

ואם לקח בשוגג יחזרו דמים למקומם – And if he bought it mistakenly, the monies should be returned to their original place

Overview

The ברייתא states that if one mistakenly bought a בהמה with מעות מע"ש,¹ the monies go back to the buyer and the cow goes back to the seller. רש"י explains what תוספות means that we force the seller (against his will) to return the money to the buyer.

פירש בקונטרס² דכופין המוכר להחזיר הדמים דמקח טעות הוא -
רש"י explained that we force the seller to return the מע"ש money, since it is an erroneous sale -

דאם היה יודע שמעות מעשר הן לא היה לוקחה דטריחא ליה מילתא להוליכה לירושלים -
For if the buyer would have known that it he is buying the בהמה with מעות מעשר, he would not have bought the בהמה, for it is a bothersome affair for the buyer to bring the בהמה to ירושלים -

והמעות הוה ניחא ליה לאמטויינהו³ -
And on the other hand he would be more pleased to bring the money to ירושלים.

תוספות asks:

ואם תאמר מה קנס⁴ הוא למוכר בהך אדרבה ריוח הוא לו שיפטר לעלות לירושלים⁵ -
And if you will say; what punishment is this for the seller; on the contrary, it is profitable for him to return the money, for then he will be exempt from going up to ירושלים -

כי המעות של מעשר שני אינן בידו כיון דאמרין יחזרו למקומם -

¹ He did not realize that the monies were מעות מע"ש.

² בד"ה בשוגג.

³ This buyer (who initially had the מעות מע"ש) if he would be aware that it is מעות מע"ש, he definitely would not have bought this בהמה with מעות מע"ש (which would have made the בהמה to become מע"ש), for then he would need to take the בהמה to ירושלים; he would much rather take the מעות מע"ש than the בהמה. Therefore since it is a מקח טעות, the money and the בהמה must be returned to their respective original owners as if nothing transpired. See 'Thinking it over'

⁴ The statement כופין את המוכר, indicates that he is being punished; we are forcing him to do something he does not want.

⁵ The ברייתא taught that one is not permitted to buy a בהמה with מעות מע"ש. Presumably therefore if one bought a בהמה with מעות מע"ש (inadvertently), the מע"ש קדושת מע"ש will not be transferred, so the money will remain מע"ש and the בהמה will remain חולין. When we realize what happened, the seller (who now has the מעות מע"ש) would be required to go to ירושלים, but now that we say יחזרו דמים למקומם, the seller need not go to ירושלים, so why is it considered a קנס. See 'Thinking it over'. [Even though the sale is nullified so the seller lost the sale, but that is not so great a loss (compared to the bother of going to ירושלים), for since the cow is being returned to him, he can find another buyer.] See the פני יהושע and מהרש"א for a (totally) different explanation of תוספות question.

Since the monies of מע"ש are no longer in the seller's possession, for we rule that everything must return to its original place?!

answers: תוספות

ויש לומר דודאי קנס הוא לו מה שאנו אומרים יחזרו דמים למקומם -

And one can say; that this which we rule that יחזרו דמים למקומם, is certainly a punishment for the seller -

דבלאו חזרת המקח יכולים לפוטרו מלהעלות המעות לירושלים⁶ -

For (even) without reversing the sale we can exempt the seller from bringing the money up to ירושלים -

שהיינו מצריכים הלוקח לחלל קדושת מעות המעשר שביד המוכר מאחר שהמוכר לפנינו⁷ -

For we would require the buyer to exchange the קדושה of the מע"ש, which is in the seller's possession (for something else), since the seller is present - והיה הלוקח מעלן לירושלים -

And then the buyer would need to take them up to ירושלים.

והיינו⁸ דפריך⁹ ליקנסיה ללוקח שיאכל כנגדן בירושלים -

And this is what the גמרא asks later, 'let us punish the buyer', תוספות explains that to mean that he should eat the equivalent of the מעות מע"ש (which he gave to the seller) in ירושלים -

ויחלל עליהם קדושת מעות המעשר שביד המוכר:

And he should exchange the קדושה of the מע"ש which the מוכר has in his possession on the food which he will purchase and eat in ירושלים.

Summary

The reason why יחזרו דמים למקומם by שוגג is because it is a מקח טעות for the buyer would never had bought the בהמה and be required to take it to ירושלים, had he known that his money was מע"ש. Had we not said למקומם, יחזרו דמים, the לוקח would have to be מחלל the מע"ש and/or eat בירושלים.

⁶ Even if we assume that the money which is by the seller is מע"ש, nevertheless the seller would not be required to bring them to ירושלים, for we would require the buyer to redeem those monies for other monies (or food) which the buyer has. The seller then would have his sale and not be required to go to ירושלים. However now that we say that יחזרו דמים למקומן, the seller (even though he need not go to ירושלים, nevertheless he) lost the sale and will have to find a new customer (perhaps at a lower price).

⁷ See later on this עמוד תוס' ד"ה מתקין (the view of the ריב"א).

⁸ תוספות is out to prove that if we would not say יחזרו דמים למקומם (and not punish the מוכר but rather the לוקח), the לוקח would be required to be מחלל the מע"ש, which the מוכר possesses (as תוספות maintained in his answer).

⁹ See ב, נו.

Thinking it over

From the beginning of תוספות it appears that the קדושה of the מע"ש is transferred to the בהמה.¹⁰ However from תוספות question it appears that the קדושה remains with the מעות מע"ש and is not transferred to the בהמה.¹¹ How can we reconcile this apparent contradiction?

¹⁰ See footnote # 3.

¹¹ See footnote # 5.