

And let us establish it by an heir

ונוקמה ביורש -

Overview¹

The גמרא explained that the case of פרה וטלית לו עליה (by the גזול) must be where the גזול sold it (for then there is יאוש ושינוי רשות), otherwise (if it was still in the גזול's possession), the rule would be אין מעיד לו עליה. The גמרא asks so let us establish it in a case where the גזול died (but did not sell it) and it is now in the possession of his heir (so there is still יאוש ושינוי רשות). Our תוספות discusses whether in such a case the rule would be מעיד לו עליה.

תוספות asks:

ו**אם תאמר והא יורש אין מעיד לו עליה דהדרא ליה כדאמר בהגוזל בתרא** (בבא קמא דף קיא,ב) - **And if you will say; but if it is by a יורש, the גזול would not be able to testify for him, since it is returned to the גזול, as the גמרא states in בתרא** -

דכל דבר המסויים כגון פרה וטלית חייבין להחזיר² מפני כבוד אביהם³ -

That any specific item, which the heirs of a גזול inherited, for instance a פרה וטלית, the heirs are required to return it to the גזול, because of their father's honor (even if there was [יאוש ושינוי רשות] -

תוספות answers:

ויש לומר דהא אוקימנא בריש הגוזל קמא (שם דף צד,ב) **כשעשה תשובה -** **And one can say, that we have established in the beginning of קמא הגוזל** that this rule that the יורשים are required to return their father's stolen item to the גזול, is in a case **where the father repented** and wanted to return the stolen item -

ולא הספיק להחזיר עד שמת⁴ והכא איירי בלא עשה תשובה:

However, he did not have the opportunity to return it before he died, however here it is a case where the father did not do תשובה; in which case the יורשים are not obligated to return it (for we are not concerned for אביהם, since he did not do תשובה).

Summary

¹ See 'Overview' to previous דוקא תוס' ד"ה ונוקמה.

² The question is how can הגזול testify on behalf the buyer's children against יהודה, since if the item is given to the יורשים, the גזול will be able to take it from the יורשים (even though there was יאוש ושינוי רשות), so he is a נוגע. This should explain why the גמרא could not have established the case of פרה וטלית by יורשים.

³ When people will see the heirs with the stolen פרה וטלית, they will remark this is the פרה וטלית that their father stole. This will be a dishonor to their father.

⁴ In such a case the יורשים are required to return the item, since we are concerned for אביהם for he did תשובה.

The rule that יורשים must return items their father stole (to the נגזל), because of כבוד תשובה is only if the father did תשובה.

Thinking it over

What would be the ruling if the father did תשובה and attempted to return the stolen item, however the נגזל refused to accept it from him,⁵ are the children obligated to return it to the נגזל?⁶

⁵ See the גמרא (cited in 'תוס') in ב"ק צד, ב which states 'וכו' שהחזירו אין מקבלין מהן וכו'.

⁶ See 'תוס' ד"ה אי תוס'.