

הא גמרתיו שומר שכר – But, 'I finished it'; he is a paid custodian

OVERVIEW

The גמרא initially inferred from the משנה, which stated; וכולן שאמרו 'טול את שלך והבא ש"ש. This would seemingly contradict the view of רפ"מ בר פפא אמר רב חסדא that if by a שואל the animal died after שמירה (since his פטור ended).¹ However from this inference it appears that even though he finished, his שמירה continues. תוספות explains why we cannot differentiate between the cases.

תוספות asks:

ואם תאמר ומאי פריך שאני הכא דאכתי תפיס ליה אאגריה -

And if you will say; but what is the challenge to רפ"מ בר פפא אמר רב חסדא here, by an אומן it is different from a שואל, for even after he finished he is still holding on to the item to insure that he receives his wages -

ולכך הוי שומר שכר אף על פי שגמר מלאכתו -

And therefore he is still a ש"ש, even though he completed his work; however by a שואל after his borrowing period ended, he has no use for it and therefore he is no longer a שואל.

תוספות realizes a partial solution to his question:

ומיהו לטעמיה דלעיל² דמדמינן אומן לשוכר ולא אמרינן שאני אומן דתפיס ליה אאגריה³ -

However, according to the reasoning previously, where we compare an אומן to a שוכר, and we do not say דתפיס ליה אאגריה, according to this view -

פריך הכא שפיר⁴ -

The גמרא here properly challenges ר"פ אמר ר"ה. However according to the other view, which does maintain דתפיס ליה אאגריה, what is the גמרא's question?!

תוספות answers:

ויש לומר דלא מהני תפיס ליה אאגריה אלא דוקא בעוד שמשכר באומנותו -

¹ [It should be pointed out that a שואל after שמירה (is no longer a שואל, but he) is a ש"ש, just like an אומן who is a ש"ש if he says גמרתיו ש"ש; so what is the question. See תוס' ר"פ והריטב"א.]

² Previously (פ"ב), the גמרא in an attempt to reconcile our משנה (which states ש"ש (כל האומנין) and ר"מ (who rules שוכר) offered two answers. Either that an אומן is different from a שוכר, since תפיס ליה אאגריה (so therefore [only] the אומן is a ש"ש but not the שוכר), or that (an אומן is no different from a שוכר, and indeed) ר"מ maintains that a שוכר is like a ש"ש, just as an אומן is a ש"ש. תוספות is now referencing the latter view.

³ The latter view (in footnote # 1) assumed that דתפיס ליה אאגריה is an insufficient reason to distinguish between an אומן and a שוכר, they therefore had to resort to the view that ר"מ maintains ש"ש שוכר just like an אומן.

⁴ If we assume that תפיס ליה אאגריה is insufficient on its own to consider the אומן a ש"ש, what is the difference between an אומן and a שואל?!

And one can say; that the concept of תפיס ליה אאגריה **is not** always **effective** to consider the אומן as a ש"ש, **unless specifically he is earning money by his trade**, only then does the added concept of תפיס ליה אאגריה, make him effectively a ש"ש -

דתרתי בעינן⁵ שמשתכר ותפיס ליה⁶ אאגריה:

Because we require two conditions for an אומן to be considered a ש"ש; one, **that he is earning money through his trade**, **and** two, that he is **תפיס ליה אאגריה**. Therefore while he is working and earning money and he is also תפיס ליה אאגריה, he is a ש"ש. However when he says גמרתיו, he is no longer משתכר, so תפיס ליה אאגריה by itself is insufficient to consider him a ש"ש.

SUMMARY

Holding on to an item to insure payment is insufficient (on its own) to render one a ש"ש; it must be combined with actual earning.

THINKING IT OVER

Tosfos maintains here that תפיס ליה אאגריה by itself is insufficient to render him a ש"ש (unless he is also earning).⁷ Previously (on ד"ה דקא תפיס), (פ,ב ד"ה דקא תפיס), Tosfos asked that we should say that תפיס ליה אאגריה is a ש"ש because תפיס ליה אאגריה. However, since the מלוה is not משתכר, how can he be considered a ש"ש solely because of תפיס ליה אאגריה?⁸

⁵ See 'Thinking it over'.

⁶ Tosfos does not explain why we need both. Perhaps it is not worth for the אומן to be responsible for the item (after he completed his work) just to be sure that he is paid; the potential loss is much greater than the gain. His pay is worth much less than the item and he assumes that the owners will pay in any case. However he is willing to be responsible if he is both given the opportunity to earn money and is assured that he will be paid.

⁷ See footnote # 5.

⁸ See תומים סי' עב ס"ק כב ד"ה ולפ"ז.