

## עבד שמכרו רבו לקנס כולי –

**A slave whose master sold him for the fine, etc.**

### OVERVIEW

The גמרא posed a query whether the owner of a slave can sell only the קנס aspect which the slave possesses.<sup>1</sup> תוספות explains why the query was not whether he can sell the קנס itself (instead of selling the עבד for his קנס).

מכר קנס של עבד לא מיבעיא ליה דאפילו לרבי מאיר<sup>2</sup> לא קני דהא לא עבידי דאתי<sup>3</sup> -

**He did not query what the rule would be if he sold the קנס of the עבד, for even according to ר"מ, the buyer would not acquire the rights to the קנס, since it is not expected to come -**

כדאמרין וכל שכן לרבנן -

As the גמרא states; and certainly according to the רבנן, the buyer will not acquire the קנס, since they maintain לעולם בא לעולם דבר שלא בא לעולם -

אלא במכרו רבו לקנס מיבעיא ליה דדילמא אפילו לרבנן קני להו כמו דקל לפירותיו<sup>4</sup> -

**Rather the query is where the master sold the slave for the rights to the קנס (which the master possesses in this slave) in which case perhaps even according to the רבנן the buyer will acquire it, just as in the case where one sells a tree for its fruit -**

כדאמרין הא קאי שור והא קאי עבד<sup>5</sup> -

As the גמרא states, ‘the ox is standing and the עבד is standing before us’, so it is not comparable to the rule of “ל” דבר שלב”ל; this is one side of the query -

או דלמא אפילו לרבי מאיר לא קני דלא דמי [לפירות דקל] -

**Or perhaps even according to ר"מ the buyer will not acquire the קנס for it is not similar [even to the fruits of a tree]**

שהפירות יוצאים מגוף הדקל ועבידי דאתו אבל קנסא מעלמא אתי<sup>6</sup> ולא עבידי דאתי:

<sup>1</sup> If an ox kills an עבד כנעני the owner of the ox must pay the owner of the slave שלושים שקלים; it is this right which he has in the slave that he is willing to sell, in all other aspects the slave still works and belongs to the original master,

<sup>2</sup> ר"מ maintains דאדם מקנה דבר שלא בא לעולם. However he may maintain it only if it is עבידי דאתי; there is a strong possibility that it will come to pass.

<sup>3</sup> It is highly unlikely that an ox will kill this עבד.

<sup>4</sup> Where one sells a tree for its fruit (not merely the future fruits of the tree) the רבנן agree that it is a valid sale, since the tree is present; so he is selling a part of something which is already לעולם בא לעולם.

<sup>5</sup> Here too the עבד is before us and the oxen are also here, so since he is not selling the קנס but the right to the קנס, which the עבד possesses it may be considered לעולם בא לעולם.

<sup>6</sup> The fruits come directly from the tree which is here and it is extremely likely that the tree will bear fruit, however by the עבד he does not produce the קנס, so his being here does not necessarily make it that the קנס is לעולם בא לעולם; it is much less לעולם than even the פירות דקל, and additionally the chances of this עבד being killed by an ox are extremely small.

**For the fruits come from the body of the tree (which exists) and they usually grow from the tree, however the קנס comes from elsewhere and לא עבידי דאתי.**

### **SUMMARY**

We should be able to sell the עבד for the קנס (even according to the רבנן) since it is like דקל לפירותיו, on the other hand we should not be able to sell the עבד for the קנס (even according to ר"מ) since the קנס is מעלמא and not עבידי דאתי it is less בעולם than (even) דקל פירות.

### **THINKING IT OVER**

תוספות mentions two differences between פירות דקל and עבד לקנס; by פירות דקל the פירות come from the דקל directly (but by קנס it does not come directly from the דקל), and פירות דקל are עבידי דאתי (but the קנס is not עבידי דאתי).<sup>7</sup> Our גמרא however only mentions the difference regarding עבידי דאתי, but not that the פירות come directly from the דקל. How can we explain this?

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See 'Thinking it over'.

<sup>7</sup> See footnote # 6.