

אי דאיכא עדים ליחזי עדים מאי קאמרי –

If there are witnesses, let us see what the witnesses say

OVERVIEW¹

רבא cited a ברייתא in support of רבה (אביי² against) that an אומן has a חזקה if there were no עדים when the item was given to him,³ even if ראה⁴. The ברייתא rules that the אומן is believed in a case where there is a dispute between the אומן and the בעה"ב, what was the price they agreed upon for this job. רבא asked if there were עדים present when the בעה"ב gave the item to the אומן, we should ask the עדים what was the agrees upon price. This would indicate that there were no עדים at the transfer, and therefore the אומן is believed (even if ראה).

דודאי ידעי הקציצה⁶ דרגילות הוא⁷ -

For the עדים certainly know the price for this is what is common –

תוספות asks:

תימה לרבינו יצחק דעדיפא מינה הוה ליה למיפרך⁸ -

The ר"י is astounded! רבא should have asked even better -

דאי איכא עדים וראה⁹ דאכתי לא מסיק אדעתיה לאוקמה בלא ראה¹⁰ -

‘for if there are עדים who witnessed the transaction and also ראה’; (תוספות) explains why we assume that there were עדים and ראה) for as of yet it did not enter our minds to establish the ברייתא in a case of ראה -

אם כן אמאי מהימן אומן שהטלית¹¹ בידו¹² -

¹ See ‘Overview’ to the previous נתנה תוס' ד"ה נתנה.

² אביי maintains that the אומן is believed only if ראה, but not by ראה, regardless whether there were עדים or not.

³ The אומן is believed with a מיגו of להד"ם. See תוס' מה,א ד"ה אבל, that להד"ם here means that ‘I never received this item בתורת אומנות ..’.

⁴ ראה means that there are witnesses who saw the item by the אומן, at the time of the תורה.

⁵ Seemingly what is the question; perhaps there were עדים by the transfer, but they do not know the price.

⁶ See TIE footnote # 16, 17). תוס' מה,א ד"ה אבל.

⁷ Presumably the עדים were brought to witness the transaction, so they were told the details; the price, etc.

⁸ See footnote # 16.

⁹ See footnote # 4.

¹⁰ It is only when we refute the proof of רבא (on מו,א) that אביי establishes the ברייתא by ראה, however initially in the proof of רבא, we assume that the ברייתא is in a case of ראה.

¹¹ A marginal note amends this to read כשהטלית (instead of שהטלית)

¹² The question is why does רבא ask אי דאיכא עדים let us ask them how much was the קציצה, when there is a stronger question; for אי דאיכא עדים and ראה, how can the ברייתא state that the אומן is מהימן; the אומן cannot verify his

'If indeed it is so' (that איכא עדים וראה) – the question should continue – 'why is the אומן believed when the garment is in his possession' -

והכי הוה ליה למימר בשלמא לרב' מוקי לה בדליכא עדים דמהימן לרבא¹³ במיגו¹⁴ -

And this is what רבא should have said; it is understandable according to רבה, who will establish this ברייתא in a case where there are no עדים by the transaction, in which case the אומן is believed according to (רבא) [רבה] with a מיגו of (ראה) even if להד"ם -

אלא לאביי¹⁵ במאי מוקי לה¹⁶ בין דאיכא עדים בין דליכא עדים לא מהימן במיגו -

However according to אביי (that it all depends on ראה), how will he establish this ברייתא, for whether there are עדים and whether there are no עדים to this transaction, the אומן is not believed with a מיגו of להד"ם, since it is ראה.

answers: תוספות

ויש לומר דהכי קאמר אי דאיכא עדים -

And one can say; that this indeed is what רבא is saying; 'if there are עדים' for the transaction -

ואתא לאשמועינן דאף על גב דאיכא עדים אומן מהימן וכגון דלא ראה¹⁷ -

So the ברייתא is coming to inform us that even though there are עדים, nevertheless the אומן is believed, and this is in a case where for instance it was לא ראה (which would support the view of אביי); this cannot be, for as רבא continues -

ליחזי עדים מאי קאמרי -

'Let us see what the עדים say'; why believe the אומן, when we can verify with עדים -

אלא לאו דליכא עדים דתו לא מצית לאוקומי בדלא ראה -

'Rather, is it not so; for there are no עדים', so now you can no longer establish the ברייתא by ראה (and no עדים) -

דאם כן מאי קא משמע לן פשיטא דכי ליכא עדים ולא ראה דמהימן¹⁸ ואין כאן שום חידוש -

For if indeed it is so (that ליכא עדים ולא ראה) what is the ברייתא teaching us?! It is obvious that where ראה ולא עדים ליכא that the אומן is believed, and there is no

claim and he also has no מיגו (there is no need to ask the עדים)?

¹³ A marginal note amends this to read לרבה (instead of רבא).

¹⁴ See footnote # 3.

¹⁵ See footnote # 2.

¹⁶ The advantage of the way תוספות presents the proof, over the way the גמרא presents it, is that according to the גמרא, we could possibly answer that there were עדים, but nevertheless we cannot ask them because perhaps the עדים do not know the price; however the manner in which תוספות presents the question, the knowledge of the עדים is irrelevant. See נחלת משה.

¹⁷ Everyone agrees that if ראה עדים וראה, the אומן is not believed.

¹⁸ The אומן has a מיגו of להד"ם; he could have said, 'I do not have anything of yours'.

novelty at all in such a ruling -

אלא ודאי איירי בראה ואפילו הכי אומן מהימן¹⁹ -

Rather the ברייתא is certainly discussing a case of ראה (ליכא עדים), and nevertheless the אומן is מהימן; proving רבה correct and disproving אב"י -

גמרא²⁰ continues with the explanation of the תוספות

ומשני לעולם בדליכא עדים ולא ראה ולא תני לרישא לשום חידוש -

לא And the גמרא answers on behalf of אב"י, that really there are no עדים and it was רישא, as רבא asked -

אלא משום סיפא דבעי לאשמועין דינא בנתנה לו -

Rather the reason the ברייתא mentions the רישא, is because he wanted to inform us the ruling in the סיפא in the case where the אומן gave back the item to the בעה"ב (where there is the distinction between בזמנו and בזמנו), therefore -

תנא נמי רישא כל זמן שהטלית ביד אומן אף על גב דפשיטא היא²¹ -

The ברייתא also taught us the רישא regarding the ruling that as long as the garment is in the possession of the אומן, he is believed, even though this is obvious since ליכא עדים ולא ראה.

תוספות responds to an anticipated difficulty:

ואין להקשות במאי דמשני אב"י אמאי נקט בסיפא נתנה לו -

And regarding how the גמרא answered on behalf of אב"י (that the רישא is in a case of ראה), one cannot ask, why does the סיפא mention a case where the אומן gave it back to the בעה"ב -

הוה ליה למיתני ראהו בידו אף על פי שהטלית ביד אומן²² -

The ברייתא should have taught a case where it was seen in the אומן's possession, so even though the טלית is in the אומן's possession the אומן is not believed -

תוספות responds that this is not a difficulty:

דהא לא נחת תנא מידי בדינא דראה²³ -

¹⁹ The אומן has a מיגו of להד"ם; meaning that 'I never received it from you' (see footnote # 3).

²⁰ How does אב"י answer this question by merely saying it is a case of ראה; but what is the חידוש?!

²¹ The רישא sort of 'sets the stage' for the סיפא; as long as the אומן has it he is believed (by ראה ולא עדים; which is obvious), however once he returns it to the owner, there is a difference between בזמנו and בזמנו

²² The רישא is in a case where the טלית is האומן ביד and he is believed (since ראה), the contrast (where the אומן is not believed) should also be in a case where the item is אומן ביד (and ראה), why make the contrast in a new case where לו נתנה? See 'Thinking it over' # 2. However, according to רבה there can be no question, for the רישא is discussing a case of ראה and the אומן is believed. The contrast is only by לו נתנה.

²³ לא ראה וליכא (that by משנה of the רישא of אב"י there is no חידוש in the רישא), rather the תנא wanted to teach us the סיפא, the difference by לו נתנה whether it was בזמנו or the אומן is believed),

- ראה is not interested in teaching us anything about the rules of ראה

ולהכי קתני נתנה לו והוא הדין דראה נמי כנתנה דמי²⁴ שהיה²⁵ צריך ליתנה לו על כרחו:

So therefore the ברייתא taught לו נתנה (which is what he wishes to teach us), and it is self-understood that the same ruling applies to ראה as well, for ראה is like נתנה, for once it is ראה, the אומן is required to return it to him even against his will.

SUMMARY

The thrust of s'רבא's question is that there is no חידוש in the רישא according to אב"י.

THINKING IT OVER

1. What changed in our understanding of s'רבא's proof/challenge, from the way it was understood in תוספות question, to how it is understood in תוספות answer?

2. ראה²⁶ writes that ואין להקשות why the ברייתא does not teach concerning ראה; what is the question; why should the תנא state the ruling of ראה (where there can be no difference between בזמנו and בזמנו²⁷), rather than the ruling of לו נתנה where he differentiates between בזמנו and בזמנו?!²⁸

זמנו (and the רישא was merely like an 'introduction' to the סיפא), therefore there can be no question why not mention ראה, for this was not the purpose or intention of the תנא.

²⁴ נתנה לו is adding (to reduce further the question posed by the ואין להקשות) that once we know the ruling by לו נתנה, we also know the ruling by ראה, since ראה is the equivalent of נתנה; it can no longer be considered האומן, once it is ראה, since he must return it to the בעה"ב.

²⁵ A marginal note amends this to read שהרי (instead of שהיה).

²⁶ See footnote # 22.

²⁷ When it is in the possession of the אומן (even if he finished the work and told the owner to pick it up), it is always considered בזמנו; the בעה"ב is not עובר on תלין.

²⁸ See נחלת משה.