

אתא לקמיה דרב נחמן וחייביה –

He came before *Rav Nachman* and he held him liable

OVERVIEW

The גמרא relates that a person sold a donkey¹ to his friend; the purchaser stipulated that he is traveling to a certain place, if he is able to resell it (there), fine (he will pay for the purchase), and if he is not able to sell it, he will return it to the seller (and not pay him).² On his return trip there was an אונס, and the item was no longer; רב נחמן ruled that the purchaser is liable to pay for the item.

תוספות asks:

ותימה מדלא אשכח לזבונא משמע דלא הוי זבינא חריפא³ -

And it is astounding! It seems that this item was not eagerly sought after (not a 'hot item'), **since he was not able to sell it -**

ואם כן אמאי חייביה והלא הנאת שניהם היתה⁴ -

So therefore since it was not a חריפא, **why did ר"נ hold him liable, for the trip was for both their benefit -**

ואמרינן בנדרים⁵ (דף לא,ב) דאין לחייב הלוקח אלא בזבינא חריפא שכל הנאה שלו⁶ -

For the גמרא states in נדרים מס' that the purchaser is not liable for an אונס unless it is a חריפא, so all the benefit is for the purchaser.

תוספות answers:

ויש לומר דזבינא חריפא היה ואם היה רוצה לתת בדמים שנתן לו המוכר⁷ היה מוצא הרבה -

¹ Others say, 'wine'.

² This is commonly called (today) buying (or selling) on consignment.

³ זבינא חריפא, literally means a sharp sale. It is an item which is eagerly sought after.

⁴ A ש"ש is שואל but a ש"ש is not. The difference between a שואל and a ש"ש is that by a שואל the entire benefit is for the שואל (the lender does not benefit); however by a ש"ש, both the owner and the ש"ש benefit (the owner's item is being watched [per his request], and the שומר is being paid). We transfer this idea regarding the חיוב of a לוקח who buys on consignment (or to inspect it) and there was an אונס, whether he is like a ש"ש (where both parties benefit, if for instance it is difficult to sell the item) and therefore באונסין, or if he is like a שואל (where only the לוקח benefits, for this item is a זבינא חריפא, the owner does not need the לוקח to sell it for him) and therefore באונסין. In our case, where it was not a זבינא חריפא, the seller was also deriving benefit from the purchaser to help him sell the item, therefore the לוקח is like a ש"ש, and should not be liable for אונס.

⁵ See 'Thinking it over'.

⁶ When an item is eagerly sought after, the owner can sell it without difficulty; he is doing this לוקח a favor by offering it to him on consignment. The לוקח in this case is similar to a שואל where כל הנאה שלו. However in our case where it is not a זבינא חריפא, why is the לוקח חיוב באונסין?!

⁷ When buying on consignment the seller sets a price (\$100 for instance) if the buyer does not return the item he must pay the seller \$100. Here the seller could have found many customers for [slightly more than] a hundred dollars, for it was a זבינא חריפא.

And one can say; that indeed it was a זבינא חריפא, and if the לוקח would want to sell it for the price which the seller set,⁸ he would find many customers -

אלא היה רוצה למוכרו ביוקר -

But rather the לוקח wanted to sell it for a (much) higher price.

anticipates a question: תוספות

ומה שלא מכרו כמו שהיה יכול⁹ -

But why did he not sell it for as much as he could have -

replies: תוספות

משום שאף אבבא דביתיה כשיחזור יתנו לו אותן דמים¹⁰ או יותר:

Because he could certainly receive that price or even a higher price even when he returns to (and before he reaches) the entryway to his house.

SUMMARY

The לוקח is liable only when it is a זבינא חריפא. An item is considered a זבינא חריפא, even if it sells easily only at a small profit margin.

THINKING IT OVER

The rule of זבינא חריפא (to obligate the לוקח) was said regarding one who purchases an item (for himself), but wants to inspect it first.¹¹ If it was נאנס during the inspection the לוקח is חייב only if it is a זבינא חריפא. We can argue that the case there is where it was inspected in the presence of the seller, and no credit was given, therefore if it is not a זבינא חריפא, then the seller and buyer are equally benefitting, therefore in order to be מחייב the לוקח it needs to be a זבינא חריפא, for then the לוקח benefits much more than the מוכר. However when the item is given to the לוקח on consignment, even if it is not a זבינא חריפא, since the לוקח benefits much more than the מוכר,¹² in that case the לוקח should be חייב.¹³

⁸ It obviously means for slightly more than the price the מוכר set. [Or perhaps it means the suggested price to sell it in the market, but not the actual price which the לוקח needs to pay the initial מוכר.]

⁹ Once the לוקח realized that he will not receive his higher price, he should have sold it at the (lower) market price (for he would still realize a [small] profit). The fact that he did not sell it perhaps indicates that it is not a זבינא חריפא!

¹⁰ The לוקח figures that he can always sell it at the (lower) market value on his return trip, even when he gets home, and maybe on the way he will find someone who can pay him even more than the market value, therefore he is in no rush to sell it.

¹¹ See footnote # 5.

¹² See לקמן צד, ב, that (according to the שו"א איבע"א רוב הנאה שלו is שואל a איבע"א רוב הנאה שלו, not כל הנאה שלו).

¹³ See נפש חיה.