

אי הכי אפילו בעדים נמי מתוך שיכול לומר החזרתיו לך כולי -

If so even with witnesses also, since he can say, I returned it to you, etc.

Overview¹

עדים, asked רבה, according to you that an אומן is believed, when there are no עדים, since he has a מגו of להד"ם, so too he should be believed even if there are עדים, since he has a מגו that he could have said, 'I returned it to you'. תוספות discusses this question.

פירוש² בשלמא לדידי דלא מפליגנא בין יש עדים לאין עדים³ -

The explanation of s'אביי question on רבה is; the משנה is understood according to me (אביי), that I do not differentiate whether there was עדים or whether there was no עדים -

אלא בראה⁴ הוא דמפליגנא -

Rather, I differentiate whether it was ראה or not; meaning that in a case -

היכא דראה אפילו היכא דליכא עדים לא מהימן כדאמר אביי בסמוך⁵ -

Where it is ראה, even where there were no עדים that can testify that he gave it to the אומן, nevertheless since it was ראה, he is not believed, as אביי states shortly -

והיכא דלא ראה אף על גב דאיכא עדים מהימן במיגו דמצי אמר החזרתיו לך⁶ -

And where there was no ראה, the rule is that even though there are עדים that he gave it to the אומן, nevertheless the אומן is believed that he bought it, with a מגו that he could have said, 'I returned it to you', and then he would be believed since there is no ראה -

אלא לדידך היכא דאיכא עדים אפילו לא ראה דלא מהימנא -

However according to you (רבה), since you maintain in a case where there are עדים, so even if לא ראה he is not believed, the question is -

אמאי אינו נאמן במיגו דאי בעי אמר החזרתיו לך -

Why is he not believed with a מיגו that he could have said, 'I returned it to

¹ See 'Overview' to the previous תוס' ד"ה אבל תוס'.

² There is seemingly an inherent difficulty in s'אביי question. אביי is asking that even if there are עדים, the אומן should be believed; however the משנה stated that an אומן is not believed, so according to אביי that an אומן is believed even when there are עדים, how can we understand the משנה. Seemingly his question is not on רבה, but rather on the משנה. Also how do we understand the term אי הכי (if so). What is he referring to?!

³ This means whether or not there were עדים that saw the owner transfer the item to the אומן.

⁴ ראה means that there are witnesses that the אומן is currently in the possession of the disputed item (so the אומן cannot claim, 'I do not have it').

⁵ See the גמרא on the עמוד ב' regarding ראה and the רשב"ם there לא ד"ה (at the [very] end).

⁶ רבה maintains in בעדים אינו צריך להחזיר לו בעדים אביי.

you'?!

In summation, אביי is challenging רבה who maintains that believing the אומן is only dependent on whether there are עדים when it was given to the אומן, or not, but it makes no difference whether we know that the אומן has the item now (ראה), or not. The question then is just as he is believed when there are no עדים because of the מגו of להד"ם, the אומן should also be believed even if there are עדים because of the מגו of החזרתיו. However according to אביי what matters is only if it is ראה or not, therefore the משנה is discussing a case of ראה, regardless whether there are עדים or not.

תוספות is not satisfied with this explanation:

ומיהו קשה דלשון אי הכי אפילו בעדים נמי לא משמע הכי⁷ -

However there is a difficulty with this explanation, for the language of אביי asking, 'if this is so, even with עדים, he should also be believed', this language does not fit with the previous explanation -

אלא משמע אי הכי דשלא בעדים נאמן במיגו בעדים נמי הוה לך למימר מיגו -

Rather it implies, 'if it is so that without עדים the אומן is believed with the מיגו of להד"ם, so even with עדים we should also employ the מיגו of החזרתיו and he should be believed; however -

בשלמא לדידי דלית לי מיגו שלא בעדים, בעדים נמי לית לי מיגו⁸ -

It is understood according to me (אביי) that I do not consider a מיגו when there are no עדים (if it is ראה), so even when there are עדים there is also no מיגו -

אלא לדידך קשה ורבינו תם דחק לפרש ואין נראה כלל לרבינו יצחק:

However according to you (רבה) who maintains a מיגו when there are no עדים, the difficulty is, there should also be a מיגו when there are עדים. And the ר"ת insisted on explaining the question of אביי (as we said previously?), however it does not appear at all to be correct according to the ר"י.

Summary

Seemingly the question of אביי is if רבה distinguishes only between עדים ואין עדים but not whether ראה or not, there should be a מיגו by עדים just like אין עדים.

⁷ According to the previous פשט it seems that אביי is challenging רבה, why does he distinguish between שלא בעדים and ראה, when he should really distinguish between ראה and לא ראה. However there is no mention here in the גמרא (at this point) anything about ראה.

⁸ The straightforward reading of the question is simply, if you say מיגו (of להד"ם) by אין עדים (to which אביי disagrees), why not say מיגו (of החזרתיו) even by עדים. Therefore אביי (who is challenging רבה) means to say that there is no מיגו at all even by אין עדים. However this פשט is also difficult (see מהרש"א), since אביי agrees that there is a מיגו of החזרתיו (by ראה). See 'Thinking it over'.

Thinking it over

1. Previously תוספות taught that according to אביי the statement of רבה was in a case of ראה;⁹ how can then אביי ask that even if there are עדים, he should be believed with a מיגו of החזרתיו, how can he claim החזרתיו if it is ראה?!

2. Why can't we say that אביי maintains that there is never a מיגו by ראה and there is always a מיגו by לא ראה, and the פשט is like תוספות says in the end, because אביי assumes that the משנה is in a case of ראה (and that רבה assumes that it is in a case of לא ראה).

⁹ See previous תוס' ד"ה אבל [TIE footnote # 4].