

22.3.13

45a (אומן אין לו חזקה) → 46b (כבר שמוה קמאי דקמך)

## I Analysis of limitation of אומן from using חזקה

- a רבה: only if he was given the item in front of עדים; if not, he can claim חזקה מיגו – חזקה he could claim להד"ם he could claim
- i challenge (אב"י): iof so, even if he was given בפני עדים, should be believed, מיגו he could claim he returned it
- 1 block (רבה): since, if given בפני עדים, he must return it בפני עדים, this is no מיגו
- ii Challenge (אב"י): if A saw an item with an אומן and claimed it was his and the אומן responded that he had sold it to him – not believed (if a 3<sup>rd</sup> party claimed that A sold it to אומן in his presence – believed)
- 1 Must be: case where there were no עדים when he gave it – nonetheless, claimant is believed
- (a) Rejection: was handed over בפני עדים – claimant only believed because he saw it in hands of אומן
- (i) Retort (to רבה): he had ruled that if given בפני עדים must be returned בפני עדים
- (ii) Answer: he changed his mind (and accepted that it could be returned בפני עדים שלא בפני עדים)
- iii Support (רבה on behalf of רבא): if A gave an item to אומן and there was a dispute as to the price of labor
- 1 If: the אומן hadn't yet given it back, A is the מוציא and must prove his position
- 2 If: אומן claimed payment during זמן (before שקה"ח on day of return) – he can swear and collect (his price)
- 3 If: afterwards, אומן is the מוציא מחברו and עליו הראיה
- (a) Must be: case where there are no עדים, else we would ask them what price they had agreed to
- (b) Therefore: if given בפני עדים, אומן is believed about ownership → believed about price as well
- (i) Rejection: in this case, A never saw the item, all would agree that אומן could claim להד"ם
- iv Challenge (רנב"י): ruling that an אומן has no חזקה
- 1 Implication: others have a חזקה
- 2 Must be: case where item was given w/o עדים – and אומן has no חזקה
- 3 Conclusion: רבה has been rejected and ruling of משנה stands with or without עדים to the מסירה
- v Related ruling: if his items got switched at an artisan's house – he may use the 'other' until its owner claims it
- 1 However: if it got switched in a non-work related setting (e.g. wedding) may not use until owner claims it
- (a) Explanation for difference (ר' חייא): a person may ask the אומן to sell his garment (after repairing it) → the אומן may have inadvertently sold the wrong one - and this was given to the בעה"ב as a "loaner"
- (i) Caveat: only if it was given to him by אומן himself, not a family member
- (ii) Caveat: only if אומן said "take this garment", not "your garment", in which case it is clearly a mistake
- vi Related note: רבא told אב"י how deceptive artisans in פומדיתא behave:
- 1 When: בעה"ב requests his garment, אומן claims להד"ם
- 2 If: בעה"ב has witnesses that saw the garment at the אומן's house, he claims it was a different (similar) one
- 3 If: בעה"ב demands that אומן bring it out for comparison, אומן refuses
- (a) דבא: he is within his rights to refuse – we only learned that בעה"ב has a claim if "ראה"
- (b) אשי: if בעה"ב is sharp, he can generate a circumstance of ראה:
- (i) he can: argue that אומן has seized it against a debt and request it be brought forth for appraisal
1. but: if אומן is sharp, he'll claim that it has already been appraised and is worth the debt owed