

He responded to him properly

שפיר קאמר ליה –

OVERVIEW¹

רבא told אב"י that the craftsman ליה שפיר קאמר, he responded effectively to the customer. רבא explains, which response רבא is referring to.

דלא משוי ראה מאי טעמא דראה תניא² -

The אומן responded properly so that he did not make this a situation of ראה; what is the reason that he was שפיר, because the ברייתא states ראה –

asks: תוספת

תימה לרבינו שמשון בן אברהם דמאי בעי למימר -

The אומן is astounded, for what did רבא mean to say when he said that the אומן was שפיר קאמר ליה; which statement of the אומן was רבא referring to -

אי בעי למימר שפיר קאמר דלא משוי ליה ראה דלא בעי לאפוקי דנחזייה³ -

If רבא meant to say that the אומן responded properly in order not to make it a case of ראה, by not agreeing to bring it out so it could be seen; if indeed this is what רבא was referring to -

דמה צריך למימר עלה ראה תניא⁴ -

So why was it necessary for רבא to comment on this statement of the אומן that he is correct since ראה תניא; it is not necessary to use this proof and comment -

פשיטא דאי מפיק ליה ויכירוה שהיא שלו דחייב להחזיר -

It is obvious that the אומן was 'smart' in not willing to show the item, for if he would bring it out and the עדים would recognize that it belongs to the customer, that the אומן would be obligated to return it to the customer -

שהרי כבר ואמר לא היו דברים מעולם⁵ -

Since the אומן denied having the item and he claimed להד"ם, so he is completely refuted by the עדים!

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

² Others maintain that this is דלא...תניא in our גמרא and this line is part of the heading of this תוספת.

³ This is seemingly the understanding of the שפיר ד"ה איברא וד"ה רבא; that רבא is referring to the response of the אומן that 'איברא לא מפיקנא ליה'; 'I'm not going to show it'. See 'Thinking it over'.

⁴ The ברייתא (on מו,ב) of ראה is in a case where the אומן claims 'I bought it from you', in which case if it was ראה (we see the item in the possession of the אומן) he is not believed for חזקה אין לו חזקה, we assume it was given to him to repair the item; it was not sold to him.

⁵ Presumably this ruling would apply even to a non-אומן who claimed להד"ם, and the item was found by him. Therefore there is no need to refer to the ברייתא of ראה; it is self-understood that the אומן was 'smart' by refusing to show the item.

ונראה לו לפרש הכי שפיר קאמר כלומר שטוען טענה זו לא היו דברים מעולם -

And the רשב"א prefers to explain it thus; said that the craftsman 'שפיר קאמר', referring to his original response where he claimed - להד"ם

דעל ידי כך לא משוי ליה ראה הואיל ולעדים לא היה בה טביעות עין ויכול לומר אחר היה -
So that through this claim of להד"ם, he did not allow this case to be considered since the עדים did not fully recognize the item, so he could then claim, 'it was another garment; this is only because he initially claimed להד"ם -

אבל אי הוה טעין לקוח הוא בידי לא היה נאמן -
However if he would have claimed initially, 'I bought it', he would not be believed -

דאין לו עוד מיגו דאי בעי אמר החזרתיו לך או לא היו דברים מעולם דירא לומר כן' -
For he no longer has the מיגו that he could have said, 'I returned it to you', or he could have said להד"ם, these מיגו are no longer an option for him, since he is afraid to make any of these two מיגו claims; the reason he is afraid, is -

הואיל ויש עדים שראו טלית כאותו שהוא שלו בידו⁶ -
Since there are witnesses who saw a טלית, in his possession similar to the customer's טלית -

והשתא אתי שפיר דקאמר מאי טעמא ראה⁷ תניא -
And now it is properly understood this which רבא said, 'what is the reason why', it is because ראה תניא -

כלומר אף על פי שאינה ראה גמורה של טביעות עין אלא שהיו בה סימנים כמו שלו -
The word ראה in the ברייתא means, even though it is not a perfect seeing of a טביעות עין, but rather it had signs similar to his garment; that is also considered ראה -
דראה דקתני בברייתא משמע ליה בכל ענין ראה (גמורה) אינו נאמן לומר לקוח הוא בידי:
For it seems to רבא that the ראה in the ברייתא means that by any type of ראה the is not believed to claim, 'I bought it'.¹⁰

⁶ We cannot deal with him as an אומן (where the rule of ראה applies), since he claims להד"ם, and he is believed like anyone else, unless he is proved wrong.

⁷ A מיגו is effective when the claimant could have claimed the מיגו with the same ease as he is claiming his actual claim. Here however it is easier for him to claim לקוח where the עדים cannot contradict him, than claiming either החזרתי or להד"ם where the עדים contradict him. This is not a valid מיגו.

⁸ It is apparent from תוספות (who states that he cannot claim החזרתיו since there are עדים) that עדים are testifying that they saw the item in the אומן's possession, very recently (or currently) that it is impossible for him to claim החזרתי after they saw it. [The רשב"ם may not interpret the case in this manner.]

⁹ The emphasis is on the word ראה, which means, 'he saw it', but not necessarily that we completely sure that it is his; he 'merely' saw it.

¹⁰ He is not believed to claim לקוח, because he has no מיגו of החזרתי or להד"ם, since he is afraid to claim that since he is concerned that the עדים are contradicting him.

SUMMARY

The שפיר קאמר ליה is referring to his claim of להד"ם, for if he would have claimed לקוח, he would have no מיגו, since he is concerned about the minimal ראיה of the עדים. The meaning of ראה תניא is that a minimal ראיה is sufficient.

THINKING IT OVER

What are the relative advantages of פי' רשב"ם¹¹ and פי' רשב"א?

¹¹ See footnote # 3.