

והשאר לא קנה לא זה ולא זה – And neither acquires the rest

OVERVIEW

תפוס ruled that the רכוב acquires the animal and the bridle, while the מוסירה acquires (only) what he is holding and the rest of the מוסירה belongs to neither, מוסירה explains why the רכוב does not acquire the מוסירה.

ואפילו אי אמרינן משוך בהמה וקני כלים שעליה קני¹ –

And even if we assume that in a case where one said, ‘Pull this animal and acquire the utensils that are upon it’, the rule is that **he acquires** them, nevertheless -

הכא כיון דתפיס במוסירה לא קני רכוב נמי לא קני² –

Here in our case of מוסירה, we say **that since the one who is holding the מוסירה does not acquire the** (rest of the) מוסירה, therefore **the רכוב also does not acquire** the rest of the מוסירה –

כדאמרינן אדעתא דידיה אגבהה איהו לא קני כולי:

as the גמרא states here; ‘he picked it up for his needs, if he is not קונה, etc. (will he be מקנה it to others)’.

SUMMARY

The רכוב cannot acquire the מוסירה since the תפיס has no intention of being מקנה to him the מוסירה (especially since he cannot acquire it for himself).

THINKING IT OVER

The תפיס במוסירה is not מקנה half the מוסירה to the רכוב since he is not קונה for himself. Why should we not say that the רכוב is מקנה half the מוסירה to the תפוס and the תפוס is מקנה in turn half the מוסירה to the רכוב, as we say by משנה³ in our שניהם מודים?

¹ See previous וקני footnote # 6.

² The case of מוסירה is different from the case of ‘משוך בהמה וכו’ where the one who is מושך the בהמה is doing it exclusively without any interference from another party. Here however even though the רכוב is performing a משיכה, nevertheless there is another party who is holding the מוסירה with the intention to acquire it for himself. Even if we assume that תפוס קנה חבירו, that is only when the תפוס has an intention to be לחבירו; however, here the תפוס has no intention of being לחבירו especially since he cannot acquire it for himself.

³ The גמרא initially said that the רכוב is קונה since the תפיס picks it up for him; why cannot we say the reverse, that the רכוב is מקנה to the תפוס. [See אות רסה.]