

But if he did not flee, we fine the seller

הא לא ברח קנסינן למוכר -

Overview

explained that the reason the לוקח is required to eat in ירושלים is because the seller is not here (so we cannot say למקומם (יחזרו דמים).¹ This implies, concludes the גמרא, that if the seller is present, we fine the seller. תוספות explains what the fine is, and why it is considered a fine.

תוספות explains that the fine is -

כמו שהוא דלעיל² דאמר יחזרו דמים למקומם³ שהוא קנסא למוכר -

Just like the fine mentioned previously in the ברייתא that the money reverts back to its original place, which is considered as a fine for the seller -

שרוצה למכור בהמתו חוץ לירושלים דקנס הוא כשתחזור לו:

Since the seller wants to sell his cow (whether a טהורה as in the ברייתא, or a בהמה טמאה as in the משנה) outside ירושלים, so it is considered a punishment for the seller when his cow is returned to him, for he lost the sale.

Summary

The fine to the מוכר is that his sale is voided.

Thinking it over

1. It (seemingly) appears from תוספות that the ruling of למקומם (in the ברייתא of יחזרו דמים) is a קנס.⁴ However there is was בשוגג; why is there a קנס for a שוגג?⁵

2. Why indeed do we not fine the seller and require him to eat⁶ the מעות מע"ש in ירושלים?⁷

¹ When we require the לוקח to eat in ירושלים it is advantageous to the מוכר, for the sale is valid and (according to חולין [in the מתקין ד"ה תוס' נו,א ד"ה מתקין] הר"מ the money that the מוכר received is here).

² (on the very top). The ברייתא there rules that if someone bought a טהורה בשוגג with מעות מע"ש outside ירושלים, the money goes back to the buyer and the cow goes back to the seller. See 'Thinking it over' # 1.

³ Seemingly תוספות is negating that we do not fine the מוכר by requiring him to spend the מעות מע"ש in ירושלים. See 'Thinking it over' # 2.

⁴ See footnote # 2.

⁵ See # 55. אוצר מפרשי התלמוד שם and תוס' נו,א ד"ה ואם on מהרש"א.

⁶ See footnote # 3.

⁷ See בחלת משה.