום⁷. Why do we need to derive it from נכסי מלוג?⁷

¹ This will depend if פשיעה is פשיעה or פטור. See צה, א, between מחלוקת.

² See 'Thinking it over'.

³ He will not be liable for גז"א (and certainly not for אונסין) which happened to this cow.

⁴ He is just like the בעל בנכסי אשתו who is neither a שואל nor a שוכר, but he is a לוקח, and is חייב בפשיעה like a ש"ח.

⁵ See footnote # 2. תוספות writes ולפי"ז; indicating that since this is the ruling by נכסי מלוג, it also applies by הלוקח בהמה.

⁶ Alternately; which of these two would we be more likely to assume that he is a ש"ח; by בעל בנכסי מלוג or by a לוקח לל' יום.

⁷ From where indeed did תוס' derive his ruling? See להרשש"ך.