

האשָׁה. אִם יְשׁוּעַדִים שִׁיצָאת בְּהִינּוֹמָא כּוֹלִי – witnesses that she left her father's house with a¹ הִינּוֹמָא¹, etc.

OVERVIEW

משנה states the case of a woman who is widowed or divorced and there is a dispute whether she was a בтолה when she originally married. If there are witnesses that she was יוצאה בהינומא at the wedding, it is proof that she was a בтолה and receives a payment of מאתים כתובה plus. Our will be discussing some details in this case.

There are places where the כתובה was written and used as a note to collect payment; however there are places where there was no written כתובה.² The woman collected her כתובה based on a ביה"ד דין. It is an enactment of ביה"ד that a woman collects a כתובה (etc.), if she is widowed or divorced.

בדלא נקיטתה כתובה איירוי דיין איכא כתובתה אם היא בтолה או אלמנה – כתובה³; The widow or the divorcee has no in her possession, for if there is a כתובה, why should there be an issue, let us see what is written in her, whether she was a בтолה when she married, and her; or if she was a widow (or a divorcee) when she married and her is only a mana.

שטר כתובה anticipates a difficulty if we assume that there is no being presented here for collection; and rejects it:

ואפילו⁴ למאן דאמר הטוען אחר מעשה בית דין ואמר פרעתי⁵ נאמנו –

And even according to the one who maintains, that one who argues with an enactment of ביה"ד and he says I paid the debt that ביה"ד placed upon me he is believed and does not have to pay, nevertheless there is no difficulty. Seemingly according to this מ"ד there is a difficulty. In our case since the ex-wife is not presenting a כתובה, the husband (or the wife) has the option of claiming that the כתובה was already

¹ The term 'even' is to be understood that 'even according to this מ"ד' there is (ultimately) no difficulty, as it continues to expound on the proposed question and subsequent answer.

² See the later on גמרא.

³ It is either a מקום שאין כותבין כתובה or she lost her.

⁴ There are those who maintain ביה"ד that one cannot claim on a debt that ר' יוחנן imposes on him (like supporting one's wife and daughters) for it is like a מלוה where פרעתי is not believed See ב"מ י"ג, ב. However there are others who maintain that מעשה ביה"ד נאמן is against a ביה"ד; see the marginal note.

paid in full.

תוספות will first clarify the difficulty, and then answer it:

מכל מקום אין נאמנו לומר כאן אלמנה נשאתייך מינו דברי פרעתי -

Nonetheless, even though that this option of **פרעתי** exists, **the husband is not believed in this case to claim**, that **I married you as a widow**, since he has a **that he could have claimed I paid** the **כחובה**. If he would have claimed **אלמנה נשאתייך** he would be **פטור** from paying anything. Now that he is claiming **פרעתי** and is willing to pay a **מננה**, he should be believed.⁶ The question is why the woman receives the entire **כתובה**; there is a **מינו** of **פרעתי**, which should support the claim of **אלמנה נשאתייך**.

תוספות responds:

דמגו במקומות עדים הוא:

For this is a which contradicts מינו. **עדים** refers to case where the claim (not the woman) contradicts the **עדים** (woman). In our case the claim is that she was a widow at the time of marriage. The **עדים** claim that she was a **בתולה**. A **מינו** cannot justify a claim which contradicts **עדים**.

SUMMARY

If there are **עדים** that **יצאה בהינומה**, then even though the woman does not possess a **כתובה**, he is not believed to claim **אלמנה נשאתייך**, with a **מינו** of **פרעתי**. This is considered a **מינו במקומות עדים**.

THINKING IT OVER

The ruling that **מינו במקומות עדים לא אמרין** is well established. What was the question initially?

⁶ This seems to be even stronger than a regular **מינו**. If he would have used the **מינו** claim he would have been entirely **פטור**; certainly he should be believed with his actual claim where he is admitting to owing a **מננה**.

ומודה רבי יהושע באומר שדה כולי דנאמן – where one says this field, etc.; that he is believed.

OVERVIEW

"ר' ג' ור' א" agrees (to ר' ג' ור' א) that in a case where the current occupant of a field asserts; 'This field once belonged to your father and I bought it from him', the rule is that the מוחזק is believed.¹ It is not clear from the משנה whether the son initially demanded that the מוחזק vacate the premises (and the מוחזק responded that שדה זו כו') or whether the מוחזק initially informed the son that שדה זו כו', and subsequently the son demands the field be returned to him (based on the admission of the מוחזק).

מתוך פירוש הקונטרס משמע² דודוקא שאין לה טובעו -

From the context of s'iyah explanation, it seems that the ruling of ר"י that we accept the claim of the current occupant that ליקחתיה הימנו, is only when this son of the original owner is not presenting a claim against him. The current מוחזק approached the son of the original owner and informed him that he, the מוחזק, bought the field from his father. The son was not aware that it once belonged to his father.

וְנִאמֵן בָמָגו דָאי בָעַי שְׁתִיק -

And the מוחזק is believed that he bought it, for he has a **מגוי** for he could have been silent. There was no need to tell the son anything. If he were silent he would have kept the field. Therefore, even though he admits that the field once belonged to the father, and he has no proof, nor a **חזקה** that it is his, nevertheless he gets to keep the field since he has the **מגוי דאי בעי שתיק** -

אבל אם תובעו אינו נאמן³ -

However, if the son presented a claim against him; the מוחזק is not believed; the son initially demanded that the מוחזק leave the field, since the son

¹ The משנה is discussing a case where there is no proof that it ever belonged to the father, and the מחזק has neither a שבר nor a שים זום.

² See also, where ר' טז, א"ד states "ה שפהה" clearly states "וזה פיו של אביו אלא על ר' יוסי", where ר' יוסי states "לעומת זה לא היה לו עורריים ר' יוסי".

³ If the mother would have responded that it never belonged to your father; the mother would retain the field. However now that he admits that he is not believed that he has the right to the inheritance, it would seem that only a field that is sufficiently strong to allow the current mother to retain the field. However, the reason is not sufficient. Once the mother admits that the father was the owner, a regular cannot be from the owner, which the mother refers to as "from the father".

inherited it from his father, and subsequently the field responded that I bought it from your father, the field is not believed, and the field reverts back to the son.

ר"ש"י disagrees with:

ואינו נראה דהא כתני סיפה ואם יש עדים قولיל -

And this interpretation does not seem to be correct, for the Mishnah teaches us in the Sifra, 'and if there are witnesses, etc'. The Mishnah states that if there are witnesses that the field once belonged to the father, then the field is not believed that (without a שטר or חקיה הימנו).

משמעותה אם יש עדים שהיתה של אביו אינו נאמן -

it seems from this **that only if there are witnesses that it once belonged to his father;** only in such a case is the field **not believed;** for since there are witnesses that it originally belonged to the father, then in order to be a field from a father קמא, a שטר or two years is required.

אבל אם אין עדים אף על גב דהלה טובעו נאמן במגו -

However if there are no witnesses that the father was the father, then the field is always believed **even though the son is demanding of him,** that he vacate the premises, nevertheless the field is believed, for he has a case of – מיגו a

דאיבע אמר לא היה של אביך מעולם -

For the could have claimed it was never your father's; the son has no witnesses that it was his father's (in the Resh Yisrael of the Mishnah). It is only in the Sifra that the Mishnah states that there are witnesses that concludes his proof that the Resh Yisrael is discussing even a case of – הלה טובעו –

מדלא נקט אם טובעו אינו נאמן -

Since the did not state 'if he demands of him, he is not believed'. According to the Mishnah ר"ש"י should not have (merely) said if there are witnesses, he is not believed; rather the Mishnah should have said that even if the son accuses him (without witnesses), the field is not believed.⁴

Tosfos offers an additional proof to his contention that is mistaken:

ובגמרה נמי פריך⁵ וליתני שדה זו שלך היהת -

And the also challenges the Mishnah and asks, 'and the should rather have taught us a case where the father says this field was once yours, etc.' The asks that instead of teaching us the case of דין גمرا, which is

⁴ assumes that it is a greater that the field is not believed without witnesses, than that the field is not believed if there are witnesses that the father owned the field. Therefore if "R"Sh is correct, that הלה טובעו אינו נאמן, then the Mishnah should have taught us the greater case of הלה טובעו אינו נאמן. See 'Thinking it over' # 2.

⁵ דף י"ב.

ששה זו דין משנה could have taught the same in a case of גمرا שלך היה ולא קחתיה ממך (which is a simpler case). This concludes the citation from the Gemara.

– גמרא **תוספה** continues with his proof. This question of the

בשם דבהלה טובעו איירוי -

משנה indicates that the son is discussing a case where the son is accusing the father of occupying his field, which prompted the response of מוחזק שדה זו שלך הייתה ולקחתה מך.

הלה תוספתו expounds; If we assume that the case of **שלך היהת** is discussing a situation of **תובע** –

ולכז משב וdae שלך הייתה ולקחתיה ממך -

Therefore the **mozak** responds to him; ‘certainly it was yours, however I subsequently **bought it from you**’. This conversation is understandable -

אבל אם לא טובעו אין שידי לומר שלך הייתה כי מסתמא הוא יודע בעצמו דבר זה: However, if we are discussing a case where the **מחזיק** is not being accused; rather the **מחזיק** is approaching the former owner (as רשי would have us understand), then it is not appropriate for the **מחזיק** to state to the original owner ‘it was yours’, for it is assumable that he himself (the former owner) knows of this.⁶ The owner knows that he is an owner; what does the מוחזק accomplish by saying ‘this was once your field’. He merely should have said שדה זו שלך הייתה. The words שדה זו שלך היה make sense only if the **מחזיק** is acknowledging a claim made against him; not if he is merely informing the former owner of his own status as a buyer. Once we assume that the question of שלך היה is discussing הלה הובעו, it is self-understood that the **מחזיק** of מינו is sufficiently strong that the **מחזיק** retain the field.

הלה תובעו therefore maintains that the ruling of ר' יי' is valid even if תוספות מוחזק are believed since he has a מינו of מועלם של אביך לא היהת.⁷

SUMMARY

There is a dispute between רשות התיישבות ("the Settlement Authority") and מערער ("the claimant") in a case where a deceased father's field; and the claimant claims that the מוחזק ("occupier") is occupying his (deceased) father's field; and the

⁶ שדה זו של אביך היה מושנה לשנה could not have proven this from the case in the Mishnah of מושנה לשנה; for there the phrase **של אביך** is appropriate even if אין הלה תובע. He is informing the son, who may not be aware, that this field once belonged to your father. However in the Gemara's question where he is stating **שלך היה מושנה לשנה**, that statement is only appropriate if it is **הלה תובע**.

⁷ See previous footnote # 3. תוספות will assume that since the son has no proof that it ever belonged to his father. His only claim is based on the admission of the owner, מוחזק, that של אביך הייתה; therefore the מינו of מוחזק is sufficiently effective for the owner to retain the field. According to this type of מינו is also considered sufficient to retain the field.

מערער רש"י responds that he bought it from the father.⁸ According to תוספות receives the field; according to מוחזק retains the field.

THINKING IT OVER

1. What would be the respective views of רש"י ותוספות in a similar case where there is no mention of a father; rather the מחזק claims he bought it from the מערער?

2. Where is there a greater that the מוחזק is נאמן; in a case of הללה樵 with עדים or without עדים?⁹

⁸ There are no other witnesses, documents or חזקה.

⁹ See footnote # 4.

דאַי רְבָּן גִּמְלִיאֵל הָא אָמֵר אִיהִי מַהֲמֵּנָא –

For if it is according to ר"ג, he maintains that she is believed.

OVERVIEW

בחלקה states: if there are witnesses, עדי הינו מא, then the woman is believed that the husband is believed. Our infers from this that if there are no witnesses, גمرا asserts that (seemingly) our is not in accordance with ר"ג, who favors the woman,¹ even if there are no witnesses to support her claim. It seems unlikely that our would not cite the opinion of ר"ג, since he was cited in the previous משנהות.

תוספות wishes to qualify the question; that it is limited to a specific opinion:

נראָה דלמאָן דאמֶר הטועָן אַחֲר מעשָׂה בֵּית דין² לא אָמֵר כלום פריך³ –

It seems that this challenge that our is not in accordance with is only according to **the one who maintains that ‘one who counterclaims an act of דין, he has no claim’**; if one claims that he already paid what required of him we do not accept this claim of פרעתי, and he is still obligated to pay, unless he can prove that he paid his obligation. It is only according to this that the challenges that the husband should not be believed (according to ר"ג) (even if there were no witnesses), because he has nothing with which to support his claim.⁴

دلמאָן דאמֶר דמְצִי טעָין פְּרֻעָתִי –

However, according to the דין that one can claim ‘I paid’ (even my a מעשה such as a כתובה; ב"ז; then –

הכא נאמֵן הַבָּעֵל אֲפִילוּ לְרְבָּן גִּמְלִיאֵל אַלְמָנָה נְשָׁתִיךְ בְּמַגְוָדָי בְּעֵי אָמֵר פְּרֻעָתִי:
Here in our if there were no witnesses, **the husband is believed** to claim, ר"ג, even according to גمرا, who usually favors the woman; nevertheless here the husband is believed to claim that I married you as a widow, for he has a **magov** that he could have claimed ‘I

¹ See the various דפים יב, ב' and כ' in משנהות.

² עדים שטר or מעשה ב"ז is an obligation on a person that he is required to discharge even if there is no writing of the כתובה. Any woman who marries is entitled to a כתובה regardless if a was written or not. There is a dispute whether one may claim on a כתובה ב"ז, even if he has no proof that he actually paid. This dispute is in a case where the claimant has no document (a כתובה to prove that (s)he is still owed the monies. In cases other than ב"ז the debtor is (usually) believed to claim, if the claimant has no writing.

³ See ‘Thinking it over’ # 1.

⁴ This Tosafot is discussing the גمرا of the ה"א, before we distinguished between ברוי ושםא and ברוי וברוי.

already **paid** you the **כトובה**. According to this, one is believed to claim even by a **בעל**, **עדין הינו מא**; therefore if there were no **בעל**, he is believed to claim **אלמנה** **מגנו**, since he has the **נשאתיך**.

SUMMARY

According to the **התווען** (**פרעתי**) **אחר מעשה ב"ד נאמן מ"ד** that it is understood (even in the **הו"א**) that **ר"ג** agrees that the **בעל** is **נאמן** (if there are no **עדין** **מיגו** **מגנו** (**הינו מא**)), since he has a **מיגו** of **מגנו**.

THINKING IT OVER

1. claims that the question of **ליימא וכוי שלא כר"ג** is only according to the **פרעתי מיגנו** of **מגנו** that he has no **כלום** **מ"ד**. Seemingly however, he has the **מיגו** of **מגנו**; **אין את אשתי**; you are not my wife and I owe you nothing.⁶
2. If the woman demanded her **כトובה** immediately after the **גירושין**, would the husband still have the **מיגו** of **מגנו**?
3. Would **העמד** **אותה על חזקה וכוי** **ד"ה הבעל**, who states in **רש"י** that **ד"ה הבעל** disagrees with this?⁷

⁵ See footnote # 3.

⁶ See מהר"ם ש"ף, מהר"א.

⁷ See שטמ"ק.

This is also logical**הci נמי מסתברא –****OVERVIEW**

In our up to 'הci נמי מסתברא', there were two questions and two answers. The first asked how is it that our משנה disagrees with ר"ג (and does not even mention him).¹ The second replied that ר"ג concurs with our since it is a case of ברי וברי. The second asked, what was the question of the first originally; is it not obvious that there is a difference between ברי וברי? The replied that our משנה is similar to a case of ברי ושמעא (that is why there was a question initially). After this discussion the concludes that הנ"מ; logic dictates that this answer is not merely a deflection, but rather that this explanation is necessary in order to understand the properly. It is not clear to which answer the גمرا is referring to, when it states that ר"ג is מודה. Is it concerning the first answer, that by the woman is not נאמן? Or is it the coming to confirm the second answer, that our משנה is similar to a case of ברי ושמעא. This is the basis of the ensuing חוליקת רשי'.

פירוש בקונטרס² הci נמי מסתברא דמתניתיןอาทיה כרבנן גמליאל –

It is explained in רשי' that the means, **it is indeed also logical that our** משנה **concurs** with the view of ר"ג, who maintains that usually the woman is believed (but only in cases of ר"ג), however we can reconcile with our – משנה ברי ושמעא מודה גם קולין –

כ Desmondin_DBBRIV_BRI_MODAH_RASHI_YOSHU_COLI –

ר"ג then, משנה, then, ברי וברי גمرا **answers, that** in a case of ברי and **admits** that the woman requires עדים to be believed; otherwise she cannot be on the basis of her claim alone, since she is opposed by a ³טענה ברי מומ�. The גمرا offers proof that this is indeed so **since the משנה teaches us** that **admits, etc.** ר"י explains this as follows: The case in which ר"י, namely שדה זו כו', has no real relevance here in מסכת כתובות. The question arises, why mention it here at all. Its relevance here is understandable however, if we maintain that in the רישא of the case of ר"ג (the case of האשה שנתארמלת) admits that the woman is not believed. It then follows, that once the משנה teaches us a situation wherein ר"ג is מודה to ר"י, the also

¹ ר"ג argues with ר"י in the first concerning various disputes between the husband and wife. ר"י maintains that the woman is believed while ר"י maintains that her testimony is not accepted.

² בד"ה והci.

³ According to ר"ג הנ"מ confirms that ברי וברי

teaches us another instance where ר"ג is מודה to (in the case of ר"י). However, if there is no disagreement even by ברוי וברוי (if ר"ג disagrees even by רישא),⁴ then why mention the case of רישא זו (by ר"י) which has no relevance to our משנה. The proves that the opinion of the woman concurs with the opinion of ר"ג; that even though generally the woman is believed by a בוטש, however since our case is a ברוי וברוי, therefore ר"ג admits that she is not believed. This is the interpretation of the according to רש"י.

רשות has a difficulty with this interpretation; specifically the proof that offers concerning that מודה בבריה ובריה is רג:

ווקשה לפירשו דבר לא אירוי רבן גמליאל במודה אני שפיר ומודה דברי יהושע -

And there is a difficulty with his interpretation; that the proof that even if מודה בברוי וברוי is ר"ג, was not involved in admitting; the ר"י of מודה' would be properly cited in the משנה; even if we do not assume that מודה בברוי וברוי is ר"ג, but rather that he may argue on the basis of the רישא, and maintain that even though the woman is נאמנה⁵, nevertheless the citing of מודה ר"י would be well understood –

כלומר אף על גב דברישא פליגנא עלך בסיפה מודינא לך

האשה שנטארמלה of רישא, it would mean to say, that even though that in the I (ר"י) disagrees with you (ר"ג); for maintains, as the states that she requires to be believed,⁶ while maintains (as we are wont to assume now) that she is believed (even by כרי ובריה), nevertheless in the שדה of סיפא of I admit to you that the מיגע is effective and the buyer is the field from the son of the man – מרא קמא

רשות proof) anticipates the obvious question (which is the basis of s'i"י proof):

אף על גב דרישא וסיפה אינן מעניין אחד -

Even though the רישא (concerning the woman's year of marriage) argues by ר"ג ור"י, where the woman admits to being married (בורי ובריה) and the **סיפה** (concerning the field) admits to being married (בורי ובריה) (מגו by ר"ג ור"י, where the woman admits to being married (בורי ובריה) and the other is בורי ובריה (מגו); how can we justify that the two topics are not the same topic (one is בורי ובריה and the other is בורי ובריה)? This in fact is the basis of the proof according to ר' שמעון בר יוחאי. Nevertheless, he claims that this irrelevance should not pose a difficulty –

כִּי הַבָּיִת דָּאֲתֵיה לְיה שְׁפֵיר וּמֹדֶה רַבִּי יְהוֹשֻׁעַ אֵי אַיִירִי רַבּו גַּמְלִיאֵל בְּמוֹדֶה -

Just as ר"ג if משנה ומודה ר"י in our case deems proper the citing of ר"י.

⁴ This is what the first מקסן assumed (because he considered it a ב"ו, as the second תרץ suggested).

⁵ This may be because he considers it similar to a שׁ (as the second הרצן explains) or because she has a בָּוֹשֶׁת נְבִיאָה or נְזִקָּה בַּתּוֹלָה etc.

⁶ She cannot be מפיצה מאורה (based on any of the reasons enumerated in the previous footnote # 5).

involved in ‘admitting’; the citing of ר"י is then acceptable in our – משנה מודה to מודה – מחלוקת מודה to מודה.

אף על גב דמודה דרבנן גמליאל אינו מענין ומודה דרבבי יהושע –

Even though that the two 'modah' of ר"ג 'modah' is not the same concept as the 'modah' of ר"י. The 'modah' of ר"ג is concerning ברוי וברוי; however the 'modah' of ר"י is concerning שדה זו. Nevertheless it is acceptable to ר"ש, as long as there is some continuity; you are משנה to me, and I am משנה to you. The same can be said, even if ר"ג is not משנה; there is still a semblance of continuity. ר"י is stating that even though we disagree here (by שדה זו), nevertheless we agree somewhere else (by שדה זו).⁷ The fact that שדה זו is irrelevant to our משנה should not pose a greater difficulty for this interpretation than it did according to the interpretation of ר"ש, where the two statements of 'modah' are equally irrelevant to each other. argues that the basis of the proof according to ר"ש, namely the irrelevance of מודה ר"י, is not improved upon even if ר"ג is משנה. The two 'modah' of ר"ג and ר"י are not on the same topic.

ר"ש"י offers an answer to justify the interpretation of:

ויש ליישב דודאי כי איירוי רבנן גמליאלי במודה שייך למיתני שפיר ומודה רבבי יהושע –
And it is possible to answer this question on; that we cannot compare the irrelevance of ר"ג, if מודה is ר"ג, to a situation where he is not מודה; **for it is certain, that if ר"ג is involved in a 'modah', then it is feasible to cite properly that ר"י is also מודה –**

אף על גב דלא הוי מענין אחד כלומר –

Even though the two 'modah' are not of the same topic; meaning, that the continuity lies not in similarity of the concepts, but rather –

דאגב דתנא מילתא דמודה רבנן גמליאלי תנני נמי מילתא דמודה בה רבבי יהושע –

That since the taught us something in which ר"ג is מודה, therefore it is appropriate that the also teach us something in which ר"י is מודה. There isn't merely a semblance of continuity, but rather there is a connection and similarity between the two statements; they are both concerning 'modah' –

אבל אי לא איירוי רבנן גמליאלי במודה לא שייך למיתני ומודה רבבי יהושע –

However, if ר"ג is not involved in a 'modah', then it is not appropriate for the to teach us משנה –

לאשמעין אף על גב דפלייג ברישא מודה בסיפה כיוון דרישא וסיפה אינם מענין אחד –
to let us know that even though ר"י argues in the Rishya, nevertheless he admits (to) in the Sifa (ר"ג) that the Rishya and the Sifa are not of the same topic. There is no connection and similarity at all

⁷ מודה to מודה is asserting that there is the same continuity from מחלוקת מודה to מודה as there is from

⁸ רישא in the סיפה and the רישא, if there is no 'ומודה ר'ג' between the two.

After answered his (first) difficulty with תוספות רשות, finds an additional problem:

אבל קשה דלא הוה ליה למימר אמגו קאי⁹ -

However there is another difficulty with גמרא פירוש רש"י for the should not have said, in its refutation of the ר"י, that is referring to מגו. It was not necessary for the גמרא to inform us of this –

עד השטא נמי לפירוש הקונטרס אמגו हוי קאי -

For even until now; before the refutation, ר"י was referring to, מנו according to פרש"י. The ה"מ of ר"י מודה (even before the refutation) was that ר"י admits that the ה"מ הפה שאסר מנו is effective. The refutation of the ה"מ, should state that ר"י is not referring to our פרק, but rather to the previous פרק. However concerning the idea of מינו, there is no difference between the ה"מ and the מסקנה; all agree that the מודה of ר"י is that a הפה שאסר מנו is effective. Why does the גمرا add that אמן קאי אמן; that was known even to the ה"מ?

הנ"מ **תוספות** offers a different interpretation of the **הנ"מ**:

ונגראה לרביינו יצחק דהבי פירושו ה' כי גמי מסתברא דברי ושמעו דמי -

And it appears to the ר"י that this is the interpretation of the הנ"מ; the logic also indicates that our is similar to a ברי ושםא משנה. Even though the husband claims that ברי nevertheless since אלמנה נשאתי, he is considered a שמא; his claim is weakened.

הנ"מ תוספות anticipates a possible misconception of his interpretation of the and proceeds to forestall it. It was necessary to claim that our משנה is, in order to explain the original question of ג' *לימא תנן סתמא דלא כר"ג*.¹⁰ The assertion that our משנה is, lends credence to the assumption that ר"ג disagrees with our משנה. When states that, the intends to support the contention that our משנה, it may be understood that that the הנ"מ simultaneously supports the accompanying claim that ר"ג argues with משנה. It is this misconception that will now clarify.

ולא בא לומר דפליג רבו גמליאל ברישא -

And the **ר"מ** is not coming to assert that **ג"ג** is arguing in the **רישא**; that

⁸ The continuity from a מודה to a מהלוקה may lead one to think that the מהלוקה is justified only if the מודה extends to the case of 'מהלוקה'. In our situation, however, the fact that "ר' argues on ר'ג concerning בר' ובר' does not lead us to think that he should not agree with ר'ג, concerning הפה שאסר ר'ג. There is no need for a מהלוקה. In contrast, the continuity from מודה to מודה is always self-justified in any case.

⁹ The refutes the saying; **אברהם קאי** according to **פירושו** maintains that the words **אמנו קאי** are superfluous according to **גמרא**.

¹⁰ If our בְּרִי וָבְרִי דֵּמֵי would be considered, then obviously there is no reason to assume that רְגַג, who believes the woman in cases of בָּנוֹשׁ, should argue with our מְשֻנֶּה, which requires by עִדים בְּרִי וָבְרִי.

since we consider it ר'ג, therefore ב"ש would believe the woman without עדים. This is not so –

אלא אף על גב דבריו ושמעה דמי מודה רבנן גמליאל משומך דלאו שמא ממש הוא -
But rather the is coming to prove, that **even though that** our **הנ"מ** is **משנה** like a case of **ר"ג**, nevertheless **admits** that the woman is not believed¹¹ **because it is not an actual**; the husband is claiming that **ברוי** **שמעא** **נשאתיין**. The cannot render his **טענה** into an **actual** **గمرا**. The continues to prove this assertion (according to **ר"ג** **תוספות**), that **מודה** is even though it is similar to (but not actually) a **בו"ש** –

מדקאמר ומודה רביה יהושע -

Since the states: מודה ר"י; this proves that ר"ג is by a (quasi) ב"ש, as the גمرا continues –

אי אמרת שלמה איררי רבנו גמליאל במודה -

It is well understood why the states מונה ר"י ומודה if you assume that is involved in a 'מודה' situation; he is admitting to something –

כלומר¹² אף על גב דבריו ושמעו דמי מודה רבנו גמליאל דעתן נאמן -

This ‘admitting’ means to say that even though רישא of the situation is similar to a situation (on account of the כו' בז"ש nevertheless רג admits that the husband is believed (even though he is similar to a שמא). If we are to assume this ‘מזה’, then –

הוינו דקטני ומודה רבינו יהושע דביהי ברוי נאמן -

This is what the משנה teaches us by stating, ומודה ר"י, namely that even though ר"י generally does not accept the ברי over the שמא, nevertheless by this (שזה זו), the ברי is believed to retain the field.

ה Tosfos anticipates the need to interject a clarification at this point. Seemingly the reason תוספות is not because of ברוי ושמא by שדה זו is not because of מוגה ר"י, but rather on account of מוגה ר"י. Why is saying that תוספות בוטש? בוטש explains: תוספות ומודה ר"י on account of מוגה ר"י.

- **ד-DSLקא דעתין דעתמא דרבי יهوשע משום ברי ושם דזה אינו תובען כדפירוש בكونטרס -**

For it entered our minds at this point that the reason that is מודה ר"י because of since the son is not demanding the field¹³ as רשות ושם as

¹¹ The ב"ג is asserting that it is necessary to consider our משנה like a case, not only to justify the question of the first מקשׁ; but rather (more importantly) to explain the continuity of the משנה.

¹² The 'כולם' is asserting that we are not merely interested that ר'ג is in the **רישא** (since it is a **בורי** and not a **בורי**); but rather that he is **מודה** despite that it is similar to a **בורש** situation.

¹³ הפה שאסר הוא הפה משנה (הו"א) states that when the son is based on the admission of the father; this means that the שמה of the son agrees that בריה. However, in the cases of בריה ושם ר' therefore, in the first place, there is no agreement that 'something' occurred. Alternately see בית יעקב (סוכת זוד אוות יט).

interpreted the הלָה תּוֹבַע¹⁴ משנה If it is a case of ר"ג, then the most logical reason why believes the defendant is because the defendant is a ברי ר"י¹⁵.

והשתא הוה מודה דרבנן גמליאל ומודה דברי יהושע בעניין אחד –

And now that the רישא of ר"ג is similar to a משנה, nevertheless we also say that by ב"ש (concerning ברי עדי' מודה 'מודה of ר"ג and the ר"י מודה of ר"ג are in the same topic; both are discussing ברי ושם משנה). The then is justified in citing מודה ר"י.

The גمرا continues with its proof:

אלא اي אמרת דרישא בברי וברי גמור הוא ולא איירוי רבנן גמליאל במודה –

However, if you will maintain not like the (that our הנ"מ), but rather that the רישא is an absolute (since the husband is actually claiming); the consequences of such an assumption is that ר"ג is not involved in 'admission' –

דPsiṭṭa d'bi'oun d'bi' ובריה דלא פליג רבנן גמליאל Mai v'moda –

For it is obvious that the woman is not believed even according to ר"ג; for since (as we are now assuming) that the רישא is a would not argue; it would be inappropriate to term this מודה. He is not admitting anything. Only discussed ר"ג not, ב"ש. Obviously he maintains that by עדים we require 'ומודה ר"י' doing in our הנ"מ; it has no relevance here. This is the proof of the Tosfos according to הנ"מ.

The גمرا continues and refutes the proof of the הנ"מ:

ולאמר מי סברת ארישא קאי וטעמא דרבינו יהושע משום בריה ושם –

רישא says, who led you to think that ר"י is referring to the to the purported ר"ג of 'ומודה ר"י, and the reason of is because of it is not so –

אמגו קאי דעתמא דרבינו יהושע משום מגו ונאמנו אפילו הלה תובע ואפרקיון קמא קאי: is (שדה זו ר"י) because he has a מגו; not because the son is a בן, שמא¹⁶ and the buyer is believed even if the son demands the field back, nevertheless the מגו is

¹⁴ See previous Tosfos דף טו, ב' ריש"י. In truth Tosfos disagrees with משנה, for the reason is discussing even a case of ר"ג, which makes the claim of the son a臆. However in this case even agrees that the גمرا thought the case of שדה זו is only by אין לה תובע, which makes the claim of the son臆. See 'Thinking it over' # 2.

¹⁵ After the claimant states שדה זו שלא אביך וכוי, the son claims that perhaps you never bought it.

¹⁶ See 'Thinking it over' # 3.

effective **and** **is referring back to the first**. In the first we find that ר"י does not give credence to a case; however in this case, even ר"י admits that it is an effective case.

SUMMARY

תוספות. מודה בברוי וברוי is ר"ג is proving that the הנ"מ is proving that ר"ג. ב"ו"ש insists that the הנ"מ is proving that מודה is ר"ג in a case that is similar to the case.

THINKING IT OVER

1. What is the (essential) difference between Tosfos' (first) question on רש"י, and the question **ויש ליישב?**

2. ומודה ר"י maintains that the הנ"מ was of the opinion that is discussing a case of **אין להה** תובעו.¹⁷ Seemingly there is a difficulty with that assumption; how will the answer to the question¹⁸ that if it is **אין להה** answer that if it is **ואם תובעו אינו נאמן**, instead of **משנה תובעו**?¹⁹!

3. According to ומודה ר"י the הנ"מ assumed that is referencing a case of **ברוי ושם** (thereby proving that the **רישא** is also **ברוי ושם**). When the **גמרא** refuted the **הנ"מ**, why was it necessary (even according to Tosfos') to say **אמיגו** (that the **ר"י** is not regarding **דר"י**);²⁰ why is it not sufficient to say **ב"ו"ש עדים כו' אינו נאמן**?²¹

¹⁷ See footnote # 14.

¹⁸ See Tosfos טז, ב, ד"ה ומודה.

¹⁹ See מהרש"א וכ'.

²⁰ See footnote # 16.

²¹ See רש"ש.

ה там שור שחוט לפניך – There, an ox is slaughtered before you

OVERVIEW

The גמרא offers an explanation as to why ר"י differentiates between the cases of מנו in the first פרק (where the claim is ineffective), as opposed to the case of מנו in this second פרק (which is effective). The first פרק compares the case of מנו to a שור שחוט, and the second פרק compares the case of מנו to a שור שחוט. There is a dispute between the two as to the interpretation of this answer; based on their dispute concerning the actual litigation in the case of שדה זו.

פירוש בקונטרס¹ שהוא טוען עד שלא אירשתיך נאנסת –

It is explained in פרק ראשון, that the reason the cases are compared to a שור שחוט is, since the husband claims you were forced before I betrothed you. The husband's claim against his wife is compared to a שור שחוט; there is a need for a response here, just as a response necessitates a response as to who slaughtered it.

והכא אין שור שחוט לפניך דין להตอบו –

However here in the case of שדה זו וכוי there is no 'ox slaughtered before you'; there is no need for a response since the son is not demanding anything from the buyer.²

תוספות has a different interpretation:

ורבינו יצחק מפרש דהכא נמי איירי בהלהตอบו כדפירושית³ –

And the explains that here too; in the case of שדה זו וכוי it is discussing a case where the son is claiming ownership of the field, as I explained.

תוספות will now clarify what is meant by שור שחוט and שור שחוט:

והכי פירושו התם שור שחוט לפניך דברי אין לה בתוליות⁴ –

פרק ראשון; there, in the cases of גמרא, there is a need for a response for she has no שור שחוט for she has no שור שחוט לפניך – דם בתוליות –

ואינה יכולה לומר בתולה אני כמו בשור שחוט שאין יכול לומר כי הוא –

¹ See, ר"י ד"ה הכא, for a more complete rendition of s' view.

² If there is a need for a response (שור שחוט), then according to ר"י a (certain type of) claim is insufficient to substantiate her claim; however when there is no need for a response (אין שור שחוט), the claim is effective.

³ See ד"ה ומזה [see 'Thinking it over' # 1]. According to the meaning of Tosfos טובע that the meaning of השור שחוט וכוי cannot be that a response is required; for in all cases a response is required, since it is להלהตอบו.

⁴ The husband is always believed if he claims that his wife has no דם בתוליות (see כתובות י, א [in addition, that presently she is certainly not a woman]. Alternately it is a case where there was no דם on the cloth).

And she cannot claim I was a בтолה by the נישואין; therefore her status is just as by a where no one can say he is alive; similarly she cannot deny the fact, that she is not a⁵ – בтолה –

ולחci בין אומרת משארטניナンשטי בין אומרת מוכת עז אני תחתך לא מהימנא –
And therefore whether she claims I was forced after the or
whether she claims I was struck by wood while I was an she is not believed.⁶ However –

הכא אין שור שחוט לפניך ונאמן במגו דאי בעי אמר לא היה של אביך מעולם –
Here in the case of there is no שדה זו; שור שחוט לפניך so we do not know, independent of the buyer's admission, that it once belonged to the claimant's father,⁷ so therefore the buyer is believed that he purchased it from the father, since he has a מגו for he could have claimed it never belonged to your father.⁸

SUMMARY

According to רשי the difference between שור שחוט and שור שחוט is if there is a claim or not. According to תוספות the difference is whether the counter claim to the claim is (basically) substantiated (as by טענת בתולים) or whether it remains unsubstantiated (as by שדה זו).

THINKING IT OVER

1. According to תוספות⁹ is the claim of the son (merely) that it once belonged to my father; or does he additionally claim that I know he never sold it to you?
2. Is the claim of the son, שדה זו by אין שור שחוט caused by the weakness of the claim (שדה זו)? or by the strength of the claim (that מגו (לה) היה של אביך מעולם)?¹⁰

⁵ It is not necessary for her to admit that she was not at the time of marriageナンשטי, in order to establish that she was not a נישואין. See previous footnote # 4. Therefore it is considered a שור שחוט.

⁶ The lack of דם disqualifies the woman from receiving the full compensation; unless she can prove that she was a mother (or a wife according to ר' אירוסין) at the time of the claim. There is no real מגו here; the claim of מוכת עז cannot effectively challenge the fact that she is not a בтолה.

⁷ The claim of the son, does not establish it as fact that it once belonged to his father. Therefore it is considered as weak. See 'Thinking it over' # 2.

⁸ If the buyer would have claimed לא היה של אביך מעולם he would certainly be believed, since the son has no עדימ, that it once belonged to his father; and the buyer is currently occupying the field (albeit without a הוקה or שטר).

⁹ See footnote # 3.

¹⁰ See footnote # 7.

**כיוון דרוב נשים בთולות נישאות כי ליכא עדימ מאוי הו –
Since most women get married as, what of it that there are no
עדים מאוי הו!**

OVERVIEW

There is a **difference** between **רב ישモאל**¹ whether we can decide monetary rulings on the basis of majority (as is the case in other areas of halacha).² Our contends that in our we should follow the **רב**, regardless if there are or not. **תוספות** will qualify this challenge.

לrob פריך דעתך ליה הולcin במנון אחר הרוב:

The contention of the **גمرا** (that the woman should collect on account of this) is (only) **according to רב**, **for** **רב maintains we follow the majority concerning monetary** issues. Therefore since **רובה נשים בთולות נישאות** when she married and she deserves a **חובה** of **מאחיהם**. According to the other opinion, however, that **אין הולcin במנון**, then there is no difficulty. The fact that **רובה נשים בთולות נישאות** is not sufficiently effective to extract the monies from the husband. They maintain that a **רב** does not have the power to be **מושcia ממון**.³

SUMMARY

The question of the **רובה** that we should follow is only according to **הוילcin במנון** **אחר הרוב** who maintains **רב**.

THINKING IT OVER

Seemingly it is possible to differentiate between the case of **רב** (by the ox)⁴ and our case. There, the seller (**מווחזק**) cannot claim with certainty that the buyer bought it for meat. Therefore the **רב** is sufficient to be **מושcia ממון**. Here however the husband (**מווחזק**) claims with certainty that she was an **אלמנה**. Perhaps in such a case even **רב** admits that **אין הולcin במנון** **אחר הרוב**.

¹ ב"ק מו, א. The case there entails the sale of an ox that turned out to be a goring ox. The buyer claimed that the ox is useless to him since he bought it for plowing; the seller claimed that the ox was sold for its meat. **רב** maintains that since most oxen are bought for plowing, we follow the **רב** and the sale is invalid. **ישモאל** maintains that the sale is valid since **אין הולcin במנון** **אחר הרוב**, עי"ש. See ‘Thinking it over’.

² The reason why **מנון** may be different is because the **רב** is opposed by a **מווחזק**.

³ The **תוספות ישנים** (on the margin) disagrees with **תוספות ישנים**. The following is a (partial) translation: ‘It is possible that even according to **ישモאל**, we should follow the **רב**, rather than the **מנון**, since the **חזקת הגוף** (that she was born a **בתולה**) supports the **רב** (they both indicate that she was married as a **בתולה**). עי"ש.

⁴ See footnote # 1.

וזו הויאל ואין לה קול איתרע לה רובה – no supportive public awareness, her majority status is flawed.

OVERVIEW

רוב גמרא teaches us that beside that there is also קול נשים בתולות נישאות; therefore in a case where there is no קול, then the הנישאת בתולה יש לה קול is flawed; we can no longer assume that she was as a נישאת בתולה. It is the assumption of that if there is no קול, it is considered as nonexistent. The opposing רוב נשים בתולות נישאות cancels out the קול two בтолה. Therefore if there is no קול, two עדים are required to establish her as a בтолה.

תומא דתנן בפירקין (לקמן כח,א) asks:

תימה דתנן בפירקין (לקמן כח,א) אלו נאמנים להיעיד בגודלו מה שראו בקטנות¹ –

It is astounding! For we have learnt in this, 'these people are believed to testify in their adulthood what they saw in their childhood'. The enumerate: משנה

זכורי בפלוניה שיצאה בהינומה וראשה פרוע –

'I remember that woman who appeared (at her marriage ceremony) with a and uncovered hair'; indicating that she was a בтолה. This concludes the quote from the משנה.

וקאמר בגמרא מי טעמא –

And the comments; what is the reason that he is believed to testify in this instance. He was only a קטן when he observed it, and a קטן is פסול לעדות. The גמרא there explains –

כיוון דרוב נשים בתולות נישאות גילוי מילתא בעלמא הוא –

Since most women get married as, בתולות therefore when he testifies that she was a בтолה it is not considered an actual testimony, but rather **it is merely revealing something** that is evident anyway.²

This concludes the quote from the תומא דתנן. גמרא continues with the question:

והשתא היכי מיררי –

And now let us consider, what occurred in that? – משנה –

¹ The גמרא there qualifies this ruling that it is necessary that another person, who saw it as an adult, testify with him.

² The reason for the necessity of testimony at all, will become apparent later in this תומא דתנן.

אם יש לה קול למה צריך שום עדות לרבות ניזל בתר רובא כדריך הכא - if there is public awareness that she was a why is any testimony required at all according to רב; let us follow the majority, as the גمرا asks here; that since there is a רבו, no עדות is required –

ואין לה קול אם אין איתרעה לה רובא ויצטרך שני עדים כשרים -

And if there is no קול that she was a **if that is true, then her flawed and two should be required** עדים כשרים to testify that she is a ⁴; not merely those who saw her, and are not ⁵עדים כשרים בקטנות, and are not

anticipates a possible solution, and refutes it:

וכי תימא דברם עוזר הוא שראה בקטנו ואחר עמו חשבינו קול -

And if you will claim that the reason it is not a **רובה**, is **that when he testifies what he saw as a minor, and another** adult (who observed it as an adult) testifies **with him**; this testimony itself is considered a **קול**. Therefore his testimony (together with another adult) fulfills the requirement of creating a **קול**. Once there is a **קול**, she collects her full **רובה**, on account of the **רובה**. Their testimony created the **קול**; there is no **רובה**.

rejects this idea that the testimony of these two alone can create a **קול**:

הא פריך הכא סחדי שקרי נינהו -

for the here challenges גمرا that two are to be believed when there is no **קול**, by arguing **these** (two who testify) **are false witnesses**. We derive from this that if there is no external testimony, קול, then even if two testify that she was a **רובה**, they cannot create a **קול**.⁷ Certainly there, where one was not a **רובה**, since he was a **רובה**, then certainly they cannot create a **קול**. The question remains: If they cannot create a **קול**, it becomes **רובה**, and two should be required.

answers:

יש לומר דבר נשים בתולות נישאות עדין מרוב נשים הנישאות בתולות יש לה קול -
And one can say that the fact that most women are married as this is superior to the fact that most women who marry have a

³ This is maintaining what he previously stated (ד"ה כיון), that this discussion is (only) according to רב.

⁴ The charge of **רובה** is flawed by the fact that there is no **קול**, which is an opposing **רובה**. Our **תוספות** assumes that the two contradictory **רובה's** cancel out each other. See 'Overview'.

⁵ This is seemingly what our משנה is teaching us; that if there is no **קול**, then two are required.

⁶ This charge was made when the גمرا assumed that **כל הנישאות בתולות יש לה קול**. See 'Thinking it over' # 1.

⁷ If two **עדים** are sufficient to create a **קול**, then why are they considered **סחדי שקרי**; there is a **קול**. The **עדים** themselves are the **קול**. See, רש"ד ד"ה כיון where he states that if **רשה** the **רשות** is then **יש לה קול**.

קול. The former is superior to the latter.⁸

וכי אין לה קול לא יתרע כלכך רוב בთולות נישאות -

And therefore even if this particular woman has no קול that she was married as a בתולה, nevertheless the **רוב** of **נישאות** will not be that much **flawed**, to the extent –

שלא יוכל עדות דראה בקטנותו ואחר עמו:

That the testimony of what he saw together with another's testimony should not be sufficient to establish her as a בתולה.

still maintains his previous conviction that (even) two **עדים** alone do not create a **מסקנה** קול. Therefore in the case of **קטנותו**, there was no קול. However according to the **rule** of the **גמרא** it is only have a קול. If the two majorities of **נישאות** would be equal, (and there was no then they would cancel out each other and two would be required (as it seems from our משנה). However teaches us that they are not equal. The **rule** of **רוב** **נישאות** is superior to the **rule** of **רוב**. Therefore even if there is no קול, we do not assume that they cancel out each other completely; it is merely that the **רוב** **נישאות** is only slightly flawed. To remedy this minor flaw and to substantiate the **רואה בקטנותו** it is sufficient to have one who was together with another, to establish her as a בתולה.

SUMMARY

הנישאות בתולה יש לה קול of **רוב** is superior to the **רוב** **נישאות** of **רוב**. If there is no קול, there is only a minor **ריעותא** in **ריעותא**. This can be remedied if there is an **עד** who saw together with an **עד** **ריעותא** **יצאה בהינומה וכוי** that she was **כשר**.

THINKING IT OVER

1. proved from the statement, **הני סהדי שקרי נינהו** that alone cannot make a קול.⁹ Perhaps we can question this premise. The stated this when we assumed that **כל הנישאות בתולה יש לה קול**. How do we know that this is valid according to the **גמרא** that merely **מסקנה** **רוב** **הנישאות בתולה** **יש לה קול**? Perhaps even two alone can make a קול (even if one of them was **רואה בקטנותו**)?

⁸ See, ‘Thinking it over’ # 2.

⁹ See footnote # 6.

2. How are we to understand the superiority of one **רוב** over the other?¹⁰ Is it a matter of percentages, that one **רוב** has a greater percentage than the other; or is there another way to explain the superiority of one **רוב** over the other?¹¹
3. If we maintain **אין הולכין** במנון אחר הרוב, what would be the דין if one of the two **עדים** was testifying **מה שראתה בקטנותו**, does she collect her **כתובה**?

¹⁰ See footnote # 8.

¹¹ See: 'ר' חידושי בתרא אות

וליהושدلמא מפקא قولי –

And let us be concerned, perhaps she will produce, etc.

OVERVIEW

There is a dispute between **רב פפא** and **רבי אבהו** concerning the writing of a receipt. In a case where the **לוּה** admits owing the **מלואה**; however the **לוּה** requests that the **שטר חוב** be returned to him. The **לוּה** claims that he lost the **שטר חוב** and is willing to give the **לוּה** a receipt instead of the **שטר חוב**. The **לוּה** however, is not satisfied with the receipt, because he is concerned that he may lose it, and the **לוּה** will produce the **חטש** (the he claimed he ‘lost’) and will fraudulently collect a second time on his loan. **ר' א** maintains that since the **לוּה** admits that he owes the money, he must pay. His only recourse is to safeguard the **לוּה**; to protect him from fraudulent claims. **ר' פ** maintains that we must protect the **לוּה**. He is not required to repay the loan unless the **לוּה** returns the **שטר**.

Our, **מאתים זוז** – **בתולת** **משנה** states that a woman may collect a **כתובה** of a **נשנה**, on the basis of **כתובה** **עדין**. She does not have to present the **כתובה** at all.¹ Seemingly the only way to protect the husband that she should not claim her **כתובה** a second time is by having the woman write a **שובך**. Our **משנה** seems to support the view of **ר' א**. Otherwise (according to **ר' פ**), the husband should claim that he will not pay her anything until she produces the **כתובה**.² Our **תוספות** will explain how indeed there is a difference to the husband whether she returns the **כתובה** or whether she just writes a **שובך**.

The **גמרא** initially asks that we should be concerned that perhaps she will collect a second time. The **גמרא** first explains what the **גמרא** assumed how this concern should be addressed.

ואפילו על ידי עדין הינומא לא היה לה לגבות עד שתחזיר לו הכתובה -

And even with the witnesses that she wore a **הינומא** **she should not be able to collect** her **כתובה** **to** **כתובה** **until she returns the** **הינומא** **to her husband** –

כיוון שיכל לבוא לידי הפסד במה שנשארה כתובה תחת ידה -

Since the husband can suffer a loss by the fact that the **הינומא** **remains in**

¹ If there was a necessity to produce the **כתובה** there would be no need for **עדין הינומא**. The **תוספות** would state how much she is owed.

² **ר' פ** defends himself by saying that our **משנה** is discussing a situation where the custom is not to write a **כתובה**. Therefore the husband cannot demand anything from his wife. He must be satisfied with a **שובך**.

her possession. This is the intent of the question ולייחס דלמא מפקא וכו'.

כתבה will now clarify what loss can the husband incur if she retains the possession, as opposed to, if she returns the possession to him.

דא מיבעיא למאן דאמר דיכול לטען אחר מעשה בית דין³ דמפסיד -

For there is no question that there will be a loss to the husband according to the one who maintains that one may counterclaim an act of ב"ד; that he will lose if she retains the possession. There is a difference to the husband whether she returns the possession or whether she gives him a – שובר –

דם לא יהיה לה כתובה יהיה נאמנו לומר פרעתיה -

For if she will not have the possession in her possession; she will have returned it to him (which proves that he paid it), then even if he loses the possession, nevertheless he will be believed to claim 'I paid' the possession; if she claims it a second time (after being paid previously). However if the possession is in her possession then (if he loses the possession) he cannot claim פרעתיה, since she has the possession. It is like any other which the woman presents. The woman cannot claim פרעתיה. Therefore it is readily understood that the husband stands to lose (according to the ב"ד that מ"ד if she does not return the possession.⁵

טעון פרעתיה continues to explain that even according to the ב"ד that you cannot be מ"ד or כתובה, where seemingly there is no real difference if she returns the possession or not; nevertheless there is a difference.

אלא אפילו למאן דאמר דלא מצי טען אחר מעשה בית דין -

But even according to the one who maintains that one cannot counterclaim an act of ב"ד; the husband cannot claim פרעתיה, even if the woman does not produce a possession. It would seem that there is no difference whether the woman retains the possession or not. In either case he cannot claim פרעתיה. According to this, what is the difference whether she returns the possession or not?⁶ What is the question?⁷ ולייחס וכו'

³ A מעשה ב"ד is an obligation than one has to discharge due to an enactment by the court, as opposed to an obligation that one takes upon himself (such as a loan). A כתובה is a prime example of a מעשה ב"ד. Every man who marries is obligated to provide a כתובה for his wife. There is a dispute if a person can claim on a מעשה ב"ד, if the claimant has no document; as is the case by us, that the woman does not have the possession (TIE footnote # 2).

⁴ Everyone agrees that you cannot claim מעשה ב"ד (פרעתיה) if the claimant has a שטר.

⁵ The fact the fact the court states that she can nevertheless collect her without producing it, proves that ר"א is correct. If the defendant (the woman or the husband in this case) admits that he owes the money, he must pay it; notwithstanding that the claimant is not returning the שטר. This proves that כוונין שובר, despite the protestations of the woman.

⁶ If the husband wants the possession as proof that he paid her, she can just as well give him a receipt. In either case he will be required to safeguard it in order to protect himself.

Most importantly, how can we derive from our that משנה that כותבן שובר ?!⁸

תוספות states that there is a difference:

מפסיד במא שהכתבת תחת ידה שם תتابענו עם אחרת ולא יהיה לה עדי הינומה -
He will nevertheless lose if she retains the in her possession, for if she will present a claim against him another time and she will not have עדוי הינומה, this second time –

יא נאמן לומר פרעתי מנה במגו Dai בעי אמר אלמנה נשאתייך -

He will at least be believed to claim that I paid you a with a that he could have said I married you as an אלמנה and you deserve only a מנה. If he would have claimed he would be believed to pay her only a מנה, since she has no עדוי הינומה. Therefore if he says I paid you one out of the two he will also be believed.⁹ He will merely owe her one מנה instead of two. He will lose this right if she retains the תוספות כתובה as will shortly state.

תוספות offers another situation in which the husband will lose even more money if she retains the כתובה:

או אם יהיה במקום שאין מכירין אם היא אשתו -

Or if the husband will be in a place where the people there are not aware whether she is his wife; in that case, if she is not in possession of the כתובה –

יא נאמן לומר פרעתי הכל במגו Dai בעי אמר אין את אשתי -

He will be believed to claim I paid you everything with a that he could have said, ‘you are not my wife’. I owe you nothing. She cannot prove that she is his wife, since no one there is aware of their marriage.

והשתא שהכתבת בידה תוכיא מאתים -

However, now that the כתובה is in her possession she will extract from him two hundred זוז. In the first case he will suffer a loss of one hundred זוז and in the

⁷ According to this מ"ד it is obvious that by מעשה ב"ד a receipt is always required, since he can never claim (as one can claim by a loan, etc.).

⁸ Generally we can perhaps maintain that לוה, אין כותבן שובר and the does not have to pay until the returns the שטר. There is a practical difference to a whether the לוה returns the שטר; in which case the can never claim the loan again, for the will claim and will be believed since the לוה has no שטר. If the however does not return the שטר, and merely gives the לוה a receipt, there is always the possibility that the will lose his receipt and the will collect fraudulently a second time by producing the שטר. However by there is no difference whether the כתובה is returned or not. The only way the husband can protect himself is if he has a document (the כתובה or a (שובר which states that he paid up. Therefore there is no difference to him whether she returns the כתובה or gives him a (according to the that מ"ד).

⁹ Even according to the that מ"ד טענה after מעשה ב"ד, לא מצי טעין פרעתי will be accepted when there is an effective מגו. See: ‘Thinking it over’.

second case a loss of two hundred זוז.

וכיוון שיכול לבא לידי הפסד אין לו לפרווע:

And since it is possible that he will suffer a loss by her not returning the כתובה he should not be obligated to pay; until he is assured that he will not suffer any loss due to the fact that the כתובה is in her possession. The fact that the משנה was not concerned about his potential loss proves that כתובין שובר. If a person admits that he owes money, he is required to pay even if the claimant does not return the שטר. The claimant is only required to provide the payer with a receipt. It is the responsibility of the payer to safeguard the receipt.

SUMMARY

There is a loss to the husband if the woman retains the כתובה. According to פרעתי טענה of that מ"ד, he loses the מצי אחר מעשה ב"ד. According to כתובין שובר that מ"ד, he loses either the מצי טען or כו' אין את אלמנה נשאית מ"ד. Therefore (if כתובין שובר), he should not pay her until she returns the כתובה.¹⁰

THINKING IT OVER

אלמנה מ"ד states that he would be believed for a מ"ד with a תוספות that in a case where he claims I paid you partially (a מ"ד; or נשאית);¹¹ (even) in a case where he claims I paid you in full?¹²

¹⁰ See 'Review' in the following תוספות ד"ה זאת, for a more detailed study of this תוספות.

¹¹ See Footnote # 9.

¹² This would be an unusual מ"ד. He is a כופר הכל; he claims I paid in full. [We should believe him partially on account of] His מ"ד [which] is that he could have been a מודה במקצת; he could have claimed you were married as an אלמנה and you can collect only a מ"ד. See מהרש"א הארכן.

זהה¹ אומרת כותבין שובר – This proves that we write a receipt

OVERVIEW²

מליה כותבין שובר maintains that from our משנה we can prove that רבי אבהו is not required to return the שטר חוב to the לוה in order to receive payment; he can offer him a receipt instead (if he claims that he lost the שטח). The proof is from the fact that in our משנה the husband must pay the כתובה based on the testimony of the עדי הינומה, even though he is not receiving the return. All the husband can demand is a shomer. The discussion whether כותבין שובר or not, is in a situation where there is a suspicion that the שטח exists. If however we know for certain (through עדימ) that the שטח exists no longer, then it is obvious that the לוה must pay and can only receive a shomer.

משנה anticipates a difficulty with the proof that ר"א brings from our Tosafot:

אין על גב דהכא לא אפשר -

Even though that here it is impossible any other way, for there are times when the husband has no choice but to accept a receipt. Tosafot explains why this is so:

דאיכא למיחש דלמא תשרוף כתובתה בעדים והזרא וגביא בעדי הינומה -

for there is a concern that perhaps she will burn her in the presence of witnesses and she will return to her husband and collect the כתובה with עדי הינומה -

כדאמרין בסמוך ודלמא הזרא ומפקא בעדי הינומה וגביא -

As the כתובה will shortly state; that if she burns her in the presence of עדימ, she can collect with the עדי הינומה. In addition the states that after she collected once with the עדי הינומה, perhaps she will produce again and collect a second time.³ The husband will not be able to claim (the second time) –

למאי דאמר הטוען אחר מעשה בית דין לא אמר כלום ועל כן זוקק הוא לשובר –
according to the one who maintains that he who counterclaims a מעשה has said nothing; his claim is denied⁴ and therefore since she can

¹ This is the previous Tosafot and the previous Tosafot complement each other.

² See 'Overview' to previous Tosafot.

³ Perhaps depends on the גمرا to bolster his claim that she will collect twice with the עדי הינומה. Seemingly the Tosafot cites the גمرا, which clearly states that there is a concern that she will collect twice with the עדי הינומה. The explanation is (as states in רשב"י) that she can find many different people, who will testify at different times.

⁴ It is the ruling of this מ"ד that allows her originally to burn her, without any fear that she will not be paid. A on the other hand will never burn his שטר בעדים; there is a concern that the לוה will claim.

always burn her **he is dependent on a shomer**; there is no other way to protect himself. She asks that since by **כתובה** there are circumstances in which the woman can force him to accept a **shomer**, therefore in general by a **כתובה** we allow her to collect by merely writing a **shomer**, without returning the **שטר**. However by loans in general where the woman cannot collect unless he produces the **שטר**, for otherwise, the woman can claim that the **שטר** can be that the **shomer** and the **din** must return the **שטר** in order to collect his debt. There is no proof from the fact that by a **כתובה**, that the **shomer** should also be by a **כתובה**.

מלואה responds that indeed there is proof from a **כתובה** to a **tosfos**:

מכל מקום דיק שפיר דעתמא נמי כותבין שומר -

nonetheless; despite the issue just raised, the **גمرا** correctly infers from this **מלואה** of **that in general**, by loans **also**, **we can write a shomer**, and the **shomer** is not obligated to return the **שטר** –

דאין כותבין בעלמא למה יפרע כאן -

For if in general, by loans, **we cannot write a receipt**; but rather the **malua** is required to return the **shomer** in order to protect the rights of the **lawa**, then **why should** the husband **pay** the **here** in our case, without receiving the **shomer** in return –

כיוון שיכול לבא לידי הפסד במא שהכתובה בידה צפיריםנו⁵ -

since the husband can incur a loss from the fact that the is in her possession as we explained (in the previous **tosfos** that if the woman has no **עדין** or it is **במקום שאין מכירין שהוא אשתו**, the husband loses by the fact that the **כתובה** is **בידה**).

SUMMARY

Even though the woman can occasionally force the husband to accept a receipt instead of the **shomer**, nonetheless she should not be entitled to have him pay, without her returning the **shomer**, unless we maintain that **כותבין שומר**.

THINKING IT OVER

משנה **tosfos** did assume that we cannot prove from our **קושיא** that **כתובה** (**כותבין שומר**); and in the answer assumes that we can infer from our **משנה** that **कושיא** (**כותבין שומר**) (since the husband may incur a loss)? What changed from the **קושיא** to the **תירוץ**?!

⁵ ג"ה וליחוש.

REVIEW⁶

There is a dispute between **רבי פפא** concerning the right of the to offer the **שטר חוב** a receipt in lieu of returning the **מלואה** to **ר'א**. **שטר חוב** maintains, that since the **לוּה** admits that he owes the **מלואה** money, he must repay him, even though the **לוּה** claims that he cannot return the **מלואה**. The **שו"ח** can only demand that he be given a receipt to prove that he paid the loan. **ר'ז** is of the opinion that the **לוּה** is not required to repay the loan, until the **מלואה** returns the **שטר**. The **לוּה** can claim that a receipt is not sufficient, for perhaps, the **לוּה** will lose the receipt and the **מלואה** will produce the **שטר** and thereby fraudulently collect the payment a second time. **ר'א** views the rights of the **מלואה** paramount (since the **לוּה** admits to owing the money), therefore **ר'ז** is of the opinion that the rights of the **לוּה** must be guaranteed (the **מלואה** must either produce the **שטר** or bring **עדים** that it was burnt, etc.) and therefore **אין כותבין שובר**.

עד הינומא משנה states that a woman can collect her כתובה based on the fact that she is not required to produce the document. The conclusion is that if we assume that the mishnah is discussing places where the custom is to write a כתובה, then this presents a complication for ר' פ and proof for ר' א. The fact that the husband is required to pay without receiving the document in return, supports the view of ר' א, that a שובר is sufficient to placate the payer; the original loan document need not be returned.

כתובות in משנה Tosfot has two general difficulties with this proof from our regarding the case of a loan. One difficulty is dealt with in the תוספות ד"ה מ"ד; the other in תוספות ד"ה זאת מ"ד. Both questions are according to the if פרעתי that the husband cannot claim she demands her שובר to prove that he already paid her. Otherwise the woman can always claim that her כתובה was not paid up yet. This makes a loan very different from a loan כתובה. By a loan must have the שטר in his possession in order to make a claim; for otherwise the can claim לוה. However a woman does not require a כתובה in order to claim her payments, for the husband cannot claim פרעתי.

⁶ This is a review of the two *הוּא וְלִיהוֹשׁ* and *זֶה*.

The first question argues that we cannot prove anything from our **משנה**. It is possible that by a loan the ruling is that **מלוה** cannot collect unless he returns the **חט"ח** to the **לוּה**. The **לוּה** has a valid claim: if the **שטר** is not returned and I lose the receipt, I may have to repay the loan again. If however the **חט"ח** is returned to the **לוּה**, he will have nothing to be concerned of in the future, for even if the **מלוה** claims that he was not paid, the **לוּה** will not have to pay him, since the **מלוה** has no **שטר**. However by a **כתובה**, there is seemingly no difference to the husband whether she returns the **כתובה** or writes him a **שובר**. Either way he will need to guard them. For if he loses the **כתובה** or the **שובר** the woman can claim that she was never paid. Therefore since there is no difference to the husband, the rule is that she need not produce the **כתובה**.

תוספות answers that there is a difference to the husband whether or not she returns the **כתובה**. The difference is in a situation where the woman cannot find **עדין**, or in a place where no one knows that they were once married. In these situations if she will have returned the **כתובה** (even if the husband loses it), she cannot claim that **בתולת נשאתי נ** for she has no **עדין**. In the latter case she cannot claim anything at all for the husband has a **מגו** that 'you are not my wife'. If however she merely wrote him a **שובר** and he lost it, then she will be able to claim her **כתובה** a second time based on the **כתובה** in her possession. Therefore; since the husband stands to lose by her retaining the **כתובה**, and nevertheless we maintain that she collects without returning the **כתובה**, this is ample proof that **כותבין שובר**.

The second question of **תוספות** is that there is another difference between **כתובה** and a loan. In the case of **כתובה**, the wife can force the husband to accept a receipt (and not the **כתובה**). She has the ability to burn the **כתובה** in the presence of **עדים** (before she was paid anything). She then comes to **ב"ד** with the **עדין** and collects. The husband cannot demand the **כתובה** because she has that the **כתובה** is burnt. He is forced to be satisfied with a **שובר**. The husband will be forced to guard this **שובר**, since his wife can always come back and demand payment. **תוספות** seems to be arguing that since the woman has the power to make him accept a **שובר** (if she burns the **עדם**), then this power should be applied in all cases even if she has no **עדם**.

that she burnt the **מלוחה**.⁷ However by a loan the **מלוחה** cannot afford to burn the **שטר**, for if he were to do so the **לוּהָ** can claim **פרעתי**. There is no way in which the **לוּהָ** can ‘force’ the **לוּהָ** to accept a **שׁוּבֵר**, therefore the דין is that אין כתובין שׁוּבֵר. There is no proof from כתובין שׁוּבֵר.

תשובותתוספות answers, that even though the woman can force the husband to accept a **שׁוּבֵר** if she burns the **שטר**, nevertheless as long as the **שטר** was not burnt, she should be obligated to return it to him upon payment, since it is possible that he may suffer a loss if it remains in her possession (as explained in the answer to question one). The fact she may collect without returning the כתובין שׁוּבֵר indicates that כתובין שׁוּבֵר

⁷ This is somewhat similar to a מנו argument ([especially] if we assume that the נאמנות of a מנו is based on the זכות הטענה).

We write a receipt

– כותבן שובר –

OVERVIEW

The **גמרא** explains that the reason the woman can collect without returning the **כתובה** is because we follow the opinion that **כותבן שובר**. The creditor has the right to collect, even if he does not produce the **שטר** as long as he provides the debtor with a receipt. **תוספות** will question the validity of applying this ruling to a **כתובה** (as it is applied by a loan).

תוספות anticipates a difficulty:

אף על גב דברך גט פשוט (בבא בתרא קעא, ב' ושות) **מפרש טעמא** –

Even though that in **פרק גט פשוט** **explains the reason** –

דמאיו דאמר כותבן שובר משום דעתך לוה לאיש מלאה¹ –

of the one who maintains that we write a receipt. The reason is **because** there is a verse which reads **that ‘the borrower is a slave to the person who lends’**; indicating that we favor the lender over the borrower, in various instances. This includes this situation, in which the **מלואה** is not required to produce the **שטר**, but may rather write a receipt to the **לוּה**.² The question is, if the reason for **כותבן שובר** is because **כתובה**, then by a **לוּה**, where the husband is not a **לוּה**, nor is the wife a **מלואה**, the rule of **כותבן שובר** should not apply.³ Why then can she collect without producing the **כתובה**?!

עבד לוה לאיש מלאה **תוספות** responds that –

לאו דוקא לוה אלא הוא הדין בכל חוב כמו כתובה דהכא –

does not specifically refer to a **לוּה**, that only an **actual** is considered an **עבד**, and must acquiesce to the claim of the **מלואה** **but rather this ruling applies to all debts** that are owed.⁴ The one owing the money, for whatever reason, is treated as the **just as the case here of a כתובה** –

¹ משליכי כב, ז.

² Where there is a choice whether to inconvenience the **לוּה** by writing him a **שובר** and not returning the **שטר** (obliging him to safeguard the **שטר**) or whether to require the **לוּה** to produce the **שטר** (and otherwise he will not be paid), we choose to place the burden on the **לוּה** instead of on the **מלואה**.

³ **תוספות** is assuming that the rule of **מלואה** and **לוּה** is **כותבן שובר** only by a real favor by lending him the money. Therefore whenever there is a conflict between their respective interests, we rule in favor of the **לוּה**. However by a **כתובה** there were no favors rendered by the wife, therefore the rule of **עבד** should not apply.

⁴ **תוספות** concludes that the rule of **עבד** is not dependent whether the creditor did a favor to the debtor. The mere fact that he is a debtor obligates him to pay the debt, notwithstanding that he may suffer a loss in the future since the **שטר** was not returned to him. The proof that this is so is from the fact that the **גמרא** uses

ושטרים מכך דאמר התם⁵ דכותבין שובר:

And notes of sale, regarding which the gemara states there that we write a כותבין שובר **in the case of a loan.** שטר מכך גמרא We can infer from that that the rule of כותבין שובר applies to all situations not only by loans, where the molah did a favor to the lolah, by lending him the money. Therefore it applies to כתובה here as well.

SUMMARY

The rule of כותבין שובר applies to all debtors, regardless if there was a loan or not.

THINKING IT OVER

כותבין שובר seems that it is more appropriate by a loan than by a note of sale. In this it seems that כותבין שובר is more appropriate by a note of sale than by a loan. How can this seemingly apparent contradiction be resolved?

2. In general, how can we maintain that אין כותבין שובר? This implies that even if the lolah admits that he owes the money, nevertheless if the molah does not produce the shtr, the lolah does not have to pay (even if the molah offers to write a receipt). This does not seem to be justified! How can a future doubtful concern (that the lolah may lose the shtr and the molah will produce the 'lost' shtr) outweigh a definite obligation in the present!?

this rationale for השטרות מכך points out. The meaning of עבד לolah may be that the one who owes, the lolah, must bear the burden of safeguarding the shtr, much as an עבד must bear the burden his master places upon him.

⁵ שטר ב"ב קסט, סע"א וע"ב. The case there is where the buyer of a property lost his deed; the עדימ (of the first) may rewrite a new shtr for him that he bought the field. However, they may not include in this new shtr, the guarantee that if this field is taken away from him (by a בע"ח he can collect from the molah (both from משיעבדים and בני חורין). The reason we do not include the אחריות is because we are concerned that the buyer did not lose his original deed and will fraudulently collect twice from the buyer, ש"י. The גמרא asks, let us write אחריות in this new shtr and give the molah a receipt stating that the only valid bill of sale on this property is this last shtr, thus preventing any fraud. The גמרא initially proves from this that אין כותבין שובר and then refutes this proof, ש"י. In any event since there is no lolah and molah here, how can we prove anything concerning כותבין שובר by a reason for lolah and molah is because of כותבין שובר?! This proves that עבד לolah לאיש molah applies to whomever even if he is not a lolah, but merely owes (or may owe) money.

מַאי אִיבָּדָה אִיבָּדָה בְּאֹר –

What is meant by ‘she lost it’? She lost it in a fire.

OVERVIEW

The says that according to ר' פפא who maintains that the reason that the husband must pay without receiving the return, is because it is a place which the husband wrote especially for her, was burnt.

תוספות asks a question:

ואם תאמר¹ אם כן אפילו במקומות שכותבין הוה ליה לאוקמי –

And if you will say, if this is so; if the was burnt, the could have established that the was even discussing a place where they write – כתובות

ומאי דוחקיה לאוקמי במקומות שאין כותבין –

And what forced the to establish that the is only discussing a place where they do not write. כתובות

תוספות answers:

ואומר רבינו תם דבמקומות שכותבין ונשרפה אייכא למיחש שכטב לה כתובה אחרת –

And the says that it is necessary to maintain that we are discussing a place where are written, then even if it was burnt, there is the concern that he wrote her another; כתובה כתובות another; the reason for this concern is –

דאסור להשחותה ולא כתובה² –

For it is forbidden to have the woman linger and be married without a כתובה. Therefore since there is a strong possibility that he renewed the כתובה, the husband should not be required to pay if he claims that he wrote a new one and wants it returned before he pays. However if it is in a place where she can collect twice, to which the husband responded that it was burnt, then there is no concern. The husband cannot claim that he wrote a new כתובה.

¹ The initially answered that we are discussing a place which the husband wrote for her. This answer was challenged since it says in the that really it is a place which the husband wrote for her. The responded that nonetheless she can collect twice, to which the husband responded that it was burnt. It seems that the still maintains that we are discussing a place which the husband wrote for her, for otherwise the would have used the term or something similar.

² See that ב"ק פט, ג' See that ב"ק פט, ג' that ב"ק פט, ג'

מקום שאין כותבין כתובה since this is a כתובה.³

תוספות offers another option:

מיهو הוה מצי לאוקמה במקומות שכותבין -

However, the could have established that we are discussing **a place where are written**. The difficulty mentioned above can be resolved if we establish –

ונשרפה אחר הנירושין דליך למייחש שמא כתב לה אחרת -

that the was burnt after the divorce; in which case **there is no concern that perhaps he wrote another** כתובה for her; there is no halachic need for a כתובה, and he certainly is not interested in helping her after the divorce. If there is no other כתובה, then it is understood that he is required to pay, since she has that the גירושין was burnt after the כתובה.

תוספות explains why indeed the גمرا did not offer this solution:

אלא שנראה לו דוחק:

However, it seemed to the גمرا that this is an unlikely solution. It is not realistic to narrow the focus of the ברייתא that it is (only) discussing a case where the כתובה was burnt after the divorce. The גمرا would rather be discussing a case where it was burnt (even) during the marriage, even if it means that we will be discussing a מקום שאין כותבין כתובה.

SUMMARY

In a כתובה, even if the woman has that her was burnt, nevertheless the husband is believed if he claims that he rewrote the כתובה. He does not have to pay her unless she returns the new כתובה, according to the כתובה that אין כותבין שובר מ"ד (unless she has that the original was burnt after the divorce). However, in a מקום שאין כותבין כתובה, the husband is not believed that he rewrote the כתובה and is obligated to pay her, even if she does not return the כתובה.

THINKING IT OVER

What is the דין in a כתובה, if the husband claims that he wrote her a כתובה, according to the כתובה that אין כותבין שובר מ"ד. Is the husband believed that he wrote a כתובה, and not obligated to pay unless she returns it to him, or is the husband not believed?

³ See כתובה הרא"ש who adds that granted that he changed the custom once by writing a כתובה, but if it was destroyed we are not concerned that he wrote another one.

And furthermore why state ‘she lost it’

וְתוֹ אִיבָּדָה לִמְהָ לֵי –

OVERVIEW

The states: 'איבדה כתובתה הטינה כתובתה נשרפה כתובתה' ברייתא she collects her with. According to we interpreted to mean גمراה. The asked several questions on this assumption. The first was 'הינו נשרפה' and the third was 'הינו לשון'. Our differentiates between these two seemingly identical questions.

תוספות anticipates a question:

אַף עַל גַּב ذְּלָכָרָה הַיִּנוּ פִּירְכָּא קְמִינְתָּא דְּפִרְיךָ הַיִּנוּ נִשְׁרָפָה –

Even though that seemingly this question of 'איבדה למה לי' is the same as the first question that the asked: that is the same as 'גمراה'. What is the difference between the first question 'הינו נשרפה' and this question 'איבדה מה לוי', they seem to be the exact same question. Both questions are seemingly asking that if 'איבדה' means 'איבדה' and 'נשרפה' then why does it say both and 'נשרפה'.

תוספות responds:

יש לישב דהכי קאמר ותו אפילו אם נאמר דנשרפה هو פירושא דנאבדה¹ –

It can be answered, that this is what the is asking in the last question, and furthermore; meaning even if we assume that 'נשרפה' is the interpretation of 'נאבדה'; this may seem to answer the first question, that it is necessary to state in order to explain what was meant by 'נאבדה'. Nonetheless even if we agree that the first question is answered by assuming that with that is explaining what he meant by² – 'נאבדה' –

מכל מקום תקשי איבדה למה לי:

Nevertheless it is still difficult why we need to say 'איבדה', and then explain that it means 'נשרפה', when the could have said just 'נאבדה' and not mentioned at all.

SUMMARY

The first question may be answered that 'נשרפה' is explaining 'נאבדה', but the last question is, merely say 'נשרפה' so there will be no need to explain 'נאבדה'.

¹ See ‘Thinking it over’.

² Occasionally a may find it necessary to use a certain word, and then be required to qualify it. The third question may be why is it necessary to use the word 'איבדה' (and then explain it).

THINKING IT OVER

How can even assume that **תוספות נשרפה גאנדָה** explains if the case of **הטמינה**³ separates them?!⁴

³ See footnote # 1.

⁴ See **מהר"מ ש"י**.

איתנוסי הוא דאיתנישו –**They accidentally encountered a mishap****OVERVIEW**

ה asked why it is necessary to pass an uncovered barrel in front of the גمراה. The גمراה answered that we are concerned that eventually (by the time she is divorced or widowed again from this husband), she may seize two hundred (the of a כתובה זוז) from her husband's estate, and claim that she was a כתוליה. She will explain that there was no כתובה passed before her, since it was due to unforeseen circumstances. If this will occur she will be believed and the husband will suffer a loss. Therefore a כתבית פתוחה is passed before her, so there will be testimony that she is an כתוליה. Our כתבית פתוחה explores this future concern that she may be מאיים (if no כתובה is passed before her). It is a concern, according to Tosfos, only in a limited situation.

נראה דמיiri כגון שיש לה מגו Dai בעי אמרה אין בידי כלום –

It seems that the גمراה is discussing a future case, where the concern is in a situation where **for instance she has a מגו that she could have claimed**, ‘**I possess nothing**'; I did not take any money at all. There is no proof that she seized her payment. It is only in that case that there is a concern, and therefore the need to pass before her an open barrel.¹ The husband claims that she took, even though since she was an כתוליה and is only owed מאה. She admits to taking, but claims that she was a כתוליה. She explains that the reason there was no כתובה is because איתנוסי. We would have to believe her that she was a כתוליה (and allow her to keep the money), since she could have claimed, ‘I took nothing and you owe me my מאה’ (at least).² In order to prevent this fraud, we pass a כתבית פתוחה before her so there will be witnesses that she is an כתוליה. -

דאילא הפי אמאוי מהימנא –

for if it is not like this; but we are concerned about any situation, even where we know that she has the money in her possession, then there is no reason to pass the כתבית פתוחה, for **why should she be believed** that she was a כתוליה. There was no sealed barrel passed before her. It is assumed that she is a כתוליה. It is up to her to prove that she has the money; seizing the money gives her no additional right.

¹ When she marries as an כתוליה we are concerned that she may grab without any one knowing about it, and she will illegally take more than she is due. Therefore the כתבית פתוחה is passed before her.

² The reason she has to claim איתנוסי (even though she has a מגו), is because if there is no claim of איתנוסי, then the מגו would not be effective, for it would be a סחמי, since no כתובה was passed before her, we assume her to be an כתוליה. The claim of איתנוסי removes the סחמי.

תוספה has a question:

ואם תאמר בחילוק קליות דבריך לך מן³ זארמלתא ליה לה כייסני -

And if you will say, that the states later concerning the distribution of dried grains; that by a widow, are not distributed; that is the sign she is an almanah and not a widow. The question is –

אמאי לא חיישין דלמא תפטא قولיך כדאמר הכא -

Why are we not concerned that perhaps she will seize, etc. two hundred as the **is concerned here** that she will claim they did not pass the barrel because of an **onus**. In the places where **is the proof of a widow**, we should also institute that by an **something else of note** should be done to indicate that she is an **almanah**. Otherwise she may be **two hundred**, and she will claim that the reason there was no **ketiyotot** is because **she seized**.

תוספה answers:

ואומר רבינו שם דודוקא בדבר שיש טורה כגוון חבית דהכא יכולה לומר איתנויסו -

And the says that the claim of **is specifically limited to something which requires effort to do, for instance** the passing **of the sealed barrel mentioned here**; bringing and passing sealed barrels of wine before the **requires an effort**. Therefore it is only in these cases, that **she can claim**; **איתנויסו**; it was too difficult for them to arrange to have the barrels brought, etc. –

אבל קליות ושאר דברים שהם קלים לעשות לא:

However, concerning קליות or other customs, which are easy to accomplish, then **she is not** believed to claim, even if she was. It is too far fetched to imagine that they could not distribute **ketiyotot**, etc. Therefore since she cannot claim, even if she were to grab and have a **magu**, she would not be believed, for it is (like) a **magu** **במקום עדים**.

SUMMARY

בתולה נשאתי **מאתים** is believed to claim even if a **clom** was not passed before her. She has a **magu** and can excuse the lack of **chavita** by claiming **איתנויסי**. [She cannot excuse however the lack of easily realized customs, even with a **magu**.] When it was known that she seized money, however, then the claim of **איתנויסי** is ineffective.

THINKING IT OVER

חבית why does the woman need to claim in **איתנויסו** in order to explain the lack of, she can simply claim there was a **chavita**, but no one remembers?!⁴

³ דף יז, ב.

⁴ See ס' פנ"י and אות ס' סוכ"ד.

A bride as she actually is

– **כללה כמות שהיא –**

OVERVIEW

כללה cites between ב"ה and ב"ש concerning how we praise the bride. ב"ה maintain that we praise her realistically according to her status and beauty. ב"ש maintain that we lavish praise on all the **כללות**, regardless if they merit it or not. תוספות discusses what ב"ה and ב"ש maintain concerning a bride that is not only lacking in status etc., but is also somewhat blemished or disfigured.

ואם יש בה מום ישתקו ולא ישבחו¹ -

And if she has a blemish, it is the opinion of ב"ש that **they should be silent and not praise her** at all.

תוספות offers another interpretation of s' view:

אי נמי ישבחוה בדבר נאה שיש בה כוגן בעיניה או בידיה אם הם יפוקות -

Or you may also say that they should praise her with any pleasant feature that she possesses; for instance with her eyes or with her hands if they are pretty.

תוספות anticipates the following question. If ב"ש also agree that even by a bride with a **מום**, she is still praised for any positive attributes she may have, why do ב"ה disagree, and have them praise the bride lavishly; beyond what she deserves. תוספות answers:

ובית הלל אומרים ישבחוה לגוררי דעתם זכרים מה שיש בה לשבח מכלל דשא ריגוני:
ב"ה maintains that **they should praise her completely;** without reservations or mentioning specific details **for if we only mention the praiseworthy attributes, there is the inference is that the rest of her attributes are shameful.**

SUMMARY

If a bride has a blemish ב"ש maintain that you either not praise her at all, or find something (specific) about her that is praiseworthy. ב"ה maintain that in all instances we lavish (equal) praise to all; in order that there be no negative inferences.

THINKING IT OVER

Why do ב"ה challenge ב"ש by asking if one bought a flawed item, should the item be praised or degraded; when ב"ש maintain that even if she has a **מום** she is not degraded, we are merely silent (or she is praised for specific positive attributes).²

¹ ב"ש is of the opinion that one may not veer from the truth, even if the consequences are somewhat disconcerting.

² See מהר"ם ש"ג.

Should he praise it in his presence or should he denigrate it in his presence

ישבחנו בעיניו או יגנו בעיניו -

OVERVIEW

ש ב"ה maintains that a **כלה** is not given undeserving praise. challenges this assumption by asking rhetorically ‘if one made a bad purchase, should not another nevertheless praise his purchase and not denigrate it’! ש did not respond to this challenge. תוספות will explain what is the opinion of ש in that situation.

ו בית שמאי סברי דאף אף על גב דישבחנו בעיניו -

And ש is of the opinion that even though it is proper **that he should praise it in the eyes** of the purchaser (as ב"ה asserted), nevertheless we cannot derive from the conduct of an individual, how to institute a general requirement for the populace at large; therefore –

אין להם לחייב לתקן להזקיק לומר שקר דהתורה אמרה¹ מדבר שקר תרחק:

It is not fitting for the to institute a requirement by a **כלה** (that she be undeservingly praised in all instances) which will have the effect **to cause the** wedding guests **to say a falsehood** (in a case of an undeserving **כלה**), **for the** תורה states ‘one should distance himself from a false statement’.²

SUMMARY

תקנת הרים maintain that there is a difference between politeness and a requirement. The הרים should not institute a requirement that causes one to utter a falsehood.

THINKING IT OVER

How will ב"ה respond to the argument of ש (as expressed in this תוספות)?³

¹ שמוטה (משפטים) כג, ז.

² It would seem that by an individual (when he is praising a purchase) it is understood that he is merely being polite. However, when the הרים make a תקנה, it is of more serious nature. Even a semblance of a falsehood should be avoided. This is what is meant by the word 'תרחק'.

³ See ז' יעב"ג.

שיטתייה לسبא – The (custom) [myrtle] was an aid for the elder

OVERVIEW

When ר' ש-bar ר'yi passed away a pillar of fire separated him from the rest of the people. ר' זира commented that this was due to his style of dancing before the pillar. There are three versions as to how ר' actually expressed this thought. The last version was that ר' שיטתייה לسبא ר'ש"י. אהני שיטתייה לسبא explains the word שיטתייה to mean his שיטה; his style and approach. This offers a different interpretation.

פירוש רבינו חננאל מלשון שטה והדס (ישעה מ"א¹) –

The ר' ש-interpreted the word **שיטתייה** that it is **from the expression** in a שטה (myrtle) as a **tree and a myrtle tree**'. He was referring to the **הדים** (myrtle) as a **tree**.

אף על גב דלא הוי ממש מין אחד מכל מקום שנייהם מין ארז² –

Even though the שטה and the **הדים** **are not exactly one species**, nevertheless **they are both a type of cedar**. Therefore it is appropriate to refer to the **הדים** as a **שטה**.

Tosfos asks:

ואם תאמר ומנא ליה דבשביל כו זכה³ –

And if you will say; how did ר' זира know that ר' bar ר'yi merited the fire surrounding him on account of the dancing with the **הדים?**

Tosfos answers:

ויש לומר דעתך דנורא היה כעין שיבשא הדס –

And one can say, that the pillar of fire that surrounded him was similar in appearance to a myrtle branch –

כדאמרין בבראשית הרבה (פרק טא⁴) נחת שיבשא דנורא ואיתעבידא כעין שיבשא הדס –

As it is stated in ב"ר (concerning the passing of ר' שמואל ב"ר) מדרש בראשית הרבה (יצחק) a column of fire descended and it became similar in form to a myrtle branch –

ואפסקת בין דידיה לחבורה –

And it separated between ר' שבר"י and his peers –

¹ הקי"ה will populate the dessert. פסקו יט. The נביא is enumerating the various trees with which

² The ר' ש states that there are ten types of גמרא (ג,ג,ג), including ארז, שטה והדים.

³ It would seem that question is appropriate according to all versions of ר' זира's statement.

⁴ In our texts it is in ג,ט,טנ.

- אמרי חמיית הדין סבא דקאי שישבא דנורא קומיה משום דעתך קמוחה דיכלתא -

The peers **said**, ‘**see this elder that a pillar of fire is standing before him.** This is **because of what he did in front of the ’כלה**; that he danced before her with the myrtle branches.

SUMMARY

The term **ארז** refers to the tree which is a type of **שיטה** tree which is similar to the **הדים** tree. They knew that the pillar of fire that separated was on account of his dancing with the **הדים**, because the fire was shaped as a **הדים** branch.

THINKING IT OVER

1. How can one explain the dispute between ר"ש"י and the ר"ח concerning the meaning of **שיטה**?

2. According to the ר"ח that **שיטה** refers to the **הדים** (which is similar to **שיטה**) what is the difference between the first **ר' זира** of **לשון** (which is **אהני לו**) and the second **ר' זира** of **לשון** [referring to the **הדים** **שוטיתיה** [see **שוט של הדים**]] and this of **שוטיתיה** (since they both refer to a **הדים**)?!⁵

⁵ See בשם הריטב"א טמן"ק.

מלך שמחל על כבודו אין כבודו מהול –
A king who renounced his honor, nevertheless, his honor is not renounced

OVERVIEW

The asks how was permitted to forgo his honor and give the right of way to a, when there is a rule that .

תוספות anticipates a difficulty:

אף על גב דלא היה מלך גמור¹ כدمשמע באלו נאמרין² (סוטה ז' מא,א) -

פרק אלו נאמרין אגריפס לא היה מלך גמור. That is why we could have said that in this case his כבוד is מהול, since he is not a valid king as is indicated in the verse.

תוספות answers:

מלל מקום יהיו נהוגין בו כבוד מלך גמור -

Nevertheless they conducted themselves towards him with an **honor** that is appropriate as if he were a **valid king**. Therefore since they treated him as royalty he cannot be כביד מוחל on his.

SUMMARY

The rule of מלך שמהל על כבודו אין כבודו מהול applies to any ‘king’ who is accorded the respect reserved for royalty.

THINKING IT OVER

агріпс answered that אין כבודו מחול applies to אגריפס, since they honored him as a king. Would this apply to anyone that is honored as a king or only to someone who actually is an ‘active king’ (as אגריפס)?

¹ השמונהים was a descendant of הורודוס who was a slave of the king Agrippa.

פרשת דרכים הואי -**It was at a crossroads****OVERVIEW**

הנ"א גمرا asked who yielded the right of way to a king. The king answered that it was not noticeable that he yielded, for it was at a crossroads. This explains why the king did not give another answer, which the Tosefta utilizes elsewhere concerning this very issue.

anticipates a difficulty:

הכא לא מציא לשינוי מצוה שאני כדמשני באלו נאמרין (גם זה שט) גבי שקרא מעומד -
Here, the could not have answered that by a it is different; by a פרק אלו in answers in if he so desires, as the king is honored if he so desires, concerning the issue, that read the Torah while he was standing.¹ (anticipated) question is why can we not say the same thing here concerning honoring a king? It is a mitzva to honor the king; therefore had the right to be honored for the sake of a king.

explains the difference between the two situations:

זהתם מצוה הוא שיש למלך לחלק כבוד ל תורה החשובה ממנה -
For there (by the reading) it is indeed a mitzva, for it is proper for the king to bestow honor for the sake of the Torah (the is more prominent than he). That is why the Aguripas praised for so honoring the Torah in public. -

אבל הכא ליכא מצוה דכבדו עדיף מכבוד הכליה -

כליה However here (by the there is no mitzva for the king to respect the king's honor is greater than the honor due to the. The requirement for honoring a king does not apply to a king; therefore there is no mitzva at all.

SUMMARY

There is no mitzva at all for a king to honor a king.

THINKING IT OVER

¹ The משנה there (in פרשת המלך states that the king reads while he is seated. The Tosefta then relates that the king read while he was standing and the חכמים praised him. The question there asks why was praised for reading standing, if the king should be seated; it is?! אין כבודו מחולן, מצוה שאני, for a king can be honored for his mitzva.

1. What would be the difference (*לhalbכה*) if the **גمرا** would have answered in the way **תוספות** suggested originally?

2. If the **תורה** is more **חשוב** than a king, then why does the king read it sitting?

[תנו¹ רבן מעבירין את המת לפני הכללה - ברייתא taught in a Rabban² taught in a Rabban³ The corpse is removed from the presence of the bride]

OVERVIEW

ברייתא states that when a מות and a כלה cross paths, preference should be given to the מות, even if it requires that the funeral procession be detoured. תוספות will discuss that this rule applies to similar situations as well.

מכאן משמע שיש אבל וחתן בבית הכנסת החתן יוצא תחה ושותבינויו -

It seems from here that when there is a mourner and a groom in the synagogue, the חתן leaves first together with his entourage –

ושוב יוצא האבל ומנוחמיו -

And then the mourner leaves together with his consolers –

תוספות cites a similar ruling:

וגם הקרובים לחתן ולאבל יאכלו בבית החתן² אם ירצו זהא כבודו קודם -

And also the relatives to the חתן and the אבל may eat in the s' house if they so desire for the s' honor takes precedence.

A final ruling:

וכן בבוקר כשהמוליכים הכללה לבית החתן מוליכין הכללה תחה אם יש מות בעיר -

And similarly in the morning when the חתן is taken to the s' house, the הכללה is taken first if there is a funeral in the city –

או יקברוהו קודם שיגיע הזמן דהכנסת כללה. להראבי"ה³ -

Or they should bury the dead before the time arrives to perform the wedding. The abovementioned is ascribed to the ראייה.

SUMMARY

מת הוחנן take precedence over מות regarding leaving the shul; dining, and performing the respective services (unless the funeral can be over before the wedding begins).

THINKING IT OVER

מת הוחנן states that the honor of the מות takes precedence over the honor of the חתן. How can we derive from this that שמתה חתן takes precedence over ניחום אבלים⁴?

¹ This 'תוספות' is bracketed and set in a different type. It is presumably an addendum from a later period.

² If they were invited to eat in both places, preference should be given to the חתן (even though it interferes with the מצה of the ניחום). See 'Thinking it over'.

³ Presumably this refers to ר' אליעזר ברבי יואל הלוי see 196.

⁴ See footnote # 2. See.

מבטליין תלמוד תורה להוצאה המת - The teaching of תורה is disrupted in order to take out the dead for burial

OVERVIEW

The teaches us that we disrupt the learning of תורה in order to pay our respects at the funeral of a deceased person. This indicates that to partake in a funeral even as a spectator takes priority over תורה. Our resolves a contradictory ruling.

asks a question:

קשה (דבלוכות¹) [דבמסכת] דרך ארץ [זוטא (פ"ח)] -

And there is a difficulty; for in [מסכת] דרך ארץ [זוטא] – we have learnt that – אמר רבי עקיבא תחלת תשמיש לפני חכמים² -

said my initial training before the sages was in the following episode – **פעם אחת הייתה מהלך בדרך ומצאתי מת מצוה ונטפלתי בו ד' מיליון³ –**

one time I was traveling on a road and I found a dead person, on whom there was a to bury him⁴ and I was occupied with him, carrying him a distance of four – מילין – **עד שהבאתיו לבית הקברות וקברתו –**

Until I brought him to a cemetery where I buried him –

וכשבאתי והרציתי דברי לפניו רבי אלעזר ורבי יהושע –

And when I came and presented my story before (these were the – ר"ע of רביהם –)

אמרו לי על כל פסיעה ופסיעה כאילו שפחת דם נקי –

They said to me for every single footprint that you took in carrying this for it is as if you have spilled innocent blood (each time you took an additional footprint). is presently assuming that told them this story (perhaps) to explain his tardiness in coming to the בית המדרש. Seemingly their response was that this is no excuse. The תורה of תלמוד תורה is greater than burying the dead (even a המת מצוה). Therefore for every step that you took in burying this, which caused ביטול תורה, you are גמרא מיתה.⁵ Based on this assumption raises the contradiction between our מסכת ד"א in מבטליין ת"ת להוצאה המת (even not for a המת מצוה) and the story in מסכת ד"א (see סנהדרין צט, א פ"א).

¹ The parenthesized word is omitted and the text reads according to the bracketed inserts.

² The following episode caused ר"ע to be more careful in ח"ה שימוש.

³ A מיל is two thousand (approximately 3,000 feet).

⁴ A מת refers to anyone who dies and there are no people who are taking the responsibility to bury them. It is incumbent upon whoever comes in contact with this (even a קטן) to bury him.

⁵ The punishment for ביטול תורה כרת is as indicated in סנהדרין צט, א פ"א (see ליקו"א פ"א).

which seems to imply that מ"ת is far greater than even burying a מ"ת (and certainly greater than the מ"ת of a ‘regular’).

תוספות answers:

ויש לומר זהתם לאו משום ביטול תורה -

And one can say that there by the story of ר"ע it was not on account of גמרא ר"א ור"י that **ビיטול תורה** admonished him so harshly was because a **מ"ת** states here on the contrary that – מ"ת מ"ת ת"ת להוצאה המת –

אלא משום דמת מ"ת קנה מקומו ויהי לו לקבورو במקום שמצוין -

But rather the reason they admonished him so harshly was because a **מ"ת acquired** ‘ownership’ of **his place** where he died, **and should have buried** this **מ"ת** **in the place where he found him;** and not transport him four miles to a **בית הקברות**. This is what they meant that for every step that you removed him from his proper burial place; it is considered as if you were **שופך דם נקי**.⁷

ר"ע offers an additional proof to the previous interpretation of the story with:

וכן משמע במסכת שמחות⁸ פרק ז' דקאמר⁹ מ"ת מ"ת קנה מקומו -

And this is also indicated in where it is stated that a מסכת שמחות **acquired his place –**

והעובר על דברי חכמים מחויב מיתה¹⁰ וכן אמר רבינו עקיבא תחלת שימושי כולי -

And he who transgresses the words of the sages, who instituted this right for the **death** penalty. The **פרק** there concludes:¹¹ **and so too said ר"ע; the beginning of my training, etc.** It then cites the entire previous story. Since the story of ר"ע follows the הלכות of the **מסכת שמחות** it is evident that the story is cited to prove the הלכות of the **מסכת שמחות**. One; that a **מ"ת** is liable for the **death** penalty. Both these points are brought out in the story of ר"ע as explained in **tosfos**. If however wrongdoing was on account of **ビיטול תורה** it would not have been cited in conjunction with the laws of a **מ"ת**.

⁶ The **יהושע בן נון** states that this is one of the ten conditions that were instituted when he divided the land among the tribes.

⁷ The reason is explained shortly.

⁸ מסכת בעב"ז after מסכת דרך ארץ כו' is one of the ten conditions that were instituted when the land was divided among the tribes. It deals primarily with the **ענין אבלות** and is euphemistically named. In our texts of מסכת שמחות it does not state (clearly) that a **מ"ת** is liable for the **death** penalty. Both these points are brought out in the story of ר"ע as explained in **tosfos**. (See however מסכת ד"א זוטא פ"ח). It also does not state that a **מ"ת** is liable for the **death** penalty (merely ר"ע **תחלת'**).

⁹ This may be derived from what is written there in **הלכה לג**.

¹⁰ This is stated in מסכת ברכות דף ז, ב.

¹¹ **הלכה לד**.

offers a different resolution to his original question:

והרב רבי יהודה מקורבי"ל תירץ -

גמרא **ר"י מקורבי"ל** answered that there is no contradiction between our which requires the admittance of the tarrying with the – מת מצוה –

דחתם משום צביטל עצמו משימוש תלמידי חכמים קאמר דגדול שימושה יותר מלימודה: For there the reason he was admonished was because he hindered himself from serving the **ת"ח**; that is what they meant when they admonished him, for serving the **ת"ח** is greater than learning the **תורה**.¹² Therefore even though we are on account of the **ת"ח** however; however שימוש **ת"ח** takes priority even over a מת מצוה.

SUMMARY

A מת מצוה is to be buried in the place where he is found. If one moves him, every step taken away from his original resting place is considered שפיכת דם מוחייב מיתה **ר"י מקורבי"ל** maintains that for laxity in **ת"ח** one is נקי.

THINKING IT OVER

1. Why did שופך דם נקי originally assume that ר"ע was on account of תוספות, and not because a קונה מקומו is מת מצוה (as concludes)?
2. What is the view of the **ר"י מקורבי"ל** concerning burying a מת מצוה in his place?¹³ If he agrees with this, why is there a need for a different answer?

¹² מסכת ד"א זוטא סוף הל' שימושת **ת"ח** שמשות **ת"ח** because he has lax in **ת"ח**. See ברכות ז, ב.

¹³ See in the **הפלאה** and שיטה ישנה **ק**.

להוצאה המת -**For taking out the dead for burial****OVERVIEW**

The language of the ברייתא states that **הוצאה המת** takes precedence even over **ברייתא**. This indicates that there are no qualifications for this rule. It applies to all מותים and to all people. Tosfos will cite other sources which seem to limit the scope of this requirement, and reconcile them with our ברייתא.

ברייתא cautions; this is-

לא במת מצוה איירி אלא בכל המתים¹ -

not discussing (only) a; that we are only for a **but**, מות מצוה **מת מצוה** מבטל ת"ת rather this rule applies **to all**; מותים we are for all.

mbetulin anticipates a difficulty with his assumption that **הוצאה המת**/tosfos means for all:

ואף על גב דברך קמא דמגילה (ז' ג,ב,ושט) אומר -

And even though states in the first פרק that - מסקנת מגילה that ברייתא מבטל ת"ת מות מצוה פשיטה דמות תורה מות מצוה עדיף דתניא מבטלון תלמוד תורה להוצאה המת It is certain that when ת"ת מות מצוה and מות מצוה coincide the ת"ת takes precedence. The there continues to support this by citing this same פשיטה there understood this to be referring to a ברייתא for we have learnt in a that we interrupt for מות מצוה. It seems that the there understood this to be referring to a ברייתא here refers to all מותים (only); otherwise the there should have said גمرا (or something similar). This seems to contradict assertion that **הוצאה המת** here refers to all מותים.

Tosfos responds that in truth the there also meant that from (even) an 'ordinary' מות than ת"ת; however the reason the גمرا -

נקט מות מצוה אגב מיili אחריני דהתם זהוי זוקא מות מצוה -

mentioned, is **on account of the other issues** the was מות מצוה was discussing **there**; in those other issues **they apply specifically to a** מותים² and not to all מותים.

Anticipates an additional difficulty:

והא דאמר באלו מגלחין (מועד קטו ז' נ,ב) מות בעיר כל בני העיר אסוריין בעשיית מלאכה -

¹ This seems evident from the language of the ברייתא. It is necessary for Tosfos to mention it on account of the apparent contradiction that cites shortly.

² Some of the issues there include that by עבודה (בביהמ"ק) מות ומזכה, then מות ומזכה. In those cases it applies only to a עדיף.

And that which the states in גمرا, פרק אלו מגלהין, that when there is a **death in the city all inhabitants of the city are forbidden from doing work** –
ומוקי לה בדיליכא חברותא³ אבל אי איכא חברותא השאר מותרין -

And establishes that this rule is valid only when **there are no societies, however when there are societies, the rest of the city is permitted** to work.

חברותא explains what is meant by תוספת:

פירוש חברותא שנחלקו בני העיר לחברות שתתעסק כל אחת במתנה בפניהם עצמה -
The interpretation of **חברותא** is that the citizens of the city divided themselves into various societies that each society be involved in its own **מת by itself**. Therefore in such a case all the other who are not part of this society are exempt from this prohibition to work. Our ברייתא (and גمرا), however, makes no distinction whether there are or not. It seems that under all situations we are even (even) for המת it is אסור במלאה. This would seem to contradict the קטן גمرا in מועד.

Tosfos answers that there is no contradiction; when the גمرا there permits work if there are – **חברות** –

הינו שלא בשעת הוצאה -

That is (only) **not in the time when** the **מת is taken out** for burial; but rather prior to the burial. Then there is no need for anyone outside the **חברותא** to cease from learning or even working, for the **חברותא** is making all the necessary arrangements –

אבל בשעת הוצאה כולם צריכים לבא -

However when the **מת is taken out** for burial, then **all** the people of the city **are required to come**; and show their respect for the **מת**. This requirement is based on respect and dignity for the **נפטר** and not merely for a utilitarian purpose.

SUMMARY

We are **חברות** of all **מת** for **mbtel h't**. Even when there are all are required to attend the funeral (even if they are not needed beforehand).

THINKING IT OVER

Can we prove whether **mbtel h't להוצאה המת** means that one is required to be **mbtel h't**, or that merely one has the permission to be **mbtel h't**?⁴

³ **חברותא** will shortly explain what is meant by תוספות.

⁴ See מהר"מ שי"ג.

אבל מאן דמתני לית ליה שיעורא –**However concerning one who teaches, he has no limit****OVERVIEW**

The ברייתא taught us that qualified it by saying that if there are a sufficient amount of participants,¹ this rule does not apply. However, this exception was limited only to those who were קרי ותני but if the deceased taught others, then there are no exceptions; all must come and (even) be. It is not clear what is the ruling concerning someone who was a **לא קרי ולא תני**.

בשאלות דרב אחאי² כתיב³ וממילא שמעין⁴ למאן דלא קרי ולא תני –

It is written in the *sheilah* of רב אחאי that we can therefore infer that for one who did not read and did not study – משנה תנ"ך –

אין מבטליין אם יש לו מתעסקין כדי קבורה⁵ –

We do not interrupt (the study of תורה) to attend his funeral **if there are sufficient people engaged in the burial.**

ונראה לרביינו יצחק דלענין מלאכה מבטליין כל בני העיר –

And the *is of the opinion*, that this ruling of the *sheilah* is only concerning working, all the inhabitants of the city must interrupt their work – להוציאת המת.

ואסור אפילו למאן דלא קרי ולא תני דלא מפליג מידי⁶ באלו מגלחין (מועד קטו זר כי, ב):

And it is forbidden to work (during the funeral) even if the deceased was one who was פרק אלו מגלחין in for לא קרי ולא תני the does not

¹ This is either twelve thousand or eighteen thousand people.

² רב אחאי was one of the (earlier) *ಗאנונים* after the completion of the תלמוד. Many of his responsa were collected in the ספר שאלות דרב אחאי. It is called because many of the responsa begin with the phrase *ונמה דשאילנא קדרך וכו'*.

³ פ' ויחי שאילתא לד.

⁴ The perhaps maintains that just as the phrase **למאן דמתני וכו'** means only to the one who was, similarly the phrase **למאן קרי ותני וכו'** means only to the one who was. Is there a requirement to attend until the quota is met?

⁵ The ריב"א and other *ראשונים* say that if there are ten people who are *מתעסק* with the (so that can be said) it is considered **יש לו מתעסקים כדי קבורה**.

⁶ This was cited in the previous *תוספות*. The only distinction made there is whether **איכא גمراה** (there is a difference between them); and even that distinction does not apply to the funeral itself.

or קרי ותני distinguish at all in the prohibition of working whether the deceased was or not.

SUMMARY

According to the **ת"ת** we are not מבטל if the deceased was לאותה הוצאה המת שאלות. The **ר"י** comments, nevertheless, that work is prohibited.

THINKING IT OVER

1. Do the **ר"י** and the **ת"ת** disagree?
2. Do we go to a funeral to honor the **נפטר** per se, or is it to honor him on account of the **תורה** that he learnt?

אלמנה מאי -

What is done by a widow

OVERVIEW

After the גمرا mentions some of the customs that were instituted to distinguish a חופה בתוליה, the גمرا asks אלמנה מאי. This question is seemingly difficult to understand. Indeed by an nothing was done. That itself was the sign. In fact this (obvious answer) seems to be the answer the גمرا gives. גمرا will explain the question and answer of the חופה.

bihude b'ui shel alia chiluk kliyot¹ l'ek b'ui almena m'ayi -

The גمرا has this **query** (only) in regards to the land of **יהודה** where there was **no** other sign for a **but** except for the custom to **distribute**, **клиיות**, therefore the גمرا asks **what will be** if she is an **אלמנה** -

ولא פעמים אףלו ולא חופה היו רגילים לחלק ויש לחוש שמא חילוק בחופת אלמנה - for, even without a, at times they were accustomed to distribute these at various festive occasions, so there is the concern that perhaps they distributed these (even) by the of the **חופה** **клиיות**.² **אלמנה** **חופה** **клиיות**. The חופה should therefore institute a special custom in **יהודה** to distinguish a **חכמים**.

גمرا now explains the answer of the חופה:

ומשננו לית לה כייסני פירוש הי' נזהרין הרבה שלא יחלקו **клиיות בחופת אלמנה -** And the answered that the **has no** distributed at her גمرا the explanation of (this answer and) the phrase that they were exceedingly careful not to distribute **клиיות** by the **of an** **חופה** **клиיות**. **אלמנה** **חופה** **клиיות**. There was, therefore, nothing to be concerned about.

SUMMARY

There was no concern of confusing a **חופה** **בתוליה** with a even though the custom of **חילוק** **клиיות** was prevalent on many occasions. Nevertheless extreme care was taken not to distribute by a **חופה** **אלמנה** **клиיות**.

THINKING IT OVER

Was it necessary to be careful in בבל not to distribute by a **חופה** **אלמנה** **клиיות**?³

¹ Rashi explains in the כתובות that **клиיות** are moist grains which when dried in an oven become sweet.

² The custom in בבל of pouring oil was much rarer and was limited to a **בתוליה**.

³ See מהרש"ל.

**וליתני מודה רבוי יהושע שדה זו שלך היהת - משנה
And let the teacher teach us that ר"י admits if one said this field was yours, etc.**

OVERVIEW

The **משנה** states that **ר"ג** ו**ר"א** admits that a **מגנו** is effective in the following case. If a ‘buyer’ claims that he bought a field from the father of an individual,¹ the buyer is believed, since there is a **היפה שאסר הוא הפה שהתייר**; the buyer could have claimed that it never belonged to your father. The **גמרא** is now asking that this same **מודה** could have been taught without a ‘father’. **ר"י** is **מודה** that if one says to another I bought this field from you, then the buyer is believed. He has the same **תוספות**. Our **תוספות** explains why the proposed case is better than how it is presently written in the **משנה**.

explains that the proposed case is better -

דחווי רבותא טפי דחווי ברוי וברוי -

For this is a greater novelty, since it is a case where the ‘buyer’ is **certain** (that he bought it) and the ‘seller’ is **certain** (that it once belonged to him and *he never sold it*) and nevertheless the ‘buyer’ is believed even against a **ברוי ושםא**, the son cannot be certain *whether his father sold the field* to this individual or not.² In that case it is not such a great **הידוש** that a **מגנו** is effective when the **מגנו** is a **ברוי ושםא** against a **ברוי ושםא**.

SUMMARY

שדה זו שלך היהת that he is believed in the case of **הידוש** (even though it is a **ברוי וברוי**) than that he is believed in the case of **שדה זו שלך** (where it is merely a **ברוי ושםא** אביך).

THINKING IT OVER

Why does not **תוספות** explain the **גמרא'**s question as **רשות** does,³ what advantage is there in **של אביך** over **שלך**?

¹ There are no **עדים** that the field ever belonged to either the father or the son. The buyer had no **חזקת** and no **שטר**.

² See **דף צוOB ד"ה ומודה**, that **מודה** is not contradicting what he previously maintained in **מהר"ם שי"פ**, for even though that the son claims with a certainty, ‘it is my father’s field’, he cannot be certain that his father did not sell it to this **מחזיק**. However by **טענה ברוי** it is a complete **טענה**.

³ **רשות ד"ה וליתני**.

And one year in the lifetime of the son**ואחת בחי הבן -****OVERVIEW**

The גمرا explains that when the משנה states that if there were that it belonged to the father, the מחזק is not believed; it is true even in a case where the מחזק was in possession of the field for three years. The reason it is not considered a חזקה is because one of those years was after the demise of the father. The חזקה was completed during the lifetime of the son. This type of חזקה is not valid. תוספה will qualify this statement. There are times when a חזקה בחיי הבן is valid and times when it is not valid.

ודוקא כשהוא קטן¹ כפירוש הקונטרס² אבל אם הוא גדול הוא חזקה -

This is only when the son was a minor; that it is not considered a חזקה, as רשיexplains; however if the son was an adult; over it is considered a חזקה if the מחזק ate the produce two years while the father was alive and one year after his demise, if the son was an adult -

כదמיין בחזקת הבתים (בבא בתרא מב, א וט) -

as the גمرا cites a פרק חזקת הבתים in בריתא that if the מחזק

אכלה בפני האב שנה ובפני הבן שנה ובפני לוקח³ שנה הרי זו חזקה -

consumed the produce in the presence of the father for a year and in the presence of the son for a (second) year and in the presence of the buyer for a (third) year, this is a valid חזקה; he was in possession of the field for three consecutive years. He may retain the field even if he has no שטר מכירה. It is obvious from that that a חזקה can be made בחיי הבן גمرا. It is therefore necessary to distinguish whether the son was a קטן (were a חזקה is not valid, as in our גمرا), or whether he was a גורל (where the חזקה is valid, as in the case in ב"ב).

תוספות offers an alternate view:

ורבינו שמואל פירש אהא דאמר בסמוך ואפילו הגדייל -

And the גمرا explained concerning that which the shortly states that it is not a חזקה if the son was a קטן; that it means and even if he matured; the רשב"ם explains this to mean (that not only is it not a חזקה if the son

¹ It is not considered a חזקה (year) if the son is a minor, since he does not know to make a מהאה.

² ה'ב שלמא.

³ The buyer bought the field from the son one year after the demise of the father. However it was the מחזק who was in possession of the property, for three years (including the one year after the buyer bought it). The מחזק claims that he bought it from the father one year prior to his demise.

matured after the demise of the father, but rather it is not a – (חזקת –)

אפילו הגדיל בחיה האב גדול לגבי מיili דאבא קטן הוא –

Even if the son matured in the lifetime the father; it is still not a.⁴

The reason is because an adult in regards to his father's affairs is considered a minor; he is not aware of his father's (previous) dealings.

קען anticipates a difficulty. According to the that a גדול is considered a in his father's affairs even if; then how is it possible to have a ?
חזקת הבן answers:

ואומר רבינו תם דלפירושו הא דאמר בחזקת הבתים (גם זה שט) דהויא חזקה בפנוי הבן –

And the says that according to the interpretation we must say, that which the previously cited says in that it is a valid if (some of) it took place in the presence of the son –

הינו כשהיה גדול בתקילת החזקה –

That is (only) if the son was an adult at the beginning of the . The son was then aware that his father owned this property. If the son makes no מהאה after the death of his father, while the מהזיק is in possession of the field, it is included in the חזקה years. If however when the חזקה began the son was a קען, then even if he became a גדול while the father was alive, any time that the מהזיק was in possession of the field during the lifetime of the son cannot be included in the חזקה years. The son may have never been aware that this field once belonged to his father. This is what the רשב"ם meant when he said that this field once belonged to his father. This is what the רשב"ם meant when he said that he became a גדול after the חזקה commenced.

SUMMARY

חזקת הבן no at the beginning of the , there is no . (However, according to רשב"י it is not a, only if the son was a when the father died.)

THINKING IT OVER

Why did the רשב"ם interpret 'ואפילו הגדיל' to mean even?⁵

⁴ This is in a case where he was a קען when the חזקה began (as will shortly explain).

⁵ The בורה מחלוקת states that if there was a two year חזקה לפניו and a one year חזקה גמרא, if he was then it is not a חזקה. On the other hand if he was two years and one year בחיי האב מהזיק פשיטא, then it is not a חזקה. According to the רשב"ם the difference is readily understood.

ורב הונא מתניתין אתה לאשਮועין –

Is ר"ה coming to teach us what we learnt in our משנה

OVERVIEW

The question initially stated that our משנה teaches us that as אין מחלוקת בנכסי קטן גמרא indicated elsewhere. The question of the משנה immediately asks if our משנה teaches this, why does ר"ה repeat it. This will explain what is meant by the question; ‘why does ר"ה have to repeat what it says already in the משנה?’.

The question anticipates a difficulty:

לאו דוקא נקט رب הונא דהא לא אيري רב הונא התם אלא במורידין קרוב לנכסי קטן –
R"ה is not specific. The question of the משנה is not on גמרא per se, but for ר"ה is not discussing there¹ the rule of R"ה was teaching the rule concerning whether R"ה appoints a relative to administer the estate of a minor.²

והא לא שמעינו ממתניתין –

And this ruling is not derived from our משנה. Why does the question ask, ‘**מאתה לאשׁמוּין?**’

The question replies:

אלא כלומר רבא דז"יק התם שמע מינה דרב הונא דאיון מחלוקת בנכסי קטן³ –
But rather the means to ask on רבא, who infers there from the abovementioned ruling of R"ה, that we can derive from the ruling of that one cannot make aחזקת קטן in the properties of a minor. This is what derives from רבא. Our question asks on this derivation of רבא –

מאי אתה לאשׁמוּין:

Ain machzikin bencsi that R"ה maintains that we do not appoint a relative to administer the estate of a minor, out of concern that the relative may eventually claim that he is the proper heir to the estate, and not the minor.

¹ If the rule would be that ר"ה merely states that אין מחלוקת בנכסי קטן, we cannot appoint anyone to administer the minor's estate; out of concern that they may later claim that they bought it from the father and they have a חזקת ג' שנים.

² Presumably the reason the question mentions רבא, is because it derives it from R"ה (and [also] because initially the question stated that R"ה doesn't mention anything about it). See ‘Thinking it over’ #1).

SUMMARY

¹ בבא מציעא לט, א

² R"ה maintains that we do not appoint a relative to administer the estate of a minor, out of concern that the relative may eventually claim that he is the proper heir to the estate, and not the minor.

³ If the rule would be that ר"ה merely states that אין מחלוקת בנכסי קטן, we cannot appoint anyone to administer the minor's estate; out of concern that they may later claim that they bought it from the father and they have a חזקת ג' שנים.

The question is really on who derives the rule of ר"ה from a ruling of ר' מהזיקין בנכסי קטן.

THINKING IT OVER

1. Why did not ask his question when the initially said: ר' מהזיקין בנכסי קטן should have asked that ר"ה never said it.
2. How are we to understand the (first) answer of the that ר' דיווקא גمرا תוספות⁵?⁶?

⁵ See footnote # 4.

⁶ See מהרש"א.

מהאה שלא בפנויcoli - A protest made not in his presence, etc.

OVERVIEW

תוספות הגמא discusses whether מהאה שלא בפנוי is a valid or not. It argues initially that the proper term for this discussion should be whether a protest? The question is whether מהאה שלא בפנוי is a protest or not; and not if מהאה שלא בפנוי is a protest or not.

תוספות asks:

תימה אמר נקט בכל דוכתא מהאה שלא בפנוי הויה למיינקט חזקה שלא בפנויcoli -

It is astounding! Why does the Gemara always mention the term an absentee protest?! The Gemara should have mentioned an absentee possession, etc.

The relevant issue here is whether the protest is a valid protest or not. The Gemara should use the expression protest and discuss whether it is or is not a protest; not מהאה.¹

תוספות answers:

ויש לומר דעתן הטעם תלוי במאנה חזקה ודאי יש לה קול אפילו שלא בפנוי² -

And one can answer, that the main cause whether or not there is a protest depends on the status of the protest; whether the protest can reach the Gemara or not; **for a protest certainly has publicity even if the protest takes place not in the presence** of the Gemara – מרא קמא

ואפילו הכי אי מהאה אין לה קול³ לא הויה חזקה -

And nevertheless if there is no publicity for the protest it will not be a protest; even though it is assumed that the Gemara heard about the protest, and we know that he did not make a protest, nevertheless it will not be a protest, since the Gemara can claim I did not make a protest because it is useless. The Gemara will claim that he did not hear it.

ולהכי נקט מהאה⁴:

And therefore, since it all depends on whether the protest has sufficient

¹ If we assume that מהאה שלא בפנוי هو מהאה, it means that the protest will be valid if no protest is made; and there will be no protest if a protest is made. If we assume that מהאה שלא בפנוי לא הויה מהאה, it means that there cannot be a protest regardless whether or not a protest was made; not that the protest is ineffective. In most instances the relevance is whether it is a protest, not if it is a protest.

² The original owner of the field is always inquiring as to the status of his field. If someone is occupying it, he will definitely become aware of it.

³ The new purchaser of a field is not actively listening if someone is making a protest. In his mind he bought the field, and it is over and done with. Therefore the chances are he will not be aware of a protest. See following Tosafot י"ח, א, ד"ה דעתם.

⁴ The discussion whether protest has a קול or not, is not whether a protest has a קול; it certainly does. The question is whether the protest has a קול.

publicity, he **mentions** מהאה as opposed to חזקה.

SUMMARY

The expression used in the מהאה is גמרא because the validity of the מהאה depends on whether the has a קול or not; regardless that the חזקה has a קול.

THINKING IT OVER

What changed in understanding between the קושיא and the תוספות? Alternately; what would be amiss if the expression would be חזקה שלא בפנוי?

**דסתם יהודה וגליל כשתת חירום דמי -
גליל and יהודה are generally considered to be in a wartime state**

OVERVIEW

The machah concluded that generally a valid (and therefore a chazakah) is a machah that is not valid (and neither is the chazakah). However during a state of conflict between two regions a machah that is not valid is a machah that is not valid. Therefore there is no chazakah between יהודה and גליל.

Tosfos asks a question:

תימה דבריש גיטין (דף ב, שטח) תנן¹ דבריך ישראל אין צריך לומר -

This is astounding! For we learnt in the beginning of מסכת גיטין in משנה that in א"י there is no requirement to say that the was -

בפני נכתב ובפני נחתם² אפילו מיהודה לגליל -

written in my presence and signed in my presence, even if the is brought from יהודה to גליל; which are considered here to be on a wartime status. We are not concerned about finding - עד קיום

משמעות דאייכא עולי רגליים ובת דין ועדים מצויין לקיימו -

Because there are those who ascend to ירושלים for the holidays and there are courts of law throughout א"י, so therefore there are witnesses available to be מקיימים the גט. The people, who are or are going to, from ב"ד, will be able to be מקיימים in גליל (and vice versa). It is evident from this that sufficient people travel from יהודה to גליל a גט. These people who are traveling should also be able to relate the גט. Why is there a difference between a machah and קיום?!

Tosfos answers:

ויש לומר דחתם האשא מחזרת אחרי עדי קיומ -

And one can say that there is indeed a difference between a machah and קיומ, for there by a גט the woman is searching for; she needs them to authenticate the גט (in order to remarry, etc.) Therefore -

¹ דף ב, א.

² When a husband brings a גט from בפ"נ ובפ"ג to חוץ לארץ א"י, he must proclaim שליח to the husband. This is considered an authentication of the גט, and prevents the husband from claiming that he never sent it. It is necessary that the שליח be מקיימים the גט by saying בפ"ג ובפ"ג, for since it is from חוץ לארץ we may not be able to authenticate it otherwise. This explains that in א"י itself however there is no such requirement.

אף על פי דיהודה וגליל בשעת חירום דמי תמצא עדי קיומ כיוון דאייכא עולי רגלים -
Even though that and are considered to be on a wartime basis, nevertheless she will find the since there are who travel between גליל and יהודת. She is searching for them; therefore she will surely find them.

אבל המחזק אין רגיל לחזור אחרי עדי מהאה -

However it is not usual for the new possessor of the property to search for יהודת וגליל. Therefore even if there are a few people who travel between גליל and יהודת, the will not hear anything from them, since he is not investigating if a was lodged against him.³

תוספות has an additional question:

ואם תאמר התם [שם זז ז.א] דאמר שאני בני מחוזא דניידי -

And if you will say; that the states there that inhabitants of are different⁴ for they travel continually –

וצריך לומר אפילו באotta שכונה בפני נכתב [ובפני נחתם]⁵ דין עדים מצוין לקיימו -
And therefore the is required to say even if he brings a in the same neighborhood, for witnesses are not available to authenticate the גט, even if it was brought from one house to another in the same neighborhood. The people of are always traveling on business and they may not be available to be the גט and/or they may not recognize the signatures of their associates even in the same place. It would therefore seem that since even for a גט, where the woman is searching specifically for עדי קיומ, nevertheless is considered a place where there are no לקיומו –

אתו במחוזא לא תועיל מהאה שלא בפנוי -

Does it therefore follow that in an absentee will not be effective?! In the previous answer, Tosfos concluded that it is more likely that a woman will find the שלא from a war zone, than the will hear the עדי קיומ from that same place. Therefore in a case where the woman will not find the (such as in), it would seem that the will certainly not hear the מהאה. It seems therefore that in an absentee שלא will not be effective.⁶ finds this to be highly unlikely!

תוספות answers:

ויש לומר דהთם דרך הליכתנו מן העיר לשימוש מהאה -

³ See previous footnote # 3.

⁴ In other cities in the same country, even in בפ"ג, no הר' ל' is required (according to ר' ל' since in the same country there are עדים מצוין לקיומו. However, which was in ח"ל, is different.)

⁵ See 'הגהות הב"ה'.

⁶ See 'Thinking it over # 1.'

And one can say that there in מהוזא, on their way when they leave the city of מהוזא for their travels, if these travelers heard a מהאה (from someone in מהוזא –)

רגילות הוא לומר פלוני מיהה ושומען אחרים עד שנשמע הקול למחזיק -

It is customary for the traveler to remark to others, that so and so protested the occupation of his field and others hear about this and in turn relate it to others until the hears of this protest. It is not necessary for the party that heard the initial protest to remain in the city, in order for the party to be aware of the protest. Even if the initial hearing party (or any subsequent hearing parties) leave the city, the word will still get around to others who are remaining in the city, until it will ultimately reach the protest.

אבל גבי גט אין רגיל שיאמרו בהליך אנו חתמנו על הגט -

However by a גט it is not usual that the signers of the will say while leaving, that we signed on a גט,⁷ and it is equally unusual for them to say – **[או⁸ מכירין אנו חתימת עדים החתוםים]:**

[(or that) we recognize the signatures of the signing witnesses (which is also a valid קיום)].⁹ People usually do not say these kinds of things (as opposed to saying that פלוני מיהה [which is a standard topic of conversation]). Therefore the woman will not be able to find the witnessים who would be her גט.

SUMMARY

A woman is more concerned with finding גט for her than a person is concerned whether anyone made a מהאה on his חזקה. Therefore a woman will more easily find גט from a situation that the will hear a מהאה in this same situation.

Conversely people are more likely to mention about hearing a מהאה than mentioning that they signed a גט. Therefore in a city of frequent travelers (like מהוזא) it is more likely that the will hear a מהאה שלא בפנוי than she will find her גט.

THINKING IT OVER

1. second question was that מהאה שלא בפנוי a מהוזא חוספות should not be

⁷ While people may be interested if anyone divorced, they are not particularly concerned who signed the גט.

⁸ According to the marginal note, the bracketed statement is from a manuscript (attributed to 'תס').

⁹ It seems from that if they said or אנחנו חתמו על הגט and this would be reported to two (ב' י"ד, ב' ד"ה כיוון in חוספות # 2. See: 'Thinking it over' # 2. קיום answers simply that she will not find the witnessים; implying that the themselves must testify in ב' י"ד. See however ח' ב' מ"ת אות ר"ץ.

valid.¹⁰ Did this mean that the **מחאה** should not be valid unless it is, otherwise the **חזקאה** is valid; or that since a **מחאה** **שלא בפנוי** is not valid (in **מחוזא**), the **חזקאה** should not be valid?

2. **anno חתמנו על הגט** would say that if the **עדים** etc. and it would be reported to **בי"ד** it would be a valid **קיימם**.¹¹ This seems to contradict the rule that an **עד מפי עד** is invalid!¹²

¹⁰ See footnote # 6.

¹¹ See footnote # 9.

¹² See **רשותן הרועים** **אות ז סוכ"ד**.

אין צריך לפרטו בעדים –

He is not required to pay him in the presence of עדים

OVERVIEW

לוּהָ גַּמְרָא stated that the משנה could not have taught us the דין if a man admitted to receiving a loan, however if he claims he is נאמן; because he would be believed to say not only if he admitted to the loan but even if there are עדים that he borrowed. The reason he is believed is because we follow the ruling that the halacha is that he borrowed. There is however another who maintains that מ"ד. Our משנה will discuss how this will explain our משנה.

תוספת asks:

וְאֵם תֹּאמֶר לִמְאָן דָּאֵמֶר צָרֵיךְ לְפָרְעֹו בָּעָדִים¹ –

And if you will ask; according to the one who maintains that he is required to pay him in the presence of עדים –

תקשי ליה מתניתין זהכא דלייתני מנה לך ביזי² –

Our here contradicts his view; for according to him, the משנה should have stated the case of 'I owed you a'; that he is believed to claim. However if there were that he borrowed a מנה he is not believed to claim. According to this this is indeed the ruling; as opposed to the מ"ד of א"צ לפרטו בעדים, where he will be believed to claim even if there were עדים for the loan. The fact that the משנה did not state this דין would seem to prove that א"צ לפרטו בעדים.

תוספת answers:

ויש לומר דפלוגתא דתנאי היא בפרק שבועות הדיינין³ (שבועות דף מא,ב) –

And one can answer that it is not only a dispute among, but rather it is (also) a dispute even among the תנאים in תנאים. Therefore we cannot ask a question on the one who claims Amoraim, from our משנה, that he can answer that even though our משנה implies that nevertheless there are other תנאים who maintain that צרכך לפרטו בעדים. This will follow those תנאים.

תוספת offers a different answer:

¹ There is a dispute among the Amoraim whether צרכך לפרטו בעדים or not.

² The שטמ"ק omits the words 'לך ביזי'.

³ Ribbav seems to be referring to the there between TosfosInEnglish.com and the Tosfos.

אי נמי דלא חשיב לה פירכא -

Or you may also say that the one who maintains מ"ד does not consider this a refutation; the fact that the משנה did not state the case of א"צ לפרטו בעדים does not prove that א"צ לפרטו בעדים, and therefore the משנה could have indeed stated the case of א"צ לפרטו בעדים. However the משנה chose not to state the case of א"צ לפרטו בעדים, but rather the case of שדה זו של אפיק היה,mana לך בידי –

משמעותו של מושם דמיון לאשਮועינו דאין מחזיקין בנכסי קטו -

Because the would rather let us know the ruling that one cannot make a in the properties of a minor. The of the felt (according to מאין מחייב בנכסי) that it was more important to teach us the (מ"ד צריך לפרטו בעדים המשנה את החיבור בעדים צריך לפרטו בעדים than to teach us the that דין. Therefore the states שדה זו של אביך כו' ⁴. However indeed it could have taught us the דין of ⁴.

סיפה has an additional question (even) on the subject of **בעדים**. The statement that **מ"ד א"צ לפרעו בעדים** could not state the case of **מנה לך בידי**, because we could not conclude the **משנה** that if **וְאֵם יָשׁ** he is not **וְאֵם יָשׁ**. However **תוספות** will ask that it is possible to conclude **וְאֵם יָשׁ** if **וְאֵם נָאמוּן**.

ואם תאמר מי משני -

And if you will ask; what did the answer, that it is not possible to state **וְאָמַר**, the **הַמְלֹוה** את **חֲבִירוֹ** **בְּעֵדִים** א"צ **לְפָרֻעוֹ** **בְּעֵדִים**, since **יְשַׁעַדְתִּים** **אֵינוֹ** **נָאֵם**, nevertheless –

אכתי ליתני ואם יש עדים ואמר לו אל תפרעוני אלא בפני פלוני ופלוני אינו נאמן -

The **can still teach us** case of **מן** **לך בידיו** and conclude; ‘**and if there are** **עדים** for the loan who will testify that the **לוֹה** borrowed **and** (that⁵) **the said to the** **לוֹה do not pay me** in private, **but** pay me **only in the presence of those two** people who will be the witnesses to the payment; **the** **לוֹה will not be believed** to claim. The question is that the **מן** could have (and should have) stated the case of **מן** **לך בידיו נאמן**⁶; however if the **לוֹה** is not believed to claim without **פרעתי** **אל תפרעuni אלא בפני פלוני ופלוני** (those) **עדים**.

תוספות answers:

ויש לומר שלא היה רוצה להאריך בלשונו -

And one can answer that the תנא of the משנה did not want to be excessive in his language. The תנא likes to limit the verbiage in the משנה, when he has the

⁴ **תוד"ה** ורב הונא (and גמרא יז,ב).

⁵ See footnote # 10 (whether there were that the עדים said מלווה). אל תפרענו אלא בפני עדים (see previous L, N.M., and A.M., 2:11, 12).

⁶ See מהרש"א וכו'.

choice. Therefore he chose a case where he could be brief rather than choosing a case where it would require a rather lengthy statement.

תוספות offers an alternate answer to this last question:

או⁷ שמא מילתא דפשיטה הוא:

Or perhaps (the reason the תנא did not use this case is because) the reason of the משנה felt that **this is too obvious**. There is no point in teaching us that if the פרעתי told him to pay in the presence of עדים, the לוה would not be believed to claim מולה. That is so obvious that the משנה need not teach it to us.

SUMMARY

We can maintain that our משנה is of the opinion that המלה את חבירו בעדים א"צ. And the one who maintains צרייך לפרש בעדים מ"ד, will follow the opinion of other תנאים who also maintain that צרייך לפרש בעדים. Another option is that our משנה can also maintain but did not state the case of אין מחזקין בנכסי קטן מפני לך because it would rather teach us why it would do so.

The תנא did not want to teach the דין in a case where there was no need required that תפרעuni אלא בעדים לפני מולה. either it would require a lengthy statement or that this ruling is too obvious.

THINKING IT OVER

1. Is there any connection (or contradiction!) between the first **קשיית הירוץ** and the second **קשיית הירוץ**?⁸

2. Why is it a **Tosafot תירוץ**?⁹ Why is it a **Tosafot שמא מילתא דפשיטה**?¹⁰ We should have no need for the first **תירוץ**! Or at least this should have been the first **תירוץ**!¹⁰

⁷ See 'Thinking it over' # 2.

⁸ See **משכנות הרוצחים אותן צ"ה**.

⁹ See footnote # 7.

¹⁰ See (also) **ח"ב מ"ת אות ר"ח**.

אי אליבא דרבנן הוא אמרי משיב אבידה הוא¹

If it is according to the view of the **רבנן**, they claim that it is comparable to **returning a lost article**

OVERVIEW

The **גמרא** asked that if a person should teach us the דין of **הפה שאסר וכוכ' דין** where a son of the deceased said to the son of the deceased (deceased), I owed your father a **מןנה**, but I paid him back half; that the son is believed without taking the oath of a **מודה במקצת**.² The **גמרא** counters that this cannot be; for if it follows the opinion of the **רבנן** then the son would be considered a **משיב אבידה**,³ etc. It is not clear why this presents a difficulty.⁴ Seemingly this is what ר"י is teaching that if he has a **פה שאסר** he is believed.⁵

explains why it is considered as a **משיב אבידה**,⁶ and what is therefore the difficulty:
קדמיסיק⁷ דרבנו מעין ומעין -

As the **concludes that** concerning the **son** of the deceased, the **can indeed be brazen** and deny any loans that he actually owed the father.⁸

ואם כן לא מצינו למיתני ואם יש עדים אינו נאמן -

And since that is true; that he is **בבנו**, then the **could not have stated that if there were witnesses** to the (entire) loan, then the **לה** is

¹ When one returns a lost article; a wallet for instance, where the loser claims that there was money in the wallet, and the finder denies it, the law is that the finder is exempt from the usual oath of a **מודה במקצת** (the finder is a **מודה במקצת** he admits to finding the wallet but denies that there was any money there). The reason he is exempt from **מודה במקצת** is because of a **תקנת הכלמים**; otherwise people would be hesitant to return out of concern that this may obligate them to take a **שבועה דאוריתא**.

² A **לה** who admits partially to a claim of a **מלואה** is obligated to swear a **שבועת מודה במקצת** that he does not owe the rest of the debt which the **לה** claims.

³ See following **האכלתיו פרש** (**משיב אבידה**) and **רבי אליעזר ז"ה** (in the case of **הפה שאסר**) where it seems that this term refers to a **מןנו**; that he could have been a **כופר הכלל** and claimed that he paid everything. See following footnote # 5.

⁴ According to **ר' ש"י** (**ד"ה אליבא**) who maintains that the ruling of **ר"י** is in a case of **הלה חובעו** (the question is directed to the **ר' ש"י** (that he would be believed even in a case of **הלה חובעו**), however according to **תוספות ז"ה** that **ר"י** is also discussing a case of **הלה חובעו**, the **לה**'s question is not readily understood).

⁵ The terms **משיב אבידה** and **הפה שאסר** are identical in this instance of **הפה שאסר**. See previous footnote # 3.

⁶ Every **ר' באה** (seemingly) has a **מודה במקצת** of **מןנו** and nevertheless is required to swear (as will shortly explain in the **גמרא**). Why is this any different?!

⁷ **יח, ב.**

⁸ This is why by **האכלתיו פרש** (**משיב אבידה**) is considered a **לה** since he has the **מןנו** of being a **כופר הכלל**. The rule of **ר' ש"י** (**אין אדם מעין פניו כי כופר הכלל**) does not apply here. However this itself is no contradiction to **ר' ש"י**; on the contrary this conforms to the ruling of **ר' ש"י**. The difficulty stems from the purported '**סיפא'**, as **תוספות ז"ה** concludes.

not believed to claim that he paid half –

دلולם נאמן במצו דאי בעי אמר פרעתי הכל דברנו מעיז ומעיז –

For in fact the **will always be believed** to claim I paid your father half since he has a **a, for if** the **wanted** he could have **said I paid** your father **everything, since** a is **indeed** against **the son** of the **father**; therefore it is a proper **ר"ג** could not have taught his **דין** in the case of **והאכלתו פרש** for the **would be believed without a שבועה even if there were that he owed him the entire sum.**

SUMMARY

If **ר"ג** would agree to the **חכמים**, there would be a difficulty with the **סיפה** where he is **נאמן** (but not with the **רישא** of the **סיפה**).

THINKING IT OVER

ואם יש עדים **סיפה** of **'משיב אבידה הו'** explains that the question is on the question חוספות **סיפה** is not understood in any event. What effect can **המלואה את ע"פ** have on a **גמרה**; as the previously stated, since **עדוי הלואה**? **חבירו بعدים א"צ לפרטם**!

ורבי אליעזר בן יעקב לית ליה משיב אבידה פטור –

**And does not maintain that one who returns a lost object
is exempt from taking an oath**

OVERVIEW

מודה cited a dispute between the חכמים and the גمرا in a case of a ראב"י. Currently¹ the גمرا understood this to mean literally that the approached the son of the (deceased) מליה and admitted to borrowing half. However the claims he repaid the father half. The ראב"י maintains that it is a case of² מודה במקצת and the must swear to the son that he indeed paid half. The חכמים argue that here, since the initially approached the son of the מליה, is considered a משיב אבידה (for he could have chosen not to come forward at all), and is therefore exempt from the view of ראב"י. The challenges the view of ראב"י and asks ‘can it possibly be that a does not agree that a from a ראב"י?’! The issue at hand is why the גمرا is so certain that a maintains that a פטור is משיב אבידה from a שבועה. There is a מהלוקה between רשב"י and רשב"ו in explaining the גمرا's assumption.

פירש בקונטרס³ התנ"ן⁴ המוצא מציאה לא ישבע מפני תיקון העולם⁵ –

משיב explained that the גمرا assumed that a ראב"י definitely agrees that a משיב is from a שבועה, for we learnt in a that one who finds a lost article is not obligated to take the oath of a מודה במקצת, on account of ‘the betterment of society’. This 'תיקון העולם' should apply to every type of משיב, including our case, where the claims לה are 'והאכילתיו פרס'; where he did not have to declare initially that he owed the father money.⁶ –

¹ According to the חכמים of the גمرا, however, the dispute between ראב"י and the מסקנה is not in a case of ראב"י, but rather in a case of all agree that he is a משיב אבידה and a הללה טובעו. In a case of ראב"י all agree that he is a משיב אבידה and a הללה טובעו.

² A מודה במקצת is one who admits to owing partially what the plaintiff claims that he owes. A מודה במקצת is משיב אבידה. The גمرا shortly explains the ‘reason’ for this.

³ בד"ה ורבי.

⁴ גיטין מה, ב.

⁵ If a מודה במקצת would be required to take the oath of a מודה במקצת (in a situation where the owner claims that the amount was greater than what the מושג is returning), then people would refrain from returning the object, out of concern that they be obligated for a larger amount. Therefore the חכמים instituted that a משיב אבידה is פטור משבועה.

⁶ The current understanding of the בריתא is that we are discussing a case of literally, which seemingly means אן הללה טובעו.

ואית ספרים דgresi הcy בהדייא -

And there are texts which state this explicitly; in some texts it is written that פטור משבואה is משיב אבידה since ‘there is a reason’ cannot disagree with the ruling that a mishboea cannot be disputed. ‘המוציא מציאות לא ישבע מפני תקון העולם’ states that.

It is the opinion of **משיב אבידה** (and the 'אית ספרים' רש"י) that a case of the kind in general, as well as our case of **מדאוריתא**, is from **פטור** on account of the **תקנת חכמים**; but not **ראב"י**. According to law a **משיב אבידה** would be **محויב שבועה**, however, disagrees:

וain nerah leRabino Yitzchak Dushib abida pitor medoriyita matut migo -

And the disagrees; it cannot be that a משיב אבידה from a פטור is from a שבואה only but rather a משיב אבידה from a פטור is according to law, for he has a **מצו**. The in the case of לוה משיב אבידה (in general, and the did not have to come forward at all and he could have kept everything - (ראב"י)

ולא מבחן המהיא משנה פריד אלא פריד וכי לית לה מeo -

And the is not challenging that must maintain ראב"י on account of that which states מציון וכור' המוצא⁷ **but rather**, the is גمرا question, does not maintain ראב"י **מגנו?!** It seemed obvious to the that everyone agrees that מגנו⁸ is effective (especially the of a meshesib גمرا as in our case of עתנות עצמוני)! אבידה

offers a proof that the question of the question of the gemara is not dependent on the account of the world (which is a [proof]), but rather on account of the change (which is a proof):⁹

וְכוֹן מִשְׁמָעַ בְּהַנִּזְקִין (גִּיטִּין זֶה נֶא, אֲוֹשֵׁם) דְּפָרִיךְ וְלִיתְ לִיהְ לְרַבִּי יִצְחָק הַמוֹצָא מִצְיאָה¹⁰ כָּלִי - And this is also indicated in where the challenges ‘does

⁷ The fact that the states does not compel to agree. ר'א"ב states that the homotza and co' לא ישבע מפני תקון העולם משנה, and he may disagree with this. Alternately, the states that a משנה is on account of פטור משובה because of a situation; otherwise people will not return to תקון העולם. In the case of ר'א"ב, however (which is an unusual situation), there may be no need for a ruling that he is required to swear, פטור משובה since even if he is required to swear, there will be no major disruption, as there would be by משיב אבידה.

⁸ See the further on **מגרא כב,א** (after the **משנה**).

⁹ It would seem that a (regular) מושב אבידה who is a הלה ובעו (the owner confronts him only after he returns the object) is even without פטור משובעה (אבידה) for he has a מגו. He did not have to come forward at all. The תקון העולם may be required in a case where the owner initially approaches the מזצ'א and claims that he saw him pick up two [attached] lost objects, which belong to the owner. The finder claims that he picked up only one object. This is a case where the finder has no מגו of claiming I found nothing, since אין אדם מעיז וכוי to be a הכל. It is in this case (or similar cases) that the חכמים exempted him from a שבועה מפני תקון העולם. See following footnote # 10.

¹⁰ "ר stated that if the owner claims I lost two purses which were tied together, and the finder claims that he found only one; the finder must take the oath of a מזודה במקצת. See the מהרש"ל there who explains under which circumstances did "ר rule that he has to swear. See previous footnote # 9.

not ר' agree with the משנה which states **that a מוציא מציאות**, etc. is not obligated to take an oath'. How can ר' who is an Amora rule that the finder is required to take the oath of a מוציא במקצת?! This contradicts a משנה!

ומשני הוא דאמר רבי אלעזר בן יעקב דאמר פעמים שאדם נשבע כולי -

And the answers that ר' בא"י follows the opinion of ר' בא"י who maintains, that sometimes a person swears, etc. on his own claim.¹¹ This answer (seemingly) indicates that the **ר' בא"י** who is a **תנא** disagrees with the **ר' בא"י** who maintains that a **משיב אביזדה** is obligated to swear. – **ר' בא"י** follows the ruling of **ר' בא"י**.

ופריך ורבי אלעזר בן יעקב לית ליה משיב אבידה פטור -

And the there challenges (similar to the challenge in our ‘does not’; ‘does not maintain that a פטור is משיב אבידה from a שבואה ראי’). This concludes the citation from that גמרא.

תוספות continues with his proof:

והשתא אי מכח מתניתין פריד -

And now let us see, if (as ר' ש"י maintains, that) the challenge to is from the ‘strength’ of the which states כו' **משנה** – גמרא, המוצא מציאה

זה היה למשמר ולית היה לבן יעקב המוצא מציאה כדקאמר ארבי יצחיק -
Should have said and presented its challenge in the following manner: **does not agree** with the **stated** when it posed the challenge to **ר' י**. The same clearly asked גمراא מציאה המוצא, as the question was phrased differently on **ר' י**. The fact the question on **ר' י** was (ולית היה המוצא מציאה ר' י) than the question on **ר' י** (which was (লিত היה משיב אבידה)), proves that they are different questions. The question on **ר' י** is not on account of the ¹² (משנה) (פטור מדאורייתא מגו) (which is a (but rather on account of)).

משנה תוספות offers an additional proof that the question on ר'א ב"י in not based on the theory of **המוציא מציאות**:

ועוד כיון דמשני הוא דברי רבינו אלעזר בן יעקב -

And furthermore since גمرا answered on its original question (does not agree to the majority of משנה; to which the answered) **that** follows the opinion of – ראב"י

אם כו רואה לומר דברי אלעזר בו יעקב פלייג אמרתניתיו -

משנה ר' בא"ר argues on our side. This implies that the question intends to state that ר' בא"ר argues on our side. The thrust of the question and answer. The question is how can (who is an amora) argue on the side of mishnah; to which the reply is that he can

¹¹ The same בָּרִיתָא there cites the same as here, concerning רַאֲבֵ"י.

¹² may indeed argue with the משנה, etc. See footnote # 7.

disagree with this since he has the support of רָאבְ"י (who is a **תנא**), who seemingly also argues on that – **משנה**

אם כן מי פריך ורבי אלעזר בן יעקב לית לייה מшиб אבזה פטור -

מישיב ראב"י גمرا asks, ‘does not agree that משנה of פטור is אבדה (which according to רש"י means does he disagree with the meaning of אבדה), how is this a question?! –

אין הכל נמי דלית ליה –

Indeed this is how it is! רַא בָּי does not agree with the משנה!¹³ This is exactly what the answer on the first question (on ר"ב) was!

אלא מכה מגו פריד כדפרישית:

But rather, the question on רַאֲבֵי is **on account of** מָנוֹ; how can it be that רַאֲבֵי does not subscribe to the rule of מָנוֹ, which is a **rule** of דָאָרִיְיתָא; as I have previously explained.

SUMMARY

The assumption that פטור is derived from a word meaning "loss" agrees that a word meaning "loss" is based, according to רשות, on the rule of משנה, and according to it is based on the rule of תוספות. This proves his contention, from the manner in which the challenges of רשות (גיטין in Hebrew) are based.

THINKING IT OVER

1. What are the relative advantages of each of the two proofs that cites from גיטין? תוספות
 2. What is the essential difficulty that has with פירוש"י תוספות?
 3. How can claim that a משיב אבידה is responsible for a missing item, when the פטור משבואה מודוריתא clearly states לא ישבע מפני תקון העולם!?¹⁴ גיטין משנה
 4. What would the דין be if an עד אחד supports the claim of the owner against the finder?

¹³ This is only in the case even if we assumed טענת עצמי to be literal. However in the case that one agrees that a פטור משובעה is even when there is no אבדה.

¹⁴ See footnote # 9

אלא הכא בדרבה קא מיפלגי -
But rather,
here they are in a dispute concerning Rabh's reasoning.

OVERVIEW

פעמים שאדם נשבע על טענה עצמו that ראב"י is discussing the ruling of. It is not clear what is meant by טענה עצמו. It cannot mean actually without aחוור, for then he would be from a since he is a משיב. Originally answered that by טוענו קטן refers to רב גمرا. The argued that by חיוב שבואה there is no טוענו קטן said רב גمرا. At this point the answered that when challenged this interpretation as well; if it is considered a קטן who is considered a קטן said רב. It is not yet clear, however, what is meant by טוענו גדוֹל. Is it a considered a קטן; there is a קטן. This is the between Tosfosot רש"י, טענה קטן; or is it a קטן? This is the between Tosfosot גדוֹל as our will explain.

אין נשבעין על טענה ח"ש וקטן וכי אבל נשבעין לקטן states in משנה that resolves² the apparent contradiction in the משנה; that refers to בא בטענת אביו קטן who is between רש"י. Here too there is the same between בא בטענת אביו, Tosfosot what is the meaning of?

פירש בקונטרס³ לעולם בטוענו קטן ודקה קשייא לך לאין נשבעין על טענת קטן - explained: indeed the claimant was a minor; and that which you had difficulty with, namely that if the claimant is a minor how can there be an oath; for there is no requirement to take an oath against a minor's claim;⁴ the answer to that difficulty is –

הני מיili בבא בטענת עצמו אבל בבא בטענת אביו טענה חשובה היא -

This rule that applies (only) when the is coming with his own claim; however when the is coming with his father's claim, then it is considered a respectable claim and a subpoena is required⁵ in order to rebut it. It is nevertheless considered a subpoena, since the is (merely) a קטן.

Tosfos anticipates a possible difficulty with this interpretation. Once we assume that we

¹ לה, ב (בסוף המשנה).

² שם מב, א.

³ בד"ה אלא.

⁴ See (end of) לה, ב.

⁵ subpoena a מהייב קטן then the explanation (see 'Overview') that if the TosfosInEnglish.com

are discussing a גمرا continue? It seems we understand why does the ba بطענת אביו explains (according to רשי) that it is necessary for the ba to continue; otherwise a question remains:

וכי תימא Mai Temiyah do Rovno -

And if you will ask; what is the reason of the רבן who maintain that he is not required to swear –

דאין סברא לומר דברי דאך בא בטענת אביו לית ביה ממשא -

For it is not logical to assume that the רבן maintain that (even) when the קtan comes with his father's claim, his claim is worthless. It is assumed that the רבן also agree that קtan ba بطענת אביו is considered a טענה חמורה, and should require a שבועה if necessary.⁶ Why do the חכמים argue and maintain that a שבועה is not required? Therefore the גمرا concludes (according to רשי) –

אלא בדרבה קמי פלאgi -

But rather the רבן and **disagree in** the ramification of s'i's explanation.⁷ This concludes citation and interpretation of s'i's explanation.

The apparent difficulty with s'i's explanation is that the גمرا originally refuted the idea that בטוענו גדול is טענה עצמו is referring to and maintained that בטוענו קtan is טענה עצמו (which was subsequently challenged). If the גمرا intends to restore the original interpretation of בטוענו קtan, the גمرا should have said אלא לעולם בטוענו קtan'; and go on to explain that since בטוענו קtan, therefore it is a טענה חמורה. However the גمرا makes no mention of it. He will now explain why, nevertheless, interpreted the גمرا in this manner, despite the apparent difficulty with this explanation.

ונראה דמשום ذكري ליה טענת עצמו דחקו להעמיד בטוענו קtan -

ראבי was forced to interpret between מחלוקת בריאות רשי and the טענה עצמו refers to it as a by a רבן. A טענה עצמו cannot mean an actual טענה עצמו for then he is a משיב אבידה. It cannot refer to a בטוענו קtan, since that is not בטוענו קtan. The only option left open is in a case where he is בטענת אביו.

however, rejects s'i's interpretation:

אבל קשה דעתיך התירוץ חסר מן הספר -

However it is difficult to accept this interpretation; **for the essence of the answer** (that it is a case of בטענת אביו, בטוענו קtan, and since he is משיב אבידה) **is lacking in the text.** The גمرا makes no mention of these ideas which רשי is inserting into the תירוץ.

⁶ See 'Thinking it over' # 1.

⁷ שבועת השומרים generally (by רבן) maintains that even though בטענת אביו is מוגה במקצת (for he has a little of the), nevertheless here (by a הכל since מיעז, כופר הכל)

בא is who asks an additional question (which challenges רשות' s assertion that a קטן can be liable in a case where the object was given to him by a minor):

ועוד דבר הגוזל קמא נבא קמא זו קוב ושם ממעטין נתנו כשהוא קטן ותבעו כשהוא גדול -
And furthermore in there is a which excludes the requirement for in a case where the object was given to the when the owner was a minor, and the owner demanded it back when the owner was an adult.⁸ In this situation the owner is not liable to take the oath of the (if he claims, etc.) -

עד שתהא תביעה ונтиינה שויין בגודלות -

Unless the claim and the giving are equal that it was done by adults. This concludes the citation from the תוספות ב"ק in גמרא continues -

והוא הדין דמהאי קרא ממעט נתנו כשהוא גדול ותבעו כשהוא קטן -

And the same ruling applies; that from this same we exclude the from a case where the owner gave it to the when the owner was a minor and claimed it when the owner was a child.⁹ Now will now explain what is meant by -

דיהינו כגוון שנתן לו אביו ותבעו בקטנות -

This is for instance in a case where the father gave the object to the son who is a קטן (נתנו כשהוא גדול) and the claim was made by the son who is a קטן (תביעה). In this case the same should apply; there is no since there is no קטן הבא בטענה רשות' position that if he is a קטן is required. From the גמרא in ב"ק it seems that even in this case, a קטן is not required.¹⁰

offers his interpretation:

ונראה דהכי פירושא לעולם בגודל מיيري -

And it appears to that this is the explanation of the תוספות גמרא. Indeed we are discussing a case where the claim is a קטן; as we were discussing until now -

אלא לא תימא ذكري ליה טענת עצמו משום דהודה עצמו היא -

However, you should not assume that it is called 'his own claim', because it is based on his own admission; that is not so, as the גמרא previously stated. Every הודה במקצת of קטן is based on קטן.

אלא בדרבה קמייפלאי ולרבנן דברנו מעיז טענת עצמו היא -

But rather the reason it is considered even though there is a claim

⁸ The same derives it from the two of פסוקים [משפטים] כב,ו (in) כי יתנן איש בריתא (there), which excludes a קטן, and פסוק ח (there) which indicates (as רשות' explains there) that the giving and claiming are compared that in both instances the owner must be a קטן.

⁹ The same (mentioned in the previous footnote # 8) which requires that the claim be as a קטן (and the same as a קטן) requires that both the claim and the claim be as a קטן. (See מהר"ם ש"פ מהר"ם ש"פ).

¹⁰ שבועה a mahayib is he is in a case that רב' s answer (in) that will explain shortly his interpretation of רב' s answer (in).

(from an adult) against him, is because ראב"י ורבנן are arguing about. Therefore according to the רבן who maintain that when the son is making the claim, then the defendant is brazen enough to entirely deny the claim; that is why it is considered a טענת עצמו. The claim of the son is very weak since the can (easily) deny it and would be פטור. The fact that the admits (partially) to the claim of the son, renders it a טענה עצמו. The טענה of the son has no strength without the admission of the לוה.

טענה עצמו (לרבנן) anticipates a difficulty. The reason it is considered a טענה עצמו is because it is, בבנו אין מעיז (even) that ראב"י maintains that. However according to ראב"י, it is not considered a טענת עצמו. Why then does state in the ברייתא that ראב"י טענת עצמו? When according to ראב"י, it is not a טענת עצמו, על טענת עצמו responds:

והכי קאמר רבי אלעזר בן יעקב פעמים שאדם נשבע -

And this is what ראב"י stated; that occasionally a person will swear – על מה שאתה מחייבים טענת עצמו –

on a case which you (the רבן) consider a טענת עצמו (since you maintain that – בבנו מעיז –

אבל לדידי דיינו מעיז טענת אחרים היא –

However according to me that a person is not (even) by a son, this type of claim is considered a claim made by others and not a טענת עצמו; therefore I maintain that in such a case he is obligated to swear.¹¹

ובסוף שבועת הדיינים (שבועות מב, א ושם) **דתנו אבל נשבעין לקטן –**

And in the end of where the משנה stated, ‘however there is a requirement to swear against a claim of a קטן – קטן –

ומפרשibaba בטענת אביו ורבי אלעזר בן יעקב היא –

And בא בטענת אביו and explains the משנה that it is a case where the קטן follows the view of ראב"י. This concludes the citation from מסכת שבועות. It would seem from that that ראב"י is discussing a case of a קטן (as רש"י interprets it) and he is if he is in a case of a קטן. This contradicts what maintains that בא בטענת אביו if he is קטן even if he is ראב"י, however by a קטן even if he is ראב"י, he is not קטן (as the ב"ק גמרא indicates).

תוספות explains:

¹¹ According to both רשב"י and the רבן agree that קטן is considered טענת עצמו. The cites גמרא that both agree that קטן is considered טענת עצמו. The TosfosInEnglish.com

זהו קטן נמי לאו דווקא אלא גדול וקרי ליה קטן משום דלגי מיili דאבא הוא -
גדול קטן of that is also not specifically a regular, but rather a
The refers to him as a because concerning the affairs of his father he is considered a קטן -

כדמפרש הבא -

בטוענו קטן not טענת עצמו is when we stated that גمرا explained here previously but rather גדויל.

וקשה קצת דהוה ליה לאקשוייה ולשוניי אמתניתין דהתם כמו שמקשה על רב -

And there is a slight difficulty, for the should have asked on that משנה and answered in the same manner as it asked on רב ([t]here). The question arises that the stated previously there stated that the asks that the stated previously is not that the simple explanation of is that the maintains that we are never who argues and maintains that we are never forced to interpret what means a. The question arises, that the there should have asked this question on the; and answered that the really meant a, however, to mean a. When interpreted to mean a the challenged his statement until we answered that when said he meant Why was not the same discussion centered on the?! One cannot answer that the there does ask the question and gives the answer -

דבහיא שמעטא גופה לא מבקשת אלא על רב:

For in that itself it does not ask the question on the משנה state rather the question was addressed (only) to רב. The there only challenged interpretation of; but not the interpretation of the. The question remains why did not the ask directly on the?!

SUMMARY

maintains that a מהיב is קטן הבא בטענת אביו disagrees. Therefore maintains that is a טענת עצמו and it is considered since he is a, while maintains that טענת עצמו since a. בבנו מעיז טענת עצמו (לרבנן).

¹² See אלהו רבה (see, however, מהרש"ל).

¹³ It may be possible that it is only a who interprets the question, since it is who interprets the question. It is also who interprets. The may have regarded it as a duplicity to repeat the questions twice; once on interpretation of the and again on his interpretation of. Once we asked and explained interpretation of it is self understood that it applies to the as well.

THINKING IT OVER

1. אין סברא לומר דסביר דarf בבא בטענת אביו לית ביה ממשא says that seemingly could have said that if the maintain that טענת קטן לית רבנן Tosfos say that he is not required to swear for he is a ביה מששא, then why do they say that he is not required to swear for he is a משיב אבידה, they could have simply said נשבען על טענת קטן?!¹⁴

2. What are the relative advantages (and disadvantages) of Rash"i's and Tosfos interpretations?

¹⁴ See footnote # 6.

מפני מה אמרה תורה מודה במקצת הטענה ישבע -

Why does the rule that one who partially admits to a claim is obligated to swear?

OVERVIEW

רבה asks why the תורה obligates a מודה to take an oath. Seemingly this is an unusual question. Ordinarily we do not question the rulings of the תורה. Why is this different than many other rulings, where no one asks ‘Why’??!

אפילו לרבען דברי שמעון דלא דריש טעמא דקראי קא בעי רבה שפיר -

has a valid question even according to the רבען who disagree with **ר"ש**, and do not analyze the reasons of the פסוקים. maintains that it is proper to analyze the reasons of various מצוות. This analysis may subsequently limit the scope of the מצווה. However, maintain that the מצווה is applicable in all instances even when the seeming rational of the מצווה does not apply.¹ It would initially seem that the question of רבה would apply only according to ר"ש. If we were to understand the reason behind the rule that a מודה במקצת חייב שבואה, we would know when to apply it; and when not to apply it. However, according to the רבען who are not קראי, there is seemingly no relevance to the question מה אמרה תורה. Whatever the reason may (or may not be) the rule will always be that a שבועה מהויב is מודה במקצת is stating that it is not so. Rather the question applies to the רבען as well. The question of רבה is –

מפני מה אמרה תורה בולי דעתך לא מהימן ולא שבועה בalgo Dai Bei Coper haCel -

How² can the rule, etc. that an oath is required by a מודה במקצת; **why is the not believed (even) without an oath**, since he has a **algo that he could have denied everything**. If the would be a כופר הכל from payment (and a שבועה); why is he not believed that he owes only a partial payment, with the **algo** of כופר הכל? He should not be obligated to swear.

¹ The ‘classic’ case is (in ב"מ קטו א concerning the rule of [תצא] כד, יז) that one is not permitted to take a garment from a widow as collateral for a loan. ר"ש maintains that this applies only to a poor widow; not to a rich widow. He is דריש טעמא דקראי. The reason one should not be החובל בגדי אלמנה is because since there is a requirement to return a משכון to a poor owner if he requires it (for bedding or clothing), therefore if the widow would be continually visiting the home of the widow (to return the משכון [at night]) it would create unsavory rumors about the widow. However from a rich widow, who does not require that her משכון be returned, one may take a משכון from her. However (רבען ר"י) disagrees and maintains that in all cases (whether a rich or poor widow) one may not take a משכון from an אלמנה; as the תורה states. We do not read any reasons into the law; we accept it as is.

² It seems that רבען is interpreting the words מה to mean ‘how’ (to include the instead of ‘why’ (which would limit it to ר"ש). רבה is not looking (so much) for an explanation of the law, but rather is searching to resolve a contradiction.

magu anticipates an obvious question; perhaps this is a that is not effective (by a - מודה במקצת -)

או נילף מהבא דלא אמרינו מגו³ -

Or on the other hand if the ruling by מוב"מ is that a magu is ineffective, then instead of saying that it is a that (which applies only to מוב"מ), let us rather derive from this ruling (that a חייב is מב"מ) that there is no law of magu. It seems that the תורה is teaching us that a magu is not effective.

ומשנין דין זה מגו דין אדם מעיז לכפוך -

And רביה answers that there is no magu by a מב"מ, for a person is not sufficiently brazen to deny the claim entirely. This resolves the apparent conflict. Generally a magu is effective; however by a מב"מ there is no magu. A person who owes money to another does not have the העזה to deny it entirely; as goes on to explain.

ו אף על גב דברך שבועת הדיינין (שם זז, מ, ב) אמרינו בכופר הכל -

And even though that in general the rules concerning one who denies the entire claim, that the כופר הכל

משביעין אותו שבועת היסת⁴ משום דחזקת אין אדם טובע אלא אם כן יש לו -

is required to swear a oath, because there is a presumption that a person does not make a claim unless it is due to him. It is therefore assumable that the who is a does indeed owe money to the לה. Otherwise the לה would have never made such a claim -

ופריך אדרבה חזקה דין דין אדם מעיז פניו בפניהם בעל חובו -

And the challenges this assumption (that the לה owes money); on the contrary; there is a presumption that a person is not brazen in the presence of his creditor. If monies are owed to the לה, then the will not have the העזה to deny it. The fact that the denies this claim indicates that indeed the לה owes no money.

ומשנין דاشתומי קא משתמייט⁵ אלמא בכופר בכל נמי אדם מעיז לכפוך -

And the answers this challenge; that indeed a person is not מעיז פניו בפניהם general

³ See מהר"מ ש"ג.

⁴ The was instituted during the period of the משנה (after the). may be translated as ‘an inducement oath’ (the are inducing the to admit); or ‘an equitable oath’ (it is equitable for the לה to collect since לה).

⁵ It would seem that in a case where there can be no Ashamot, then there would be no חיזוק; for א"א Ashamot which is present and the claims that he bought it from the לה. There is no Ashamot here, for the לה should be believed on account of ד"ה חזקה [see following בפניהם].

מלואה, however here, the **בעל חובו** intends to ultimately repay the **לה**, it is just that for the immediate present he is **evading** making the payment, for he has no money. This concludes the citing of that גמרא. **It is evident** from that **that even by a person** is sufficiently **brazen to deny** everything –

דאשטעמוטי קא משטמייט כמו במודה מקצת -

for he is evasive, just as we say here concerning **a partial admittance**. The question is, if **מודה** is מודה במקצת just as a **מעיז** can be כופר הכל a **מעיז**, then why does the **מודה** not have the **מעיז**? It seems that the **מודה** contradicts the explanation of **רבה**!

answers:

מכל מקום קאמר הכא שפיר חזקה דיין אדם מעיז לכפור הכל כל כך ולא הווי מאגו -
Nevertheless the here correctly states that there is the presumption that a person is not wont to be so much, to deny everything; and therefore there is no – מאגו –

דייתר ברצון הוא מודה במקצת הטענה דיינו מעיז כל כך⁶ -

For he is more willing to be a than a, for he cannot be so brazen. It is easier (if one owes money) to be a **מודה** than a **כופר הכל**. Therefore the **כופר הכל** has no **מעיז**. [On the other hand there are those people who are sufficiently brazen to even be a **כופר הכל** (when they owe money) on account of **אשטעמוטי**; therefore the **שביעת היסת** was instituted.]

answers anticipates an alternate interpretation of **רבה**'s query, and rejects it:

אבל אין לפדרך דרביה אתה לפרש מפני מה אמרה תורה מודה מקצת ולא כופר הכל -
However, we cannot interpret that is coming to explain why the תורה requires only a **מודה to swear and not a **כופר הכל**.** The original explanation of **מודה** is that **רבה** asks why the **מודה** is not believed with a **כופר** of **מאgo**. According to this proposed interpretation is asking; why should not a **כופר הכל** also be required to take an oath –

וקאמיר חזקה דיין אדם מעיז לך נאמנו בשכופר הכל -

And **רבה** continues (according to this proposed interpretation) and **states that since a person is not, מעיז, therefore he is believed** without a **שבועה**, when **he is** **כופר הכל**. For if he had indeed owed money he could not have denied it completely. This is the proposed interpretation.

⁶ The fact is this owes money, he was not מובי"מ. Obviously (if we suspect him of lying) he did not have the to be and therefore no. One who is כופר הכל העזה, however, may be of a stronger temperament and can be even to the extent of כוה"כ 'מעיז' (since he is משתחמט).

תוספות, however rejects it –

אדם כן במקום שיכול להעיז אפילו כופר הכל חייב –

For if this were so (that a since פטור משבעה is כופר הכל, then it would follow, **that in a situation where the can be לעז, even if he is a כופר** הכל, the should be obligated to swear. The reason (according to this interpretation) that a פטור משבעה is on account of the הכל; where this חזקה אא"מ does not apply (in a case where it is possible for the to be לעז), the ruling should be that a כופר הכל is obligated to swear. This conclusion, however, is contradicted –

ובסתור אמרין אפילו לרבען דברנו מעיז ופטור אף מודה מקצת הטענה –

For shortly the will states the opposite; according to the who maintain that the son of the and therefore the son of the is exempt from the The reason for this is –

משמעות דמשיב אבידה הוא מאו דאי בעי כופר הכל –

Because the since he has the that he could have been. This proves that a פטור משבעה is כופר הכל even if he can be לעז. If the ruling would be that a כופר הכל where he could be לעז; how can the maintain that a פטור משבעה is בנו against for he could have been a (that can be לעז?! This is able to be according to the הכל); בנו לעז and מודה by (according to this interpretation). There would obviously be no מאו to exempt the son of the. Therefore we must conclude that a כופר הכל is always from a, regardless whether he can be לעז or not.

Following this conclusion, Tosfos deals with the obvious question:

ואם תאמר ומnen דכופר הכל פטור –

And if you will ask; how indeed do we derive that a פטור משבעה is כופר הכל from a. We have rejected the previous proposition that a כופר הכל since פטור משבעה is כופר הכל?!

Tosfos anticipates a possible solution, but rejects it:

וליכא למימר מדאיצטריך קרא לחייב שבועה بعد אחד¹⁰ מכלל דכופר הכל פטור –

⁷ The word 'אך' here means that not only is the by a applicable (even) when he can be לעז; it is applicable even to the extent that it can be used as a to exempt a מודה from swearing.

⁸ See 'Thinking it over' # 2.

⁹ It would seem that is asking that we should derive a by חיוב שבועה from a. מוב"מ כופר הכל that Tosfos is. See 'Thinking it over' # 1.

¹⁰ The states that לאל יקום עד אחד באיש לכל עון ולכל חטא (דברים [שופטים] יט,טו) we interpret it to mean לכל עון ולכל חטא לא קם אבל לשבעה קם.

And one cannot say that since a פטוק is required to teach that a single witness obligates the opposing litigant to swear, this implies that this litigant who is a כופר הכל is exempt from taking an oath. If a חייב is כופר הכל a שבועה מה חייב is ע"א, then why is there a necessity for the תורה to teach that a חייב is כופר הכל is required to swear (even) without the ע"א. This seemingly answers the question. We derive that a חייב שבועה is כופר הכל from the fact of an ע"א.

However, שבועה a מה חייב is כופר הכל rejects this solution. It is possible that a חייב is כופר הכל in special circumstances:

זהא איצטריך להיכא שמעידים¹¹ שגנב לו והוא אינו יודע -

For it is necessary to teach that an ע"א is שבועה a מה חייב in cases where they (the various ע"א) testify that an individual stole from him; however the victim is not aware who stole it.¹² A חייב שבועה can be obligated to swear (according to this הוה אמינה), when there is a definite claim against him (as in a loan, etc.) however in a case where the victim is not personally aware who the thief is, and cannot claim with certainty that he is the thief, then the alleged thief would not be required to swear. However if there is an ע"א who testifies the he is the thief, that alleged thief would be required to swear, even if the victim cannot identify him as the thief. This is what the פטור משבועה of ע"א may be coming to teach us. In conclusion there is no proof from פטור משבועה is כופר הכל that a חייב שבועה is כופר הכל always?!

תוספות answers:

אלא יש לומר דוגירות הכתוב היא דכי הוא זה ממש דבעינו כפירה והודאה -

כי הוא But rather we can say that it is a decree of the תורה for the words מודה במקצת (from where we derive the obligation of שבועה מודה במקצת) indicates that a denial and an admission are required to obligate an oath. A חייב שבועה is כופר הכל therefore exempt from a חייב שבועה.

OTOS offers an alternate explanation (that we cannot derive by aFromFile of the פטור משבועה by aFromFile of the חייב שבועה):

ועוד מודה במקצת יש להשיבו שחיב לוי ממון שהודה –

And furthermore by aFromFile of it is proper to have him swear; for

¹¹ The רשות amends this to שמעידים (instead of ש...).

¹² See where Tosfos also maintains that an ע"א can be where the two were both חייב (however, there the two were both חייב).

¹³ The פטוק referring to a שבועה. The translation of 'כ"ה' in פטוק (משפטים) would be 'It is only this' that I owe. This implies that he is both partially admitting and partially denying the claim.

since he owes him the monies which he admitted -

ועל ידי כך מגלאל עליו שבועה בעין גלאל¹⁴ -

And through this (monetary admission and obligation) **we ‘roll’ upon him an oath** as well, **similar** to the ruling of **- גלאול שבועה**

אבל כופר הכל נסתלק לגוררי ממו:

However, one who is **כופר הכל**, **has removed himself completely from the plaintiff;** and there is nothing by which he can retain him and make him swear.

SUMMARY

The question of **שבועה פטור מוב"מ** is, why is a from a since he has a **כופר הכל פטור** of **מגנו**. The question cannot be why is a from a **כופר הכל מזען פניו וכוכ'**; for then the answer would be since 'א. However this is contradicted by the who maintain that a even when he is **כופר הכל** from a either because **כופר הכל מזען**. A **גוזרת הכתוב** is **כפי הוא זה** from a **כופר הכל** limiting a **כופר הכל** to a **חייב שבועה**; or there is no by a as there is by a **מוב"מ**.

THINKING IT OVER

1. **פטור משבועה** is **כופר הכל** **תוספות**.¹⁵ asks from where we know that a Seemingly it is, since the never states that he is **מחוייב** **מוב"מ**, because by there is ample reason to suspect the **מזה** and believe the **תובע**. [It seemingly cannot be derived from **פטור משבועה**, since the **מזה** is not mentioned.]

2. Can we infer¹⁶ from our **תוספות** whether a (prospective) liar would prefer to pay nothing and swear falsely, or whether he would prefer to pay partially and be exempt from a **שבועה**?

¹⁴ We derive (from the words **אמן אמר**, פירוש סוטה) that if one is obligated to swear against his plaintiff, then the plaintiff has the right to coerce the defendant to swear (his denial) on additional disputes between them, where (on their own) no **שבועה** could have been administrated. This is known as **גלאלי שבועה**. Similarly here once there is a **חייב ממון** from the **תובע** to the **נתבע**, the **תובע** can be **נתבע** on the **גלאלי שבועה**.

¹⁵ See footnote # 9. See **רבג**.

¹⁶ See footnote # 8.

חזקת אין אדם מעיז פניו –

There is a presumption that a person is not brazen faced

OVERVIEW

It is not clear what this **חזקה** is based on. Why do we indeed assume that **א"מ** תוספות first cites **רש"י**'s explanation, refutes it, and then offers his explanation(s).

לא כמו שפירש הקונטרס בהגוזל¹ (בבא קמא דף קז, א) **דאין אדם מעין -**

– מעיז שעשה לו טובה שהלווה אבל בפקדון מעיז –

since the did him a favor, that he lent him money; however by a deposit the watchman is מעין. The depositor did no favor to the watchman; on the contrary the watchman is doing the depositor a favor, therefore the watchman can be מעין without reservations.

רשות' disagrees withתוספות:

adam can be perekdon miyada mikatz nemi yahafutor b'mago da'i be'ui kofar ha'el -

For if this is true (that by a פקדון is שומר **מעיז**) then it should follow **that** a פטור **should be** from a שבואה, for he has **a** מוגה במקצת **that he could have been a**. **כופר הכל** would be he would be from פטור משבואה (according to even if he is **מעיז**);² he should therefore also be שבואה when he is a מוגה by a פקדון. In the case of a מולה, since כוה"כ, the has no לוה, פטור מוב"מ (he could not have [as easily] been a כוה"כ); however by a מובה"מ where the שומר פקדון, he should be with the מוגה (according to ריש"י), he can be מוגה.

מחייב שבועה is פקדון by a מוב"מ will now prove that a **תוספה**:

ובכל דוכתא משמע דמודה מקצת חייב בפקדו -

And in all places it seems that a חייב is פקדון in a מוב"מ offers some examples –

גבי עשר גפנות טעונות מסורתி לך כולי³ (שבועות זי מב,ב) **דמשמע דאיירி בפקדו -**

בד"ה כדרבה וד"ה אבל¹

² See previous that a **כופר הכל** is always even when he is **מעיז**. [However, **כופר הכל** is always even when he is **מעיז**, a **שבועה** is required (even) for **פקודון ב"ק** in that by a **כופר הכל** where he is not **מעיז**. See [כח ואילך בשיטות רשי ותוספות]

³ The claimed that he received only five. There is a whether the נפקד is required to swear; depending whether the grapes are considered מוחור לקרקע (which is פטור משבעה). However if it would not be considered מוחור לקרקע then the נפקד would be even though it is a פקדון; not a הלאה.

Concerning the case where the plaintiff claimed ‘**I have delivered to you ten laden grapevines, etc. It seems**⁴ there that the משנה is discussing a situation and there is a – **חייב שבועה פקדון**

ו גבי סלע הלויתני עליו ושתיים היה שוה (שם מג,א) – offers an additional example –

And concerning the case where the claims to the collateral that I deposited by you which you subsequently lost, **and the collateral was worth two**, and therefore you owe me a 'selع', etc.⁵ The molah is required to swear a שבועה מוב"מ to the lord; even though the lord did him no favor.

ו גבי מציאה נמי אמרינו בהניזקין⁶ (גיטין נא,א ושם) **דמודה מקצת חייב ולא מהימן במגו** – gives one final example:

And concerning the finding of a lost article, the **פרק גمرا also states in** **מגו** **מציאה** **that a** **is obligated** to swear **and he is not believed with a** **כה"כ** of the owner did no favor to the finder.

ו glyc cited three examples ofחייב שבועה מוב"מ where there is a חייב שבועה even though no favor was done to the lord. According to ר"י, they should have been נשבע. According to ר"ש, since they have a כופר הכל of מגו. The reason a כוה"כ is not believed with the owner is because כוה"כ is dependent on כוה"כ. However in a case where no favor is done there is no חזקה of כוה"כ; the owner should be believed with the owner. This indicates that the owner of כוה"כ is not dependent whether a favor was granted, and in all cases a person is כוה"כ to be כוה"כ. Therefore, a כוה"כ does not have the מנו that he could have been כוה"כ.

אא"מ will now give his explanation why:

אלא אומר רבינו تم דהינו כgon החזקה שאינו האשה מעיזה פניה בפni בעלה⁷ –

Rather, the חזקה says that the **אא"מ** **הזהה ר"ת** **is similar to the that a**

⁴ לוה molah תוספות is dismissing the possibility that the משנה is discussing a loan situation where the lord lent the lord five [five] to harvest, which the lord will be obligated to repay at a later date.

⁵ The lord claimed that the master was worth a selع and a half; thereby admitting that he owes the lord (only) half a selع which makes the lord molah.

⁶ תוספות is referring to the [בריתא] (גمرا) which states that if the owner claims that I saw you pick up the two wallets which were tied together, and the finder claims that he picked up only one, the finder is obligated to swear a מוב"מ. See previous תוספות ד"ה וראב"י (footnotes # 9 & 10). The previous is based on the המוציא מציאה לא ישבע מפני משנה מראי מקום given. However it may be that תוספות is referring to the fact that there should be no שבועה at all since there is a מגו of כוה"כ, for by the owner did no favor to the finder.

⁷ This חזקה is utilized in a case where the woman claims in the presence of her husband that he divorced her. The woman is believed, for if she were still married she would not have the העזה to claim that she is divorced, since אין האשה מעיזה פניה בפni בעלה.

woman can not brazenly lie in the presence of her husband. It is not because the husband bestowed favors on her; but rather this is the nature of things –

שאין לאדם פנים לכפור הכל -

That a person does cannot put up ‘a face’ to deny everything. The חזקה of מציאה פקדון and אא"מ therefore, applies in all situations (even) including

תוספות offers a (slightly) different explanation:

וּרְבִינוּ יַצְחָק בֶּן אָשָׁר⁸ פִּירַשׁ אֵין אָדָם מֵעֵז הַיָּכָא שְׁחַבְיוֹ מִכִּיר בְּשָׁקְרוֹ וְאֵין לְהַארִיךְ :

And the explained that a person is not when his litigant is aware of his lie. And it is not necessary to elaborate.⁹

SUMMARY

ריש"י maintains that אא"מ since he received a favor rejects this; for it would follow that a פטור משבעה should be מוב"מ בפקדון. The גمرا states that a מהויב לשבע is מוב"מ בפקדון.

קופר explains that אא"מ either because he does not have the to be כופר פנים to be; or he is not when the other realizes that he is lying.

THINKING IT OVER

1. What is the difference between the explanations¹⁰ of the ר"ת and the ריב"א?¹¹

2. It would seem that according to the ר"ת the idea of חבירו מכיר בשקו is not relevant to the רבן סברא of אא"מ; why therefore do the בבנו maintain that אין לאדם פנים לכפור הכל, מעיז?!¹³

⁸ See Tosfos footnote # 6.

⁹ See ‘Thinking it over’.

¹⁰ See footnote # 9.

¹¹ See סוכ"ד אותן לב וח"ב אותן ריש.

¹² That is the סברא of ריב"א.

¹³ See (also) משכנות הרועים אות קכח.

ובכולי עעי דלודי –

And he wants to admit to all

OVERVIEW

רבה asked why is a required to take an oath. [According to תוספות he should be believed with a of many. According to others; why is a not required to take an oath.] answers that רבה [and therefore there is no (according to ; or the truth (according to others)]. This would seem to satisfactorily answer the original question. However, continues with an analysis of the and concludes that he is. The question is; why did find it necessary to continue explaining that the is מושתמת and offer different explanations.

פירוש בקונטרס בבבא מציעא¹ (דף ב, ושם) דאתא לפרש אמאין נשבע –
explained in that is continuing to explain why the is continuing to swear, for seemingly –

ニימא מגו דחשייד אממוני חשייד נמי אשבעתא –

Let us argue that since this is suspect of dishonesty in monetary issues (that is why the oath is being administered to him), **he should also be suspect concerning the oath;** he may swear falsely. If the is suspect of being willing to steal he should equally be suspect of willing to swear falsely. What then is the purpose of the oath?!

ולהכי קאמר ומכולי עעי דלודי ליה ולא חשייד אממוני –

And therefore continued and said that this really wanted to admit to owing everything (he has every intention of ultimately repaying the loan, however presently he is); **therefore he is not suspect in monetary** matters, and an oath may be administered. This concludes s"y interpretation of ומכולי וכו'.

תוספות has a difficulty with s"y's explanation:

וקשה לרביינו יצחק דהא אמר בפרק קמא דבבבא מציעא (דף ב, ב) –

And the has a difficulty with s"y's explanation, for the states in the first of **פרק ב"מ** – מסכת ב"מ **פרק** –

דא אמרין מגו דחשייד אממוני חשייד נמי אשבעתא –

That we do not presume that since one is suspect in monetary matters he

¹ ד"ה בכולי there (see) בד"ה והאי.

is suspect as well concerning oaths; but rather the assumption is that even one who is says **רבה** is not **חשיד אשבעתא**. How could interpret that the reason is to remove the problem of **ונכלי בעי דלודין ליה!**?!
?מג' דחשיד אמונא נמי אשבעתא

ר' ש"י anticipates (and rejects) a possible solution to his question on:

ויאין לומר דמן התורה חסיד נמי אשבועתא ומדרבען הוא אמרינו דלא חסיד -

And one cannot answer that according to law, a תורה is also החשיד is not the החשיד אמונא גمرا states that a החשיד אשבועתא that is only מדרבנן. The reason why is –

לפי שראו שהיו מקלילו במימון יותר מאשר בשבועה ותקנו שבועה על החשודים -

For the **חכמים realized that** people are more lenient in allowing themselves to lie in **monetary** matters **more than** they would lie by **oaths**; and therefore **they instituted an oath** (even) **on suspected liars** –

כל זמן שלא נודע שהוא גזלו שכבר מנו התורה עדים² -

As long as it is not known that he is a robber; and therefore he is still fit for an oath - מון ההוראה -

אבל גזלו ידוע שפסול מון התורה לא תקנו -

However for a known גולן who is unfit מִן הַתּוֹרָה to take an oath, in those cases the חכמים **did not institute** that an oath be administered to a גולן. This would seemingly answer question on רשי".

הוספה continues to resolve certain issues if we were to accept this answer:

ולפי זה שבועה שלא שלחתי בה יד³ היא מדרבן -

And according to this explanation, the oath that a watchman swears, **that 'I did not use the deposited object'** is (merely) a שבועה מדרבנן; for according to the law תורה, יד שומר דחשיד אמונא חשיד אשבעתא If we suspect the that he was in the פקדון, that makes the watchman a שומר (he is using something that does not belong

³ ב"מ ו רב ששת states (ב"מ ו ג) that a who claims that a mishap happened to the פקדיון and wants to exempt himself from payment is required to make three oaths; 1) that I was not negligent, 2) that I did no use the פקדיון, and 3) that it is not in my possession.

to him [so there is no מישתמת]), and **השיד אשבעתא** is **חשייד אמונא** a **מן התורה**, and cannot swear.

ולא היה דוריתא אלא שבועה שלא פשטי בה -

[And the only oath that a watchman must swear, **מן התורה**, is the oath that **I was not negligent** in watching the **שומר**; for even if the **שומר** was negligent, we cannot consider him a **חשיד אמוןנו** (even though that if he was **פושע** he is **חייב** for the **פקודון**), therefore he may swear **מן התורה** that **לא פשעתني בה**.]⁴

תוספה continues to anticipate and resolve another issue (with this assumption):

זהו אמת דכתיב אם לא שלח לא ששבע שלא שלח אלא כי קאמר קרא נשבע שלא פשע -
And that which is written in the Torah 'if he did not send his hand in (use) his neighbors deposit',⁵ it does not mean that he swears that he was not (for if we suspect him of) he is liable to punishment; but rather this is what the verse is stating: the one who swears (for even if he was) not guilty of the oath states that there is a restriction to taking this oath –

אימתי בזמן שלא שלח בו יד חייב אפלו שלא פשע דעתחיב באונסים -
When can the take the oath of שומר only in a situation where
לא פשעתו and he was not exempt from paying for the missing object); for if he was שומר is obligated to pay even if he was not, for
פקודן since he was פקודן he becomes obligated to pay for the even if it was missing due to unforeseen (and unavoidable) accidents.⁶ There is therefore no purpose in swearing if he was שולח יד ⁷ This concludes the (attempted) answer on רשות (with additional resolutions).

חשייד however rejects this solution. We cannot say that מDAOРИיתא חשידammuna is אשבועתא

דרה נבי נסכא דברי אבא (שבועות זב לבב) משמע دائ' אמר לא חטפי -

⁴ It is not clear from whether the term *ללא מלה* is שבועה שאינה ברשותי or not. See *תוספות* *הרבאים* אותם ללא מלה.

⁵ The פסוק בעל הבית אל האלקים אם לא שליח ידו במלאתך רעהו שמות (משפטים כב, ז) indicates that the oath must take. The simple reading of the פסוק indicates that the oath is תורה אם לא שליח ידו במלאתך רעהו. However according to the present understanding there can be no oath if we suspect the שופט of שליחות ידו: for then he is a רשע.

אונסים When the shomer is **שוחט** (without permission), he is **חייב** to be responsible for all damages.

⁷ The פסוק would be understood as follows to administer the oath of the האלקיים to the פשעתה, and נקרב בעה"ב אל if שומר when is this oath administered (and subsequently exempting the payer from paying), only if רעה. The words אם לא שליח וגו' rather refer to the circumstances that allow the oath to be administered

For concerning the case of a piece of silver that Rabbi Avah ruled on,⁸ it seems that if the defendant would have claimed ‘I did not grab the silver from the plaintiff’ -

היה נשבע להכחיש את העד אף על גב דחשיך אמוןנו -

He would be obligated **to swear** that he did not seize the silver, **in order to contradict the** testimony of the **witness** who claims that he did seize the silver from the plaintiff; **even though** that in that case the defendant **is a thief** [seizing from someone is an act of גנבה unless it can be proven that the object seized belongs to the seizer].⁹ We can derive that an oath is administered even by a **thief**. This contradicts the previous answer.

anticipates (and rejects) a possible answer. Perhaps the **חוב שבועה** there is only **tosfosot** and not **מגן דחשיך אמוןנו וכו'** and there is no **מדרבנן** rejects this:

והתם הויא שבועה דאוריתא -

And there by the case of **חוב שבועה** **it was a** that the seizer would have been required to swear, not a **tosfot**. **שבועה דרבנן** proves it:

דבשבועה דרבנן לא אמרין מותך שאין יכול לישבע משלם -

For by a we do not say ‘**that since he cannot swear** he is **obligated to pay**¹¹ –

כדמשמע בפרק קמא דברא מציעא (שט) גבי ההוא רעה -

As is indicated in the first of **פרק ב**; **concerning** the case of ‘**there was a shepherd**, etc’.¹² Since we see that by **נסכא דר"א** there is a ruling of **מותך**

⁸ The case there is of a plaintiff who claims (and has a single supporting witness) that the defendant seized from him a piece of silver. The defendant admitted to seizing the silver; however he claims that the silver belongs to him and not to the plaintiff. There are no other witnesses (as to who is the original owner of the silver). **נסכא דר"א** ruled that the defendant is obligated to swear (if he would have claimed); however since he cannot swear (for he is not contradicting the plaintiff) he is a **thief** and therefore he is obligated to return the silver.

⁹ There is no **אשתיות** when he claims **לא חטא** and is lying; as opposed to other cases of an **ע"א**, even by a **מהר"ם** (**ש"ף** **אשתיות** **סבירא** **סברא** **כזה**) where there is the **אשתיות** of **סברא** (see).

¹⁰ The **חוב שבועה** in the case of **נסכא דר"א** is a **חוב שבועה**, which is a **חוב שבועה**. However, if we maintain that **ההיא** is a **חוב שבועה** then we would not allow the defendant to swear (for he is a **thief**). The **חוב שבועה** against the plaintiff is (in this case) a **חוב שבועה**. This is what is referring to when he discusses whether the **חוב שבועה** of **נסכא דר"א** is a **חוב שבועה** or a **חוב שבועה**.

¹¹ **איינו יכול** ruled that the defendant is a **thief** to deny the testimony of the plaintiff. However since he is a **thief** therefore he is obligated to pay.

¹² The shepherd counterclaimed that on this particular day he was not given any sheep to watch. He testified that they saw him eat two (of the owners') sheep on that day. The **גמרא** there says that if the ruling of **ר' חי ר' ר' חי** is correct (according to **ר' חי** the testimony of the **עדים** make it similar to a **מזהה** **במקצת** **ר' חי**), the shepherd would be obligated in a **חוב שבועה**. However since he is a **גוזל** (on account of the two sheep) he cannot swear the **חוב**; rather the claimants would swear how many sheep they gave him on that day and he would be obligated to pay. The **גמרא** asks that even without the ruling of **ר' חי** (which makes him

שָׁבּוּעָה דְּאוֹרִיתָא נַסְכָּא דֶּרֶ"א is even though that the week proves that the is a week even though that the we do not say that it is a week. We may conclude that even by a proposed explanation of which contradicts the original question remains how can we state that when he was addressing the issue of when it is known that both by a week and a week.

ובכללי בשי וכוכ' will give his own interpretation why **רבה** continues with **ונראה דאתא לפרש שלא תקש כיון דאיין אדם מעיז יהא נאמן במה שכתב מkicktz -**
And it seems that **רבה** is coming to forewarn that you should not ask, that since we just concluded that **אא"מ**, therefore the **should be believed in his partial denial** (without an oath) for he must be telling the truth (since **אא"מ**)¹³ –

וכיוון דמחייבינו שבועה אם כן מחשבו עזות פנים -

And since nevertheless we do obligate the מוב"מ to swear, this indicates that we consider this as an עוזת פנים מוב"מ; for if he was not an **expert** then we would have to believe him since פ"א, and -

אם כן יהיה נאמן במצו דאי בעי כפר הכל -

If this is true that the עוזית פנים מוב"מ is an מוב"מ then he should be believed (without a כוה"כ for he has a **מגוי** (שבועה). The only reason that a מוב"מ is not believed with the כוה"כ of מגוי is because therefore he has no since he could not be מזיע and be a כוה"כ. However now that we are saying that the מזיע פנים מוב"מ (that it why we do not believe him), then he should have the מזיע of פטור משבועה כוה"כ.¹⁴

ובכללי בעי וכו' רבה that continues with the answer of **תוספות**:

שבועה דרבנן whenever שבועה היסט (which is a claim) and therefore the claimants should also be allowed to swear and collect. The answers גמרא that since we do not make an additional תקנת חכמים on a (שכנגדו נשבע ונוטל) תקנת חכמים. This proves that by a גמרא however did not suggest that the דין should be מתו"ש אליל"ם. מתוך why we do not say by the there is no law of (See ד"ה שכנגדו תוספות why we do not say by the (שבועה היסט) דרבנן.) See 'Thinking it over' # 1.

¹⁴ And if we do not accept the concept of **מגוי** let us derive from here that we do not accept the concept of **מגוי**. See previous footnote # 13; see מורה"ם ש"פ. [Alternately; it would seem that **חוسطות** is asking that מה מה נפשך should be פטור משובעה if he is not an פטור. If he is not an פטור, then he should be believed with his טענה. If we do consider him an פטור on account of the פטור. (See כוה"כ מגויות.)]

וקאמר דין זה עוזת מה שכופר קצת -

And states that this partial denial on part of the **רבה** is **not** considered, therefore he is not believed (neither based on his own claim, and not [even] with a **מגנו** of **כהה** which requires **עוזת**).¹⁵

Tosfot asks:

ואם תאמר כיון שלא חשים אשבועתא למה גזלו פסול לשבועה -

And if you will say since that a person who is **חשיד** is **אמונה**, then **why is a robber disqualified to take an oath.** What is the difference between a **חשיד אמון** and a **גזלן**? They both are willing to take someone else's money illegally. Nevertheless we administer a **שבועה** to a **חשיד אמון** because a **שבועה** is a more serious offence. Even someone who is willing to steal will not swear falsely. The same should apply to a **גזלן**. Even though he steals, nevertheless he will not swear falsely.

Tosfot answers:

ותירץ הרב יהודה חסיד דזוקא כשהוא חשוד על אותו ממון שבא לישבע -

And the rabbi answered that only specifically when he is suspect on the money for which he is required to swear; only then –

אמרין שלא חשים אשבועתא דעת ידי השבועה יפרוש -

Do we say that (even though he is **חשיד** on this money nevertheless) **he is not**, **חשיד אשבועתא**, **for the** obligation of taking an **oath** will cause that **he separate** himself from the act of **stealing**. He will not take the oath and swear falsely, but rather he will admit and return the monies owed –

אבל אותו ממון שכבר גזל לא יפרוש על ידי השבועה -

However that money which he already stole; he will not separate himself from that wrongdoing **through the oath** that he is now obligated to swear on a different issue. When a **חשיד אמון** is given an oath for the monies we suspect he may be attempting to steal, the **שבועה** will prevent him from stealing, for since he is not **חשיד אמון** he will return the monies owed and will cease to be a **חשיד אמון** (and therefore he is not a **חשיד אשבועתא**). However by a confirmed **גזלן**, even if he refuses to take the oath he will still remain a **גזלן**. We cannot administer an oath to a confirmed ¹⁵**גזלן**.

¹⁵ Some commentaries explain this as follows. A regular person is not willing to transgress for both stealing and to swear falsely; therefore when he is confronted with a **שבועה** he will refrain from swearing falsely since, if he swears falsely he will be transgressing **ממון** and **שבועה**. However a **גזלן**, who already stole, is certainly not willing to return that which he already stole. When he is confronted with a **שבועה** for this current case he will not desist from swearing falsely; he is not concerned about transgressing two **עבירות**, because in his mind he already transgressed on **ממון** by his first **גזילה** (which he will not return). The **גזלן** does not see himself doing a halfway; returning the new money but not the old money. Therefore he remains a **גזלן** (see **סוכ"ד ב"מ ה,ב אוות נתן החשיד אשבועתא**).

תוספות anticipates a question:

וגבי והוא רעייא דחשייב ליה גזLN משום דאכל תרי מיניוו -

And concerning the case of ‘**that shepherd**’, where **considers** the shepherd to be **since he ate two of** the sheep that were allegedly given to him for safekeeping and therefore – **פסול לשבואה**

אף על פי שצרייך לפרווע הנני תרי דאכל -

Even though that the shepherd **is required to pay for these two sheep that he ate.** Seemingly he is not a **גזLN**; he will pay for the two sheep that he ate (since there are witnesses that he ate them). Concerning the rest of the sheep that the owners claim they gave him for safekeeping, which he denies, the **שבואה** will cause him to admit. On those sheep he is merely a **חשיד אמוןנו**; not a **גזLN** and even on the two sheep that he ate he is also no **גזLN** for he is paying for them. Why then do we not administer an oath to this **'ריעיא'**?

תוספות answers:

מכל מקום לא יפרוש מן השאר משום שבועה -

Nevertheless he will not be from denying owing **the rest** of the sheep **on account of the oath** that we will administer –

דמה שמשלים בעל כrhoו אין זה השבה מעלה -

For the payment for the two sheep **which he is paying against his will is not considered a proper return** of a stolen item. The shepherd is still considered a **גזLN** even after he pays for the two sheep; since he is not paying of his own accord. If a shepherd admits to owing and repays he is no longer a **גזLN** and is permitted to swear. However the shepherd did not admit; it is the **עדים** who are forcing him to pay for the two sheep. The shepherd remains a **גזLN** and is **פסול לשבואה**.

פסול is **גזLN** a **כשר לשבואה** is **חשיד אמוןנו** a **כשר לשבואה** offers an additional explanation why a **גזLN** and a **כשר לשבואה** **לשבואה**:

ויש מפרשים דגゾLN בשר לשבואה מן התורה דלא חשיד אשבעתא -

And others explain that a is (also) **כשר לשבואה מן התורה** (just as a **חשיד אשבעתא** so too a **חשיד אשבעתא** is) **(גזLN, אמוןנו -**

אלא דמדרבען פסלתוו כשהוא גゾLN¹⁶ -

газLN But rather the disqualified him from taking an oath when he is a רבנן.

מדרבנן has a question on this opinion that a **גזLN** a **כשר לשבואה** only **פסול לשבואה**:

ואם תאמר ומאי שנא דלעוזות פסול כדכתיב¹⁷ אל תשת ידע עם רשע וגומר -

¹⁶ **גנאי** who states that by a **גזLN** it is a **גנאי** to administer him an oath. See **טנהדרין כה,ב** and **ד"ה** ובכולי

¹⁷ **טנהדרין כה,ב**. See **שםות** (**משפטים**) **כג,א**.

And if you will say; and why is there a difference, by a גזין, between taking an oath and giving testimony? **When it comes to** גזין, **עדות is** גזין, **as it is written** תורה 'do not place your hand' (associate yourself) **with a wicked person, etc.** We derive from this that a גזין (who is a רשע) is disqualified to testify -

- ולשבועה כשר

However concerning a שבועה גזין (according to מפרשים) Why is there a difference between a עדות and שבועה?!¹⁸

תוספות answers:

ויש לומר דבר שבועה שקר יש בה עונש גדול דעתיב¹⁹ בה לא נינה -

And one can say that concerning a false oath there is a severe punishment, for concerning a שבועה שקר it is written in the תורה that 'will not cleanse' the sin of one who swears falsely –

וכדאמר בשבועת הדיניין (שבועות דף לט,א) שכל העולם נזדע –

And as the states in פרק שבועת הדיניין גمرا – **כשאמר הקדוש ברוך הוא** (לא תשבעו ולא תשא) –

When the Holy One blessed be He said (do not swear and) do not mention my name in vain. Therefore even a גזין whom we do not permit to testify, out of concern that he may testify falsely, nevertheless concerning an oath, we are not concerned (מן התורה) that he will swear falsely since the punishment is a severe one.

תוספת gives another reason why a שבועה is different than עדות:

עוד דבר עדות שקר ליכא אלא לא תענה²⁰ –

And furthermore concerning bearing false testimony there is only but one transgression, namely 'thou shalt not bear false witness', however -

ובשבועת שקר איכא לא תגוזל²¹ ולא תשבעו²² לשקר:

Concerning a false oath there are two transgressions; namely 'do not steal' and 'do not swear falsely in my name'. Therefore since there are two transgressions by שבועה, people are more concerned not to violate them and will not swear falsely. However by עדות שקר there is only one, therefore the גזין will not be that concerned and may testify falsely.

¹⁸ פסול גזין לעדות is seemingly asking that we should derive the Tosfos גזין לשבועה from the פסול גזין לעדות.

¹⁹ שמota (יתרו) כ,ז

²⁰ שמota (יתרו) כ,ג

²¹ ויקרא (קדושים) ט,יג

²² The ז' in the margin corrects this to read ולא תשבעו בשמי לשקר (ויקרא [קדושים] ט,יב).

SUMMARY

ריש"י maintains that the 'ובכולי בעי דלודי ליה' is coming to explain why there is no concern of תוספות. מגו דחשיד אמונא חשיד נמי אשבעתא rejects this (and proves that) we do not say מגו דחשיד וכו' either by a or a שבועה דאוריתא. רבנן maintains that is explaining why the 'אא"מ' does not allow us to believe the 'מוב"מ' without a שבועה. There is a dispute in whether a מדרבנן or פסול לשבועה מה"ת is גולן.

THINKING IT OVER

1. derives from the case of **ההוא רעיא** that by a we do not say **שבועה דאוריתא**.²³ מtopic שאל"מ Seemingly, there even if it were a we merely say **שבועה דאוריתא** and not **שבועה תוספות** (as explains in ²⁴). What proof can we bring from that by a we do not say מtopic **שבועה דרבנן** ?!

2. From where do we derive that a **גולן** is **פסול לשבועה** from the Torah?²⁵

²³ See footnote # 12.

²⁴ In fact there states clearly that the option of **מtopic** does not exist; (seemingly) for the same reasons that they do not exist if it were a **שבועה דאוריתא**! See also **ח"ב אות ריח**. See also **ט' סוכ"ד ב"מ ה, ב' אות**.

²⁵ See footnote # 18. See **משכנות הרועים** אות קמה.

They are believed

הרוי אלו נאמנים –

OVERVIEW

The states if **עדים** משנה testify that they signed on a **שטר**, however they were unqualified to be witnesses, if there is no other way to authenticate the **שטר**, the **עדים** are believed.¹ The **שטר** is not valid.² Generally, when a **שטר** is presented, the only claim that can be made against it is that it is a forgery. If that claim is made, the bearer of the **שטר** is required to authenticate the signatures. However any other claim, including that the **עדים** were unqualified, is rejected (especially if the **שטר** was authenticated). It is assumable that the maker of the **שטר** used only qualified witnesses.

תוספות asks:

ואם תאמר ולמה נאמנים והוא מגו במקום עדים הוא³ –

And if you will say; why are they believed to disqualify themselves; the **מגו** should not be effective **since it is a which contradicts witnesses**. Their **מגו** במקום **עדים** contradicts **עדים** **תוספות**. **עדים** will explain why it is a **מגו** **tosafot**. Seemingly no one is claiming that the signatories are qualified. **תוספות** explains that there is contradictory testimony to the disqualifiers –

данן שהזוי שלא היו אונסים ולא פסולי עדות –

שטר **עדים** **ב"ז** are the witnesses who claim **that the** in the **were not forced** to sign **and are not unqualified witnesses**. Whenever there are (authenticated) **עדים** **כשרים** on a **שטר** it is assumed that they are **עדים**. This assumption has the strength of **עדים**. These **עדים** signed on this **שטר**, as they themselves testified. Their signatures are authenticated. It is therefore assumable, with the strength of **עדם**, that they are **עדים** **כשרים**. Therefore their claim that they were **פסולים** contradicts this **עדות**.

תוספות will prove that once **עדים** are authenticated on a **שטר**, it is considered as if there are witnesses that they are **עדים**.

¹ There is a dispute whether they are believed to the extent that the **שטר** is destroyed, or that the **שטר** remains unauthenticated. See footnotes # 5&7. See **טוכ"ד** **אות נז**.

² The (later on this) states that the reason they are believed to claim **הפה שאסר הוה השתייר** is because this is a case of **הפה שאסר הוה השתייר**. The validity of this **שטר** is based solely on their testimony that they signed it; however they maintain simultaneously that they were ineligible to be witnesses. **תוספות** refers to this as a **מנו**; they did not have to testify at all (or they could have testified that it is not their signatures; see [however] following [footnote # 7]) and the **שטר** would not be valid.

³ The term **מגו** **במקום** **עדים** means that the claim (which has a **מגו**) contradicts **עדים**. A **מגו** **במקום** **עדים** **מגו** is not an effective **מגו**. The **מגו** is not sufficient to dislodge the **עדים** who contradict the claim.

זהא ל مكان⁴ אמרינו דתרי ותרי נינהו –

For later the **גמרא** states that the witnesses who signed on the **שטר** and the witnesses who disqualify them are considered as if **there are two** witnesses against **two** witnesses. The question is that since in our **משנה**, there is an assumable testimony (through the **עדים החתוםים**) that the **עדים** are **כשרים**, therefore even though the **החותמים** claim that we were **פטולים**, nevertheless they cannot be believed.⁵ The fact that the **עדים** have **מגנו** is meaningless, since it is a **מגנו** **במקום עדים**.⁶

answers: תוספות

ויש לומר דבריהם דהצרכו חכמים קיום הכא לא חשיב קיום כלל ⁷ –

And one can say; that since the חכמים require authentication by a שטר; otherwise it is not a **שטר**, therefore **here** in the case of the **משנה**, **it is not considered קיום at all** –

מה שאומרים כתוב ידינו הוא זה –

that which the state that this is our handwriting. The **שטר** is not

⁴ **גמרא** there cites a **ברייתא** that if the two signatories died, and their signatures were authenticated, then if two other witnesses come to disqualify the signatories, the disqualifiers are not believed. This implies that the **שטר** is valid. The **גמרא** asks how can the **שטר** be valid, it is **תורי ותרי**; the disqualifiers versus those that oppose them. (The **גמרא** there resolves the difficulty; that the **שטר** is merely suspended.) We derive from that **גמרא** that it is assumed that the authenticated signatories are considered as two, who claim that they were **כשרים** and contradict the disqualifiers.

⁵ There is a dispute among the commentaries whether **תוספות** means to ask that they should not be believed at all, and the **שטר** is valid; or that they should not be believed and the status of the **שטר** will remain unresolved, until we can find other **עדים** (as in a case of **תורי ותרי קיום**). See footnotes # 1&7.

⁶ The **רישא** of the above cited **שטר**, states that if the **שטר** was not **מקיים**, the disqualifiers are believed (even if they testify that the signatures are authentic). **תוספות** seemingly has no difficulty with that **רישא**, only with our **משנה**. See **ר"א** who explains that in our **משנה** since it is the **שטר** **עדוי** who are testifying that **פלוות** **הגדת עדות** for it is a **הוגה ומגיד**, since they already signed the **שטר** (and said **הוא זה**), which indicates they are **כשרים**. They can only be believed on account of the **מגנו**. Therefore **tosfos** asks that it is a **proper** **פלוות** in the **ברייתא** however the **tosfos** are different from the **עדים החתוםים**, therefore their testimony of **פלוות** is a **proper** **הגדת עדות**. In addition they also have a **מגנו**, therefore it can be argued ([at least] in the **הו"א** that **עדות** together with a **מגנו** may be effective even **משכנות הרוחים** **אות קצג** **במקום עדים**. See also **tosfos** **עדים**.

⁷ **כתב ים** **יוצא מקום** (**תורי ותרי**) is discussing a case of (**ברייתא**) **תוספות** surely realized that the **בריתא** (**אין כתב ים יוצא מקום אחר**, and our **משנה** (**נאמנים**)) is discussing a case of (**תורי ותרי**) (**אין סהדי קיום** **הינו**, since they testified that **כת"י** **הוא זה** (and did not retract it), it should be considered sufficient to set the **סהדי קיום** in place. **tosfos** concludes that since they immediately negated the **קיום** by saying **אין סהדי קיום**, there is **no קיום** at all, and therefore **no קיום**. Alternately, according to the view (see footnotes # 1&5) that **tosfos** question was why they are believed to destroy the **שטר**; since it is a **place** **מגנו** in the **שטר**, the **שטר** should remain suspended as in **תורי ותרי**. Therefore **tosfos** never intended that **כת"י** **הוא זה** is a **full** **קיום**. Rather in the **הו"א** maintained that the **כת"י** **tosfos** **פלוות** **הינו** should cancel out each other. **tosfos** responds that **כת"י** has no effect at all, and we must accept the **פלוות** **הינו**.

by this statement of **כתוב ידינו הוא זה**. The reason for this is – מקומות

כיוון דאינהו גופייהו אמרי תוכ' כדי דבר⁸ קטנים או אונסים היו -

כתב ידינו הוא זה Since these witnesses **themselves**; the very ones who stated say within the limit, ‘**we were minors or we were forced** when we signed’. This statement automatically nullifies any קיום that may have been forthcoming through their opening statement of כתוב ידינו הוא זה. There is an שטר that the was signed by qualified witnesses, only if we know that there is a qualified שטר. There can be a qualified only if it is a שטר מקוים. In our case there is no שטר מקוים, hence there is no. **aan סהדי** Therefore it is not a שטר. ⁹

אבל ל�מו חשבינו لهו כ שני עדים כיון שכבר מקוים הוא –

However later גمرا which was previously cited we do consider the signatories as two עדים הפטלים who contradict the testimony of the The reason for this is since it is already a שטר מקוים –

שכתב ידם יצא ממקומות אחר –

For their handwriting is already established elsewhere. Their signatures were already verified. This made it a שטר כשר. By a שטר כשר there is an understanding, that the writers are qualified. Therefore the signatures are considered qualified. Therefore the signatures are considered qualified.

SUMMARY

When they are not merely contesting the validity of the (which would make it a but rather they are testifying that there is no, and therefore no. The שטר that the signed are כשרים is only by a valid authenticated שדי.

THINKING IT OVER

גמרא proves in the משנה in the **הו"א** that there is an **סחד** from the תוספות. later which states it is a **תרי ותרי**.¹⁰ Seemingly, when the later asks that it is **תרי**, the thrust of the question is that the **פוסלים** are not that **תרי ותרי** because there are **עדים** (**תרי** because **עד הشرط**). The **תרי** are in the **סחד** because there are **עד הشرط**.

⁸ The term שלום means that it was said within the time that it takes to say the three words of **תוק כדי דבר**. Anything said is considered as being said simultaneously with whatever preceded it. **עליך רבבי קיום עדים**. In our case it would be as if they initially said we were disqualified. There would certainly be no in such a situation.

⁹ The קיומם on the פה שאסר accomplishes that they have the power to nullify the קיימן. When they said כה"י, this renders the פסולים הינו meaningless. They are saying we wrote our names on a piece of paper, not on a שטר. Without the פשא"ס, however, we would not believe them that they already said כה"י הוי (and are not retracting it).

¹⁰ See footnote # 7.

How does this prove that by us there is an **אנן סהדי**?¹¹

2. What is the essential difference between the **קשייא** and the **תירוץ** of **תוספות**?¹²

¹¹ See מהרש"ג.

¹² See משכנות הרועים את קצד ואילך.

אין נאמנים -**They are not believed****OVERVIEW**

If a פסולין עדות testify that they were מקומות when they signed the שטר, they are not believed.¹

תוספות anticipates a difficulty:

הכא² ליכא לאקשויי דלהימנו במגו דאי בעי אמרי פרוע הוא³ –

We cannot ask here that we should believe their claim that they were since they have a, for if they wanted they could have said it is paid up. If these would have testified that this is indeed our signatures however, the loan was already paid by the לה; they would be believed and the לה would not have to pay. Therefore we should believe them as well that the הלו is exempt from paying.

תוספות answers that the מגו is not effective:

דכיון דמקוים הוא מגו במקומות עדים כדפירושנו⁴ –

כתב ידם יוצא מקום that שטר is authenticated; as it states in the previous therefore it is a that contradicts, as we explained in the previous When a שטר is signed by כשרים, it creates an that it was signed by כשרים. The claim of these עדים is that they were אן סהדי. Their claim contradicts the אן סהדי. A מגו is not effective when the claim contradicts עדים.

תוספות offers another explanation why they are not believed:

ועוד⁵ בחוזרים ומגידים הם וכיון שהגיד שוב אינו חוזר ומגיד כדאמרין בגמרה –

שטר Furthermore, this claim that they were (which is offered after the פסולים) which is offered after the שטר.

¹ There is a dispute whether they are not believed at all and it is a שטר כשר or they are not believed to nullify the שטר; the status of the שטר remains suspended (see previous footnote # 1).

² This uses the word **הכא** to indicate that the ensuing answers are applicable only 'here', according to the **מסקנא** that ר' ב"ה, these answers are not applicable. See [TIE] 'Thinking it over' # 2 in **תוספתה ד"ה מלחמת ד"ה**.

³ They are believed to claim, since that is not contradicting anything that was implied in the שטר.

⁴ A מגו במקומות עדים means that the claim (not the מגו) contradicts עדים.

⁵ The necessity for an additional explanation may possibly be understood if the following is assumed: אין נאמנים means that they are not believed at all, and the לה can collect with this שטר question, that they should be believed with the מגו of שטר, is that the שטר should be destroyed, for if they would claim the שטר would be void. The first answer that it is a מגו במקומות עדים is sufficient to explain why the שטר cannot be destroyed since there is no מגו. However, we still may not collect with this שטר, since it is a תרי ותרי שטר מקומות; the second testimony that they were פסולים. The second answer is that כיוון שהגיד שוב אינו חוזר ומגיד removes the שטר; their second testimony is discarded. There is only the שטר, and the לה can collect with this שטר. The answer of השטר alone is also insufficient, for even though they cannot be believed as עדים, nevertheless they should be believed on account of the מגו; to have the שטר suspended. Therefore each answer complements the other. See 'Thinking it over' # 2.

is considered **that they are retracting and testifying anew**. This they cannot do, for there is a rule **that once he testified, he cannot retract** his previous testimony, **and testify differently, as it is stated in the gemara** (immediately following the משנה). The שטר states in the name of the witness that the witness owes money. These are now claiming that they were פסולין שטר and the witness is פסול. This in effect means the witness owes no money. This is a contradiction to their previous testimony. Therefore the claim of פסולין הינו, which disqualifies the שטר, contradicts their original testimony that the witness owes the money.

תוספות offers a final explanation why they are not believed with a מנו:

ועוד⁶ דבר שני עדים לא אמרין מנו -

And furthermore there is a rule **that by two witnesses the rule of does not apply**. A מנו is effective only when there is one person making a claim and he has a מנו. However by two people who are making a claim even though they have a מנו, they are not believed.

תוספות responds to an anticipated question:

וברישא נאמנים משום دائיב עי שתקי:⁸

However, in the Rishonim of the משנה the עדים are believed on account of a מנו, to claim that they chose to testify. In the רישוא we do not say מנו כי תרי לא אמרין say פסולין עדות הינו. Because if they chose they could have been silent and not testify at all. The reason of the רישוא is that the witness did not have to testify that that was the case, then there would be no שטר. This type of a reason is effective even by two עדים.⁹

SUMMARY

מן (מקוימים שטר) are not believed to claim פסולין הינו with a מנו because: a) it is a case of כרוע because: b) they are in a place, and c) they are silent except for a מנו.

⁶ Perhaps this answer applies even if we were to assume that this is not considered a lie. The fact that a witness is in a place does not necessarily create an actual lie, especially if the witness themselves claim that they were not lying, and in addition they also have a מנו.

⁷ The popular explanation is that the idea of a מנו is that if he was lying he could have said a more effective lie. This proves he is telling the truth. If however there are two claimants, we suspect that perhaps they are lying and the reason they are not claiming the more effective lie is that each one thinks that the other may have not thought of the more effective lie. See Tosfos Yeshivah Talmud Baban 7b.

⁸ It would seem from this answer that when the רישוא states in the משנה that they are believed (only) to suspend the שטר, but not to destroy it. Their reason is that in which case the שטר would not be destroyed, but merely suspended.

⁹ One explanation is that there is no concern what the other will say (see previous footnote # 7); as long as one will not testify, the שטר will not be destroyed. Another explanation is that a reason is so evident that no one doubts whether the other is aware of this option.

THINKING IT OVER

1. What is the claim of the text; is it **לוֹה** or **מְזֻוִּיף** or **פָרוּעַ** or something else?¹⁰
2. The text answers that it is a **חוֹזֵר וּמְגִיד**.¹¹ Seemingly the question was that they should be believed because of a **מִגּוֹ**; not because of a **הַגְּדָת עֲדּוֹת**. By there is no problem with **חוֹזֵר וּמְגִיד**, as evidenced in the **ר' ישא**.¹²

¹⁰ See footnote # 8.

¹¹ See footnote # 5.

¹² משכנות הרועים את רג' ורד. See קושיות הגרא"ע.

לא שננו אלא שאמרו אנוסים הינו מחתמת ממון -
only when they said, 'we were forced by monetary means'.

OVERVIEW

The סיפה of our states that if כתוב י"ט is written and the witness states that if כתוב י"ט is written after it, then they are not believed. Initially it was understood that כתוב י"ט qualified the סיפה of the witness. They are not believed to claim אנוסים הינו מחתמת ממון (for they are forbidden to sign under monetary coercion). However they are believed to claim אנוסים הינו מחתמת נפשות (since they are permitted to sign in order to save their lives).

דלא מהימני משום דלא משוי נפשייהו רשיים¹ -

They are not believed to claim we were coerced to sign the שטר on account of monetary coercion **because they cannot make themselves wicked** people. It is forbidden to cause someone a loss (even) if threatened that non compliance will cause you a loss of money. If they claim that it was a monetary coercion, then they are admitting to transgressing a prohibition and making themselves רשעים. A person is not believed to testify about himself neither for his benefit or his detriment.

continues to explain why they are not believed in the other two cases:²

קטנים כדרבי שמעון בן לקיש³ -

And they are not believed if they claim we were **רשב"ל as קטנים** stated that there is a sign on a שטר that only גודלים that have a right to sign.

ופסולי עדות מלאה גופיה מידק דיק כదאמרינו בסמוך:⁴

And they are not believed to claim that we were **רשב"ל because the himself is very exacting** to choose only **עדים כשרים as the גمرا will shortly state.**

SUMMARY

According to the כתוב י"ט are not believed to claim עדים if ה"א is written after it, or **רשב"ל** because **קטנים, דלא משוי נפשייהו רשיים** or **אנוסים הינו מחתמת ממון**. **מלאה גופיה מידק דיק** since **פסולי עדות**.

¹ See רשב"י ד"ה לא.

² This is seemingly bothered if we maintain that by maintaining that they are believed (for they are not), then why should they not be believed by us; in these cases they are also not משוי נפשייהו רשיים. See footnote # 4.

³ דף יט, ריש ע"א.

⁴ This answer is that by maintaining that they are believed contradicts them; however by maintaining that there is a right to sign that contradicts them. See: 'Thinking it over'.

THINKING IT OVER

If the claim אנו סים מהמת נפשות even though they are believed;⁵ even though they are (seemingly) contradicting the עדות שבשטר. Why then should they not be believed to claim פסולין עדות or קטנים when they are merely contradicting a חזקה?!

⁵ See footnote # 4.

מהמת נפשות הרי אלו נאמנים –

On account of death threats, then they are believed

OVERVIEW

עדי כת"י יוצא מקום אחר if states that (even) רב"ח are believed to claim נפשות מהמת (since it contradicts no אנוסים היינו).¹ Our explanation why they are not believed to claim תוספות (חווקות).² אנוסים מהמת נפשות מגו with a ofzman.

תוספות asks:

ואם תאמר וכי אמרו קטנים היינו או אנוסים מהמת ממון היינו³ –

And if you will say; and when they said we were (even) when they said that we were coerced by monetary threats; in either of these two cases –

לייהנו במו דאמרין אנוסים מהנת נפשות –

They should be believed with a, for they could have said that we were אנוסים מהמת נפשות. If they would have claimed they would be believed (according to this), then they should also be believed (even) if they claim אנוסים מהמת ממון היינו or קטנים היינו.

תוספות will now prove that (even) the claim of a is believed when there is a משוי נפשיהו רשעים (even though they are).

זהא ברישא דאייכא מגו⁴ נאמנים לומר אנוסים מהמת ממון⁴ –

For in the of the where there is a **רישא** משנה; they could have said it is not our **anosim** **היא מהמת ממון** כת"י. That proves that a is effective. question is that the תוספות should (also) be effective in the סיפה.

תוספות answers:

ויש לומר דאנוסים מהמת נפשות לא שכיח⁵ –

And one can say; the reason it is not an effective is because מגו is not common; people do not usually threaten to kill (עדים) for money. The

¹ See previous תוספות ד"ה לא.

² Seemingly question applies to פטולי עדות היינו as well.

³ See מהרש"א (האריך).

⁴ This applies to the claim of קטנים היינו as well. In the they are believed since they have a מגו; they should be believed in the סיפה as well, for they have the מגו of נפשות.

⁵ For a מגו to be effective, it is necessary to assume that the claimant could have just as easily used the claim. If however it is easier to use the actual claim than the מגו claim, it is not an effective מגו.

עדים would not feel comfortable claiming it; therefore it is not an effective **מגנו**.

offers another answer why the **מגנו** is ineffective:

ועוד דבר שני עדים לא אמרין מגנו כדרישת:⁶

And furthermore, we do not utilize a **מגנו** **concerning two** **I** **explained previously;** the only that is valid **מגנו** **דאיבע שתקו** is **בשני עדים** **מגנו** **דאיבע שתקו** **a** **בשני עדים** **מגנו** **דאיבע שתקו** **Every other** **מגנו** **is ineffective by two.** **עדים**

SUMMARY

כת"י יוצא are not accepted (if **אנוסים** מהמת ממון or **קטנים** הינו even with the of **מגנו** **נפשות** **מגנו**, either because the **מקום אחר** or because there is no **מגנו** **בי תרי** (except for a **שכיח**). **מגנו** **דאיבע שתקו** **a** **בשני עדים** **מגנו** **דאיבע שתקו**

THINKING IT OVER

כהב יdem יוצא מקום תוספות that (since it is therefore) it is a case of **מגנו** **במקום עדים** (as answered previously **בד"ה** **אין**)?⁸

כהב יdem יוצא מקום תוספות that (since it is therefore) it is a case of **חזר וmagic** (as answered previously **בד"ה** **אין**)?⁹

פרוע of **מגנו** **tosfos** **asked** **previously** **tosfos** **בד"ה אין**?¹⁰

⁶ **תוספות ד"ה אין**.

⁷ According to this answer, the **מגנו** in the **רישא** is not that they could have claimed it is not our, but rather they did not have to appear at all to confirm their signatures.

⁸ See **מהר"מ שי"ג**.

⁹ See [TIE] **תוס' ד"ה אין** (on this footnote # 2).

¹⁰ See **ק"ט טש**.

ואין אדם משים עצמו רשות –

And a person cannot commit himself as being wicked.

OVERVIEW

עדים if the taught that (even in a case where רבי בר חמאת if the claim that they are not believed to be כה"י הוו אובל אנוסים היינו מחמת ממון פולש. The reason that we do not accept their testimony that they were אנוסים היינו because it is forbidden to sign on a שטר on account of an אונס ממון. A person is not believed to testify anything that will make him a רשות. The fact that a person is considered a relative to himself prevents us from accepting any testimony affecting his status (except for an admission of owing money). We cannot therefore accept the testimony that they were אנוסים היינו מחמת ממון. If however they claim אנוסים היינו מחמת נפשות, where they are not testifying in regards to their status (there is no עבירה if one signed a שטר), they are believed to be הפה שאסר (for there is a פולש).

The statement of אנוסים היינו מחמת ממון is (seemingly) composed of two parts; first, that they were forced to sign the שטר (meaning that they did not see any loan taking place, and therefore their signatures are meaningless [this alone can be an acceptable testimony (if it was מחמת נפשות)]), and second, that the coercion was monetary in nature [this is not an acceptable testimony for א"א מע"ד].

There are other cases where an עד testifies in a manner that is seemingly (partially) unacceptable (similar to our case), however we divide this (unacceptable) testimony into two, and accept only the valid part, and reinterpret the invalid part to allow the testimony. The resultant testimony is then accepted. This is known as פלגין דיבורה. We divide the testimony. Seemingly in our situation the idea of פלגין דיבורה can (also) be applied. However it is not. will differentiate our case from those cases where we do say פלגין דיבורה.

תוספות asks:

ואם תאמר והא קסביר רבא פלгинן דיבורה בפרק קמא סנהדרין (דף ט, ב ושם) –

And if you will say; but maintains in the first of that we divide his statement. This was said by רבא –

גבוי פלוני רבוני לרצוני –

Regarding the cases where one testified ‘**that person sodomized me with my consent**’; the law is that he can team up with another עד and have this perpetrator put to death for sodomy. ¹ We split his statement. We accept his testimony that sodomy was performed by the alleged perpetrator but not with the accuser.² We cannot accept his testimony that he preformed sodomy willingly, for אין אדם משים עצמו רשות. A similar ruling applies when he testifies -

ופלוני בא על אשתי –

Or ‘that person came upon my wife’. The ruling is that together with another supporting עד, the accused will be killed for adultery איסור אשת איש; however the wife of the accuser will not be killed even if he testified that she consented. The reason is that he is a relative to his wife and a relative cannot testify. There too, we split his testimony. We accept his testimony concerning the adulterer, that the man committed adultery, but not concerning his wife. This is called פלגיון דיבורא. We accept that part of the testimony which is acceptable. תוספות continues with the question:

אם כן הכא נהימנו דאנוסים היו אבל לא מחתמת ממון אלא מחתמת נפשות –

If this is so that maintains רבא, then here too let us believe them that they were coerced to sign the שטר (which is an acceptable testimony), however it was not for monetary reasons as they testified (which is an unacceptable testimony since they are but rather on account of saving their lives (which is an acceptable testimony).

We cannot argue that our גמרא does not subscribe to ³ – פלגיון דיבורא –

далיבא דרבא קיימה –

For we are following the view of רבא! He is the one who maintains פלגיון דיבורא which is an unacceptable testimony, for he is asking why by nevertheless we accept (and we reinterpret nevertheless we accept, nevertheless by saying nevertheless לרצוני). The same should be here where they testify לפלוני (which is an unacceptable testimony, for they are by saying לפלוני to mean לרצוני). Let us also accept only the פלגיון דיבורא, and reinterpret פלגיון דיבורא to mean as we did by פסול. The would then be שטר.

תווסף answers:

ויש לומר כיון דקיים שטרות מדרבנן לא פלגיון דיבורא כדי לפסול את השטר ⁵ –

¹ If the accuser testifies that he was coerced into sodomy then all agree that he is believed. There is no need for פלגיון דיבורא. [A victim can be an עד.]

² See there ג"ה ואין תוספות.

³ See ‘Thinking it over’ # 1.

⁴ challenged the initial understanding of רבא; presumably agrees with the conclusive understanding of אין כת"י יוצא ממק"א is אנוסים הינו מחתמת ממון that even if ב"ה.

⁵ אנוסים מחתמת נפשות רישא שטר in the even if they said עדים מדורייתא because since there is no need for מדרבנן קיימים, there is no מיגו (it is as if א"א). It is only who require

And one can say since the necessity to authenticate documents is a rabbinic enactment; we assume that עדים החתוםין על השטר נעשה כמי שנחקקה עדותן we assume that מן התורה we do מקומות מן התורה שטר קיום בבי"ד is required. Therefore, since this we do not divide their statement in order to invalidate the שטר.⁶ The testimony of these העדים, as given, is unacceptable since א"א מע"ר. The מקומות מן התורה שטר will not use the extraordinary measure of פליגין דיבורא to invalidate this קיום.

תוספות offers another answer:

ועוד דין לנו לומר עצמנו דאנוסים היו מלחמת נפשות –

פלוני רבענוי案 our case of **הינו** is different than **for we cannot claim on our own that they were forced under a death threat –**

דואגנס מלחמת נפשות לא שכיח בדרישית⁷

For it is uncommon to coerce witnesses to sign a loan document with a death threat, as I previously explained -

אבל התם שכח שבא על אשת איש אחרת כמו שבא על אשתו או שרבעו⁸ אדם אחר – However, there it is just as common that the alleged perpetrator came upon another man's wife just as he came upon his wife, or that he sodomized another person not the accuser. Tosfot answer is that we can say only when the reinterpreted version is as likely as the original (as in סנהדרין מס' 3). If however the reinterpreted version is highly unlikely (as in our פליגינו דיבורא) we do not say (גמרא).

⁹ וכן בהרגתיו בסוף פרק ב' *דיבימות* (ז' כה, ב' ושם) יכול להיות דודם אחר הרגו -

פרק ה And similarly by the case of ‘I killed him’ in the end of the second מסקנה; for it is just as possible that another person (not the עז) killed him. It is just as possible, therefore we say, שכיה פלאגין דיבורא.

תוספות offers yet another solution:

אי גמי שאני הכא דמחמת ממון או מחמת נפשות הוי פירושא דאנוסים היינו –

If you wish you may also say that here by אָנוֹסִים הַיְנּוּ it is different than there

הפה שאסר מהמת נפשות (because of the **הפה**) however the will not be effective if we require the additional **פלגיןן** of **היקיוש** as well.

⁶ This answer may be more readily understood if we assume that הרי אלו נאמנים means merely that the שטר is not destroyed, see תוד"ה footnote # 1]. The fact did not institute a פ"ד since even if they are believed it will merely be a שטר without קיום, which is סוכ"ד אהות צ"ב, וצ"ע. See כשר מה"ת.

⁷ See previous תוספות ד"ה מהמת (by footnote # 5).

⁸ The ר"ש is not that it was לאותני (instead of פלגיינן), but rather that he was another person; not the עד. See footnote # 10.

⁹ The נגמרא there infers from the משנה that if a person claims ‘I killed him’, the wife of the alleged victim is permitted to remarry. In that case there is also the issue of ר' א מע"א and nevertheless we permit her to marry only on the basis of דיבורה פלגין

by their statement of ‘**on account of money**’ or ‘**on account of a death threat**'; these phrases **are the explanation of ‘we were forced’**. It is not a separate statement; it is a necessary qualifier to explain how they were coerced –

היכך לא פלגין דיבורא –

Therefore we cannot divide their statement; for there is only one statement –
אבל לרצונו¹⁰ או בא על אשתו הוי דיבור בפני עצמו¹¹ –

However, the addendum of ‘**willfully**’ (which makes him a by, פלוני רב униי (רשות or ‘**came upon his wife**’ by, פלוני בא על אשתו, these phrases **are considered a separate statement** not intrinsically tied with the initial statements. Therefore (only) in those situations (do) we say פלגין דיבורא.

offers a final distinction between the cases:

אי נמי¹² הכא עיקר עדות הוא במה שאומרים אונסים היינו –

If you wish you may also say that **here the main testimony consists in their saying that – אונסים היינו –**

היאנו שבאו לומר שלא ראו המלאה –

Which means, that they came to testify that they did not see the loan take place –

אם כן מיד עושים עצם רשיים כיון שחתמו אם לא יעשו פירוש לדבריהם –

If this is so that they are testifying that we signed a document illegally **they immediately commit themselves as being, רשיים, since they signed on a document without knowing whether it is true, unless they interpret their actions** (that they signed it because they were – (אונסים מהמת נפשות

היכך לא שייך הכא פלגין דיבורא –

Therefore the concept of פלגין דיבורא dos not apply here, since in the main thrust of their testimony they become – **רשיים**

אבל היה דהרגתיו¹³ עיקר עדות הוא לומר שנרג לחשיא את אשתו –

However, by that case of the main thrust of the testimony is to testify that the husband was killed (not who killed him), in order to enable his wife to remarry –

וכן פלוני רביעו או בא על אשתו עיקר עדות להרוג פלוני –

And similarly in the cases of בא על אשתו or פלוני רביעו

¹⁰ According to the **גירסאות** of the **רש"ש** (see footnote # 8) should not have said ‘**לרצונו**’, but rather ‘**ש'**.

¹¹ The claim of requires a qualifier intrinsically. How did the take place? We are not an פלגין אונס. The claim of does not require an intrinsic qualifier. The act of or בעה with an א"ג, is sufficient grounds for מיתה. The qualifier is merely completing a statement.

¹² See ‘Thinking it over’ # 2.

¹³ asks first from the 'הרגתיו' for that seems most similar. He begins my saying ‘I killed him’.

testimony **is to kill him**; in the main thrust there is no – ממשים עצמו רשות –
ה↖ן פלгинן דיבורה¹⁴ **ולגבי להשים עצמו רשות או לגבי אשתו לא יהא נאמן:**

Therefore we divide his testimony; concerning making himself a רשות
 (through saying הרגתיו or רבעני לרצוני) **or concerning his wife** (that she was an adulteress) **he will not be believed** פלгинן דיבורה and we are נאמן.

SUMMARY

פלгинן דיבורה offers four criteria for accepting or rejecting תוספות.

- a) If it does not go against a **דאורייתא**, but not if it is against a **דאורייתא**.
- b) If the **שכיה** is **פלгинן**, not if it is not **שכיה**.
- c) If the unacceptable statement is not integral, but not if it is integral
- d) If the thrust is acceptable, but not if it is unacceptable.

THINKING IT OVER

1. asks that here too there should be a **פלгинן דיבורה** ¹⁵. Seemingly, there is תוספות. **פלгинן דיבורה** by **אנוסים** **הינו** but we do not believe them that **הו** **זה** **כה"י** **הו** **הינו** **פלгинן דיבורה** **אנוסים** **הינו!**¹⁶

2. What is the difference between תוספות answer of **א"נ** **שאני הכא** **דמחמת ממון וכוי'** תוספות **א"נ** **הכא עיקר עדות וכוי'** ¹⁷? final answer **הו פירושא וכוי'**¹⁸

¹⁴ We accept his main testimony to kill the perpetrator or allow the woman to remarry; and in order that his testimony not be discredited since he also stated certain aspects which made him a **רשע** we are **פלгинן דיבורה**.

¹⁵ See footnote # 3.

¹⁶ See סוכ"ד **אות צא**.

¹⁷ See footnote # 12.

¹⁸ **דרכי זוד**.

מלוה גופיה מידק דיק –

The lender himself is particularly meticulous.

OVERVIEW

אין כת"י יוצא even if, פסולין עדים הינו claimed that there were many reasons, they are not believed. The reason is because there is a reason that a person is careful to have only one sign on the paper. It seems implicit from this reasoning that it is presumed that there was a loan, and therefore, we must conclude (according to ר"מ) that the loan was signed by ¹עדים כשרים. The question arises, what do the Rabbanim presume; do they agree with that there was a loan, however the reason of מידק דיק cannot overpower the fact. Or do the Rabbanim maintain that there is no assumption of a loan, and therefore no reason of מידק דיק.

ולרבנן אפילו מלוה על פה לא הו² -

And according to the Rabbanim, who argue on ר"מ and maintain that they are believed to say that it is not even considered as an undocumented loan. The debtor owes no money at all.

חוספה anticipates a difficulty:

The עדים are presently testifying that there was a loan; however they were unqualified then to sign as witnesses. Now however they are not פסולין עדות דין. Seemingly we should believe them now that there was a loan. Granted that there is no documented loan, for when they signed on the paper they were פסולין. Nevertheless now they are not and are testifying that there was a loan. It should be considered as a loan. If the debtor claims there was no such loan he should be obligated to pay.³ This explains why it is not considered even as a loan - מלוה ע"פ חוספה.

דבעין שיהא תחולתו וסופה בclasspathן כדאמרין ביש נוחליין (נבא בתרא קכח ואשם):

For, concerning testimony, it is required that the witness be both in the beginning when they observe the testimony and in the end, when they

¹ If there was no loan then the assumption of מידק דיק is meaningless. A reason is only when he actually lent money. If the entire story is bogus, then there is no reason. See רש"י ד"ה בשלא מא (where it [also] appears that he disagrees with the Rabbanim and maintains that according to the Tosa' it is a reason) מלוה ע"פ.

² There is also therefore no reason, since there is no established loan. See (however) חוספה יט, א"ד ה'ז.

³ If the debtor claims that he paid it then he would be פטור, since it is only a loan. However if he claims עדם, he is tacitly admitting that he certainly did not pay. Therefore he will have to pay since the witness testifies that he borrowed money.

תחלתו בכשרותה היה, states in **פרק י"ש נוחלי נגמר**. In our situation there is no loan, for at the time of the loan, these were **עדים פסולים**. Therefore, even though they are **כשרים** now, we cannot accept their testimony.

SUMMARY

The **חכמים** maintain that if the **עדים** claim **פსולי עדות הינו**, there is no loan at all, not even a **מלוה ע"פ**, since it was not **כשרה**.

THINKING IT OVER

Why indeed are the **עדים** not believed that there was a loan with the **מגו פסולים** that they could have not said that they are?⁴

⁴ See **ש"ש ר'ג**.

קטנים נמי כדרכי שמעון בן לוי –

They can also not claim to be **minors**, as **רשב"ל** stated

OVERVIEW

The **גמרא** states that (according to ר"מ) עדים are not believed to claim because the **מלוה** is מילוי דיק. They are also not believed to claim that there is a **חזקת** who maintains that there is a **חזקת** that only adults sign on, not **קטנים**.¹ It seems that the reason for this is different than Our **מלוה** מילוי דיק.² Our will discuss if this is indeed so.

הוּא מצֵּי לְמַיְמָר וְקָטָנִים נָמִי מִשּׁוּם דָּמָלוֹה גּוֹפִיה מִילּוֹה דִּיק – anticipates a question:

The **גמרא** could have explained that the reason they cannot claim that they were **קטנים** is also because the **מלוה** himself is very meticulous to sign only proper witnesses. He will not permit minors to sign, just as he will not permit to sign. **קטנים** is asking that it was not necessary to give a different answer by **גמרא**. The **גמרא** could have given the same explanation by **קטנים** as it gave by **גמרא**.

הוּא מצֵּי לְמַיְמָר וְקָטָנִים נָמִי מִשּׁוּם דָּמָלוֹה גּוֹפִיה מִילּוֹה דִּיק – replies:

אֲלֹא דְנִיחָא לֵיה לְמִינְקָט בְּכָל חַד טֻמָּא אַחֲרֵינוּ³ –

However it was preferable for the **גמרא** to point out in each case a different reason why they are not believed.

הוּא מצֵּי לְמַיְמָר וְקָטָנִים נָמִי מִשּׁוּם דָּמָלוֹה גּוֹפִיה מִילּוֹה דִּיק – offers another answer:

אֵי נָמִי טֻמָּא דְרִישׁ לְקַיֵּשׁ גּוֹפָא נָמִי מִשּׁוּם דָּמָלוֹה מִילּוֹה דִּיק⁴ –

If you wish we can also answer, the reason for the **ר"ל** **חזקת** itself, is also because the **מלוה** is very careful. There are no two reasons; it is the same reason.

¹ ר"ל actually states that the **עדים** do not sign on a **שטר**, unless the parties (i.e. **מלוה** are). We may also extend this logic that the **עדים** will not sign unless they are **גדולים**. See (however) footnote # 2. See **ר"ק** who questions this logic.

² Perhaps the **חזקת** concerning **קטנים** is based on the reality that children are not readily available in situations where **שטרות** are written. Usually only adults are present. See **ר"י** **משכנות הרועים** אות **ר"ל**.

³ If the reason is the same in all cases, why mention all of the cases; one would be sufficient. This indicates that the **תנא** is teaching us that there are various different reasons for the different cases. It is possible that sometimes when one reason (**מלוה מילוי דיק**) is not applicable (if for instance they signed in the presence of the **מלוה** only, and the **מלוה** was not there); then in that case we can employ the other reason (of **רשב"ל**).

⁴ According to this answer we will not accept the logic and arguments of footnotes # 2&3. [The reason the **גמרא** finds it necessary to cite **ר"ל** concerning **קטנים**, is perhaps it is more difficult to distinguish certain (mature) **קטנים** from **גדולים**, than to know who the **מלוה** are. The **גמרא** therefore cites **ר"ל** as a support.]

The sign on a **קטנים** no and פסולין עדים **מלוה** is; therefore no sign on a **קטנים** no and פסולין עדים **מלוה**.

It would seem that according to this view ר"ל does not mean that only do not sign on a **שטר**, but rather that פסולין עדים do not sign on a **שטר**. The question arises –

ואה דלא מיתי דברי שמעון בן לקיש אפסולי עדות -

פסולי עדות concerning רשב"ל גمرا does not cite as well? Instead of making an anonymous assumption that, **מלוה גופיה מידק דיק** it would have been better to credit this assumption to an authority like **רשב"ל**.

Tosfos responds:

משום דברי שמעון בן לקיש לא הזכיר אלא קטנים בדבריו:⁵

Because did not mention ר"ל in his statement, but rather he only mentioned **קטנים in his statement**. Therefore the could not have cited that ר"ל maintains that פסולין עדות do not sign on a **שטר**. Even though ר"ל definitely agrees to it.

SUMMARY

The reason of **ר"ל** can either be based on the reason of **מלוה מידק דיק**, or it can be independently valid.

THINKING IT OVER

Is there a practical difference between the two interpretations of **תוספות**?⁶

⁵ רשב"ל made his statement in conjunction with a case concerning **קטנים**.

⁶ See footnote # 3.

חזקה אין قول - There is a presumption that witnesses do not, etc.

OVERVIEW

ר"מ maintains that the קטנים הינו עדים are not believed to claim (even though they have a פה שאסר), since there is a החזקה against their claim. The who argue and believe the עדים, seemingly maintain that the מגו overpowers the החזקה. Our finds it difficult to accept that this is the interpretation of their מהלוקה.

הכא משמע דלא אמרין מגו במקום חזקה לרבען אמרין -

It seems from here that (according to ר"מ) we **do not apply** the power of a החזקה, when the claim **contradicts a החזקה and according** to the we **do apply** a מגו even if the claim contradicts a החזקה. The עדים are claiming that they were קטנים when they signed the שטר. They have a מגו (really a פה שאסר), that they did not have to come and testify that כת"י הוא זה. Nevertheless ר"מ maintains that we do not believe them (even though they have a מגו), on account of this החזקה, that אין העדים וכו' אא"כ נעשה החזקה, which contradicts their claim. This proves that the power of החזקה is stronger than a מגו (according to ג"ג). Conversely according to the who maintain that we believe the עדים in spite of the החזקה, this proves that the מגו is more effective than the החזקה.¹

וחrif עיון דביעה היא בפרק קמא דבבא בתרא (ז"ח, ב' ושם) ולא אפשרית א"ב

And this requires contemplation for this is a query in the first of פרק ב' ב"ב; whether a מגו is more effective than an opposing החזקה or not **and this was not resolved.** The query there was –

גביה תבע אחר זמנו ואמר ליה פרעתייך תוך זמני:

Regarding when the claimed payment from the לוה after the due date and the replied that I paid you already before the due date. In this case there is a החזקה that a person does not pay his debts before they are due. This contradicts the claim of the that לוה has a מגו; he could have claimed that I paid you after the due date; in which case he would have been believed. It is a מגו במקום החזקה. The question is² how we can reconcile our גمرا that the issue is resolved (albeit in a מהלוקה) and the ב' ב' in גمرا, which maintain that the issue is not resolvable. does not answer this question.

¹ See, however, previous תוספות (יח, ב) ד"ה מלוה footnote # 2.

² See ‘Thinking it over’.

SUMMARY

מגו במקום חזקה seems that ר"מ ורבנן argue whether we say גمرا. However in ב"ב it is a בעיא דלא אפשריטה ב"ב.

THINKING IT OVER

Is question on the topic why does the there ask whether we say גمرا or not, when we see here that it is a מחלוקת? Or is the question on our here; how can our assume that ר"מ maintains that we cannot resolve this issue?³

³ See ח"ב מ"ת אות רלג.

דאמר מר אין לך דבר כולי – For the master said, there is nothing, etc.

OVERVIEW

רבא asked that we cannot fault the **עדים** for signing falsely under duress (of the loss of life) for states that only in three instances must one forfeit his life to avoid transgressing an **עבירה**. It would seem that רבא agrees to this ruling. Tosfos points out that it is not necessarily so¹.

פירוש² אפילו למאן דמחמיר לא מחמיר אלא בהנץ –

The explanation in citing this ruling is to be understood as follows; **even according to the more stringent** view in these matters, **he is not stringent** concerning all commandments (that one must give up his life so as not to transgress any commandment), **but rather only in these** commandments of ע"ז ג"ע וchap"ד מוסר נפש is one obligated to be מושך.

רבא explains why we must interpret the citation in this manner, and not simply that is citing a ruling (**להלכה**):

דרבא גופיה קסביר דאפיקו בהני אינו חייב למסור עצמו במצוועא –

for himself maintains that even by these three, one is not obligated to give up his life if it is done privately as states it –

במסכת עבודה זרה בפרק רבוי ישמעאל (דף נ, ואש"ט) ואין חילוק בין הנץ לשאר –

in **פרק רבוי**, **and according to there is no difference between these three to the rest** of the matter; in private there is never an obligation for מצוחות נפש –

וכפרהסיא⁴ ביכולתו יירג ולא יעבור :

And in public, by all one should rather allow himself **to be killed and not transgress** any מצוחות. Therefore when רבא is citing this statement it cannot be; but rather he is saying even the strictest opinion does not require for signing falsely on a שטר.

¹ See, however, Tosfos ע"ז נד, א ד"ה הא.

² The term 'פירוש' (or 'פירוש') denotes a departing from the simple understanding of the text; namely that רבא agrees to this ruling.

³ From the simple reading of it appears that according to רבא the rule is (even) by עבר ואל יירג. However, elsewhere we find that rules regarding דמים (פסחים כ, ב) give the reason of נאי ב. פרהסיא, which would seem to apply to a case of בזנעה as well as to a case of דם דין סמך טפי.

⁴ he is explaining that we cannot say that when states this רבא that Tosfos is discussing a case of פרהסיא for then the ruling is that by all the matter; not only these three. See 'Thinking it over'.

SUMMARY

There is a dispute whether the three עבירות are singled out for even ירג ואל עבר (ר"י בcznua), or whether all עבירות are the same; there is no only if it is רבא (בפרהסיא).

THINKING IT OVER

If maintains that rule is by all עבירות, the rule is רבא, בפרהסיא then what is his question; perhaps they were forced to sign the שטר בפרהסיא?⁵⁶

⁵ See footnote # 4.

⁶ See מהרש"א.

טעמא דברי מאיר כדרכו הונא כולי – ר"מ as etc.

OVERVIEW

modah bishter shchtabo ain zrich lkiyim loha. If the admits that the was written with his consent (he borrowed the money from the shter), however he already repaid the loan; he is not believed. The can collect the loan from the without authenticating the shter. Even though, if the would have claimed modah, the would be required to be the modah, nevertheless (according to this) is not effective and the shter must pay if he claims modah.¹ Others argue with and maintain that modah is modah bishter shchtabo zrich lkiyim loha, and unless the modah is believed to claim with the of modah.²

Our maintains that the reason are not believed to claim modah (that) modah rab hona agrees with modah annosim hinyo vco' (ר"מ). It is not clear how this explains the reason of modah. There is a dispute between resh"y and gmera how to explain this.

פירש בקונטרס² דמיורי פלוגתייה בשמודה לוה שכתבו³

explained that the answer why modah maintains that the are not believed is because their argument (between modah vrobenen) is in a case where the admits that he wrote the – shter

והיינו טעמא דברי מאיר דאי נאמנים דהואיל ולה קיימן⁴ לא צרכיתו לעדים – And that is the reason of that the are not believed to claim annosim and nullify the shter, but rather the shter is valid and the can collect with it, is because since the authenticated the shter, by admitting that it was written with his consent, there is no further need for the to authenticate the shter, for the already authenticated it by admitting that it was written with his consent –

ולאו אפומיניהו מקיים שטרא

Therefore the shter is not authenticated by their testimony; but rather by the

¹ See following Tosfos for reasons why the modah is not believed with the of modah.

² בד"ה אין.

³ The is claiming that the loan is paid up, and therefore the shter is void. The are (also) saying the shter is void; since we were there never was a valid shter. The question here is whether the modah is in possession of a valid shter, which, in turn, will deny the modah a claim of modah. See ‘Thinking it over’ # 1.

⁴ modah bishter shchtabo ain zrich lkiyim loha; the admission of the modah makes the modah.

הפה שאסר no קיומ השטר לוה. Once the עדים are not necessary for there is no admission of the shtr. They are now challenging an independently valid shtr. Their testimony cannot be accepted.

ורבן סברי צריך לקיים⁵ -

And the maintain that it is necessary to authenticate רבן that the לה admits to have written; otherwise the can still claim פרעתי, and be exempt from paying. Therefore, this still needs the authentication of the shtr. Without their קיומ, the לה cannot collect. The הפה שאסר are therefore believed with a מלה; for they could have withheld their entire testimony, and the מלה would not be able to collect.⁶

תוספות has a difficulty with this interpretation:

וקשה לרביינו יצחקadam כו' ליפלו בלא עדים בלהoga גופיה הוαιיל וטעמייהו תלוי בלה -
And the has a difficulty accepting this interpretation for if this were so; that the לה is admitting to the loan and the argument between is ר"מ ורבנן. Whether the admission of the לה is considered a קיומ, let argue without claiming that הינו כו', but rather they should argue by the לה himself. Their argument should be what the דין is if the claims against a which is not מקוימים, since their reasoning whether to believe or not to believe (the עדים is dependent on the לה; whether his admission creates a קיומ or not. Nothing is added when we insert in this dispute. According to ר"מ we do not believe the עדים because the admission of the לה is sufficient קיומ.⁷ According to the רבן we believe the עדים because the admission of the לה is insufficient. It all depends on the מודה בשטר שכתבו of the לה. The עדים are superfluous!

תוספות has an additional question on רש"י:

ועוד דברך מי שמית (בבא בתרא זז קינד, ושות) משמע שלא פליגי בלה -
do ר"מ ורבנן פרק מי שמית in גمرا – (רש"י indicates or not) whether לקיים or not (as when the לה is מודה שכתבו, מודה whether שכתבו).
דקאמר רבינו יוחנן שאני אומר מודה בשטר שכתבו אין צריך לקיים דברי הכל היא -
For ר"מ said, ‘that I say that the ruling of all agree to it’ [we do not consider the מזוייף of the לה to claim to be sufficient to require קיומ].

⁵ מהר"מ שי"ף רש"י does not state this. This may be an inference of Tosfos in the understanding of Rash"i. See Rash"i who maintains that Rash"i can follow the opinion of the ב"ב there in Rash"i. The Rash"i maintains that the agree to that ר"מ that when only the claims פרעתי are מודה בשטר שכתבו א"צ לקיים; however that is when only the claims ר"מ agree to that ר"מ. In a case (like our case) where the עדים support the contention of the לה that the shtr is invalid, the רבן maintain that the עדים (together with the לה) can be פולש. According to the מהר"מ שי"ף all Tosfos questions on רש"י are nonexistent.

⁶ See 'Thinking it over' # 1.

⁷ See 'Thinking it over' # 2.

ופריך והא מפלג פלגי אין נאמנים לפוסלו -

And challenges this statement of **ר"י** **but they do argue** concerning **ר"מ** ברייתא that maintains **they are not believed to invalidate** the **הכמים** [the שטר is insufficient] and the maintain that they are believed to invalidate the **שטר** [the שטר is sufficient]. The **שטר** in this question assumes that just as **ר"מ ורבנן** argue whether the **הפה** of the **עדים** is sufficient to nullify the **שטר**, they also argue whether the **מגו** of the **להה** is sufficient to nullify the **שטר** with the claim of **ר' יוחנן**. To which responded and –

אמר ליה אי אילימי עדים לאירוע שטרא איהו כל כמיניה -

שטר **said to if witnesses are sufficiently powerful to nullify a** **שטר** **לייש לקיש** (according to the **רבנן** is **he** (the **להה** also to be believed and nullify the **שטר** **ר"י** maintains that when a **claims** **להה** is not sufficient that we should believe him. However when two **claim** **עדים** is sufficient to believe the **עדים** and nullify the **שטר** (according to the **רבנן**). We derive from this that (according to **ר"י** both **ר"מ** and the **רבנן** maintain that **ר"מ** maintains that the reason why the **ナאמנים** **לפוסלו** are **עדים**).

רש"י has one final question on :

ועוד דהוה לי למימר בדבר הונא קמיפלגי -

And furthermore the **should have said** that **גمرا** **are arguing about the ruling of** **ר"ה** **ר"מ** **ר"ה** agrees with **רבנן** and the **disagree**. Why does the **say that** **דר"מ** **בדרכם** **הונא** **גمرا**?⁸

now offer his interpretation:

ונראה לרביינו תם ולרבינו יצחק דהכי פירושו טעמא דברי מאיר בדבר הונא -

And the and the say that this is the interpretation of the answer; **the reason** that maintains that **ר"מ** **ר"ה** **is like** **ר"מ** –

דבמו שאומר רב הונא שלא אמרין מגו לפסול השטר בלהה -

That just as maintains that we do not accept a for the to **להה** **מגו** to **invalidate the** **שטר** –

הכי נמי אומר רבבי מאיר בעדים דאף על גב דאלימי לא פסל שטרי במגו⁹ -

⁸ The expression **בדרכם** implies that it is similar to (but not exactly the same as) **ר' הונא** (the reason of **ר"מ** is precisely **ר"ה**, not (only) similar to **ר"ה**).

⁹ According to we are discussing a case where the **שטר** is not **להה** that he wrote the **שטר** [the **שטר** is not claiming **להה**]. For if the **להה** is **מודה** and we are assuming that **ר' רבנן** **א"צ** **לקיימו** **להה**, the would not maintain that the **עדים** are believed to say **להה**, **אנוסים** **היינו**, after the **שטר** was **מקיים** **להה**. On the other hand we cannot assume that the **להה** is claiming **מוזיף**. For if the **להה** is claiming **מוזיף** then the **שטר** is worthless (without **קיום** **מדרבנן**). Why would maintain that **ר"מ** **ר' יוחנן**, since the **עדים** have a valid **הפה** **שאסר** **א"ן נאמנים**?! See **סוכ"ד** **אות ג** **הפה** **שאסר** **א"ן נאמנים**?! See **ר' יוחנן**, who

says the same thing also applies to עדים ר"מ who wish to invalidate the שטר; they are not believed; even though עדים are more powerful than a לוה, nevertheless they cannot invalidate a שטר with the power of a מגו, just like the cannot. The רבנן, however maintain (as ב"ב explained in ב) that we cannot compare to a לוה. The power of a לוה is limited; therefore his cannot invalidate the שטר. However, עדים are more powerful and they can invalidate a שטר if there is a מגו.

SUMMARY

ר"מ maintains that the dispute between ר"מ ורבנן is in a case where the לוה claims עדים are not believed to claim according to פרעתיה. The רבנן maintains that by saying שטר פרעתיה is מקוים. The רבנן maintain that he maintains that קיום עדים retain the פרעתיה is not a הפה שאסר.

ר' יוחנן asks; a) should argue by the without לוה b) עדים תוספות both agree that ר"מ ורבנן רבנן קמיפלגי מבשאצ"ל. The רבנן maintains that it is a case of ר"מ אין הלוה מודה, and maintains that neither the עדים nor לוה can invalidate a שטר with a מגו, while the רבנן maintain that עדים can invalidate a שטר with a מגו.

THINKING IT OVER

1. According to ר"ש"י, the admits that the שטר was written with his consent (he claims רבנן פרעתיה). How can the maintain that the עדים are believed to testify לוה ¹⁰, אנוסים היינו when the contradicts them and admits that it was written with his consent?!¹¹

2. עדים ר"מ ורבנן do argue about why ר"ש"י asks that according to ר"ש"י why they argue about עדים Perhaps they argue about עדים to let us know that, according to ר"מ, even if the עדים wish to invalidate the שטר, they are also not believed. Alternatively, they argue by עדים to let us know that even though the admits that it was written with his consent (it was not a situation of אנוסים) and the also admit that עדים זה כה"י הוא nevertheless the maintain that they can invalidate the שטר by saying אנוסים היינו?

explains that the לוה is not present, or that he (also) claims that he (also) claims that אנוסים היינו. See 'Thinking it over' # 2 in the following תוספתה ד"ה מודה.

¹⁰ See footnote # 6.

¹¹ See שיטתה מקובצת.

¹² See footnote # 7.

מודה בשטר שכחבו אין צורך לקיימו - שטר, it is not necessary to authenticate it

OVERVIEW

אף that maintains that if the one who wrote the **שטר** admits that the **שטר** was written with his consent, he is not believed to make any claims against the **שטר**. The question is why not. Seemingly the one who wrote the **שטר** has a reason to do so. Our sages propose three explanations.

תוספות asks:

ואם תאמרמאי טעמא לא מהימן במצוין כדי עמי אמר מזוייף -

And if you will say; what is the reason that he is not believed that he paid the loan, since he has a reason that he could have claimed that the **שטר was forged?** If the one who wrote the **שטר** would have claimed he would not have to pay, unless the **שטר** is forged. The same ruling should apply when he claims (or other claims); he should not be required to pay unless the **שטר** is forged.

תוספות answers:

יש לומר דשמעא ראה לו אמר מזוייף פון יכחישו ויליכא מינו¹ -

And one can say; that perhaps the one who is fearful to claim, lest they will contradict him, and therefore there is no reason. If the one who wrote the **שטר** claims he paid the loan, no one can contradict him.² However, if he claims that the **שטר** is forged, it is possible³ that the one who wrote the **שטר** will be able to be the **שטר**, thus proving the one who wrote the **שטר** to be a liar. The one who wrote the **שטר** therefore prefers the lie of the one who wrote the **שטר** over the lie of the one who wrote the **שטר**. The idea of a reason is that if he were a liar he could have said the better lie. In this case the ‘better’ lie is the **שטר** (where he cannot be contradicted) as opposed to the lie of the one who wrote the **שטר** (where he can be contradicted). He does not want to claim he is forged, therefore there is no reason.

תוספות offers another explanation why **א"צ לקיימו**.

ופירש הקונטרס במקום אחר⁴ דעתם משום דבר תורה אין צורך קיים -

מודה בשטר שכחבו קונטרס explained elsewhere that the reason why there is no need for a reason by a law there is no need for a reason by a **שטר.** The reason for this is –

דעתם החתום על השטר נעשה כמו שנחקקה עדותן בבית דין⁵ -

¹ See ‘Thinking it over’ # 1.

² He will choose a time when he was alone with the one who wrote the **שטר**, and claim that he paid him then.

³ It should be borne in mind that the **שטר** is not a **שטר**, for the one who wrote the **שטר** is admitting that the **שטר** was written with his consent. There is a strong likelihood that the one who wrote the **שטר** will be able to be the **שטר**.

⁴ This may be referring to the **ב"ב** in Tosfos (in TIE footnote # 1). **ב"ב** frequently refers to the **ב"ב** in footnotes [see TIE footnote # 1].

That witnesses who are signed on a שטר, it is considered as if their testimony was already cross-examined and accepted in – ב"ד

ורבנן הוא דעתך והיו קיומם כי טועין מזויף הוא –

And it is (merely) a Rabbinic law that requires the molah to authenticate the signatures (but only) in a case where the claims that it is forged –

אבל בשאר טענות כגון פרוע הוא לא הרציכו קיומם וכן נראה לרביינו יצחק –

However concerning all other claims of the for instance, ‘it is paid up’ they did not require of the molah any קיומם ר"י agrees with this as well.

A שטר is considered makomim in regards to all claims of the molah (except for פרעתיה).⁶ When the claims are makomim the שטר is considered ineffective against a molah.

תוספות anticipates another possible solution, but rejects it:

אבל אין לפרש שלא מהימן במגוון לומר פרוע הוא –

However, we cannot explain that the reason why he is not believed to claim with a מגוון פרוע of מזויף is –

משום דאי פרעה שטרא בידיה מי בעי –⁷

Because, for if the indeed paid him, then what is the doing in the hands of the molah. The molah is in the possession of the שטר, which supports the claim of the molah that the loan was not paid. The מגוון is not sufficiently strong (according to this proposed answer) to support the claim of the פרעתיה, which is contradicted by the proof of the שטר בידיה מי בעי.

תוספות rejects this proposed explanation:

זהא כי טועין נמי אמנה⁸ הוא מסקיננו בסמוך אמלתיה דבר שלא מהימן –⁹

For even if the claims it was a שטר אמנה, the concludes shortly, concerning רב' statement that the molah is not believed; even if the שטר is not makomim and the molah therefore has a מגוון of אמנה –

והתם לא שייך האי טעמא:¹⁰

And there, this reason of שטר בידיה מי בעי is not applicable; the molah has the שטר because the molah entrusted him with it. It cannot be used to disprove the molah's claim (as in

⁵ The reason is that (מה"ה) no one is suspected of forging (or signing falsely on) a document.

⁶ See ‘Thinking it over # 2.

⁷ If the loan would have been paid the molah would have demanded that the שטר be returned to him.

⁸ A שטר אמנה is (as ר"י explains in a note which a prospective ‘entrusted’ (hence the term ‘אמנה’) to the prospective molah, that in case the molah will need to borrow money, the molah will already have a שטר in his possession.

⁹ The גמרא there states that the ruling of that molah is not believed to claim that it is a שטר אמנה is equivalent to (and based on) the opinion of רב הונא א"צ לקיימו ר"ב הגאון א"ז.

¹⁰ TosfosInEnglish.com rejection does not necessarily imply that שטר וכו' is not sufficient to negate a molah, it merely states that there must be an additional reason why there is no molah (to explain אמנה). See ‘Thinking it over’ # 3

the case of **פרעתיה**). This proves that the reason why or other claims of the are not valid is not on account of **שטרא בידיה כו'** but rather for the other reasons mentioned.

SUMMARY

We do not believe **פרעתיה** because either a) he would rather claim **מצויף** (which is non refutable) than **מצויף** (which is refutable) or b) a **שטר** is considered in regards to all claims [of the **לוּה**] (except **מצויף**; but not on account of c) that **שטרא בידיה מאוי בעי** is stronger than the **מצויף** (because that does not explain why **אמנה הוּא** is not believed).

THINKING IT OVER

פנ states that the **לוּה** is not believed since he is fearful **מצויף** because he is fearful. In the previous **תוספות ד"ה טעמא ר"מ**, it is stated that just as the **לוּה** is not believed with a **עדים**, so too the **עדים** are not believed with a **עדים**. However according to this explanation that the **לוּה** is not believed on account of **עדים יכחשו**, this reason seemingly does not apply to the **עדים**, for even if other **עדים** contradict them it will still be **תרי ותרי שטר** and the **שטר** will not be **מצויים**.¹²

2. The **ר"י** and the **קונטרס** maintain that (except where the **לוּה** claims **מצויף**) is required (even **קיום** no **מצויף**).¹³ The previous **תוספות ד"ה טעמא** presumes that we are discussing a case where **אין הלוה מודה**, which means that he is either not present or is claiming **אנוסים היו**; however he is not claiming **מצויף**.¹⁴ If he is not claiming **מצויף**, then the **שטר** is considered **מצויים**. How can we believe the **הפה שאסר וכו'** that **עדים** **אנוסים היו**?!

3. Those that maintain that we do believe **מצויף**, nevertheless maintain that **אמנה במצויף** is not believed, for a different reason.¹⁵ Why does **פרעתיה** argue that **שטרא בידיה וכו'** is not the reason by since it is not applicable by **אמנה וכו'**?¹⁶ It is possible that **פרעתיה** is not believed because of **שטרא בידיה וכו'** and **אמנה בידיה וכו'** is not believed for the different reason¹⁷

¹¹ See footnote # 1.

¹² See **tos' בית יעקב** on that.

¹³ See footnote # 6.

¹⁴ See there footnote # 9.

¹⁵ See **ר"ג** that **תוספות יט, ב** **ד"ה אמר ר"ג**.

¹⁶ See footnote # 10.

¹⁷ See **מהרש"א**. See footnote # 10.

If you agree with ר"מ, etc.

אי סבירא לך רבבי מאיר قولיך –

OVERVIEW

מודה בשטר שכתבו ר"ה that agrees with the ruling of ר"מ generally. It stated that ר"מ agrees with the ruling of ר"ה that everyone agrees with it. This ruling justifies the ruling of ר"מ that everyone agrees with it. Therefore, one would seem that ר"ה would also agree with that ruling.¹ Therefore, ר"ג asked ר"ה why are you citing this statement as if everyone agrees with it.² This is merely the opinion of ר"מ, and therefore you should clearly state that you support the view of ר"מ. Our discussion discusses and rejects a possible response from ר"ה.

תוספות asks:

ואם תאמר ודלא מושום הכי לא קאמער הלכה ברבי מאיר –

And if you will say; that perhaps the reason that did not state clearly that the halacha is according to ר"מ is –

משמעות פרק מי שמת (בבא בתרא קיד, ב, ושות) דמפיקך דברי מאיר לרבען –

because in there are those who invert the opinion of ר"מ to the opinion of the. That opinion maintains that the claim that רבנן maintains that the halacha according to ר"מ could not have been stated, for we would not know for certain whether he means the opinion of ר"מ or the opinion of ר"מ. That is why רבנן chose to state clearly that רבנן was chiding him that ר"ה should clearly say that he agrees with ר"מ.

תוספות answers:

ויש לומר דהוה מצוי למיימר דהhalacha כרבנן שמעון בן גמליאל –

– רשב"ג is like halacha that could have said that ר"ה –

דאית ליה בהדייא בפרק קמא דבבא מציעא (ז"ז, א) דמודה בשטר שכתבו און צרייך לקיימנו –

Who clearly maintains in the first of ב"מ פרק that if the admits that he wrote the, the shetr, halacha is not obligated to authenticate it³.

SUMMARY

When ר"ה said that halacha according to ר"מ he meant that could have mentioned a(ny) who clearly maintains that. רשב"ג; מבשאצ"ל namely.

¹ See following Tosfos, which will explain how there can be such an assumption.

² See רשב"ג ד"ה גנבא.

³ ר"ג maintains that the proper states is that גירסה ר"מ is concerned because there is a גירסה ר"ג that states ר"מ. אין נאמנים ר"מ, if ר"ג is concerned because there is a גירסה ר"ג, נאמנים ר"מ could have said ר"ג. See 'Thinking it over'.

THINKING IT OVER

Why did not ר"ג argue initially that ר"ה should say **הלה כרשב"ג!**?⁴

⁴ See ר"מ טש.

ר"מ הלכה like is**אימא הלכה כרבי מאיר –****OVERVIEW**

ר' מא is of the opinion that even if all agree to it, the halacha is not effective against a shtr. The explanation is that he maintains that the halacha follows the opinion of ר' ה, who maintains that even if all agree to it, the halacha is ineffective against a shtr.

In the previous Tosafot it was explained that we should not infer that the Rabbis disagree with the Rabbis. Rather they also can maintain that the Rabbis are different and more powerful than the Rabbis. When have a shtr against a shtr they are believed.

R' נ challenged R' מא for saying his rule of "א"צ לקיימו as if all agree to it. R' מא maintains that only R' מא agrees that the halacha is ineffective against a shtr. However the Rabbis are of the opinion that for a shtr is effective against the shtr.

This challenge of R' נ to R' מא seems to contradict that previous; which distinguishes between the halacha (whose is ineffective against a shtr) and the halacha (where a halacha is effective against a shtr). Our will resolve this difficulty.

Tosafot asks:

תימה דאפיקו כרבנן נמי מצי סבר ושאני עדים דאלימי לאורומי שטרא –

This is incredible; to assume that R' מא must agree with R' ה! For can even agree with the Rabbis that even if he maintains "א"צ לקיימו for the Rabbis, nevertheless, the Rabbis are different than the Rabbis. For the Rabbis are (more) powerful than the Rabbis and are capable of invalidating the shtr. The halacha is not believed with the Rabbis and is believed with the Rabbis. However the halacha is believed with the Rabbis.

זהבי אית ליה לרבי יוחנן –

For this indeed is the opinion of R' י; everyone maintains and nevertheless the Rabbis maintain that R' מא follows only the view of R' נ. The question is why does R' י insist that the ruling of R' מא follows only the view of R' נ, when clearly states that even the Rabbis maintain that R' מא follows only the view of R' נ.²

Tosafot answers:

¹ Tosafot ד"ה טעמא.

² This difficulty is eliminated according to the interpretation of R' ישעיה, who maintains that R' מא argues whether "א"צ לקיימו or not and there is no difference between the halacha and the Rabbis.

ויש לומר דבר נחמן אין נראה לו לחלק -

And one can say; that ר"ג does not see fit to differentiate between the **לוּהה שָׁאֵר** and the **עֲדִים**. According to if **ר"ג** are believed to be **פּוֹסֵל** (with a **שְׁטַר** ()), the **הַפָּה שָׁאֵר** is also believed to claim (with a **מְגֻוָּדֵל**); and if the **לוּהה** is not believed to claim (ב**מְגֻוָּדֵל**) then the **עֲדִים** are not believed to be **פּוֹסֵל** (with a **שְׁטַר**). Therefore, if we maintain that **הַפָּה שָׁאֵר** (a **מְבָשָׁאֵץ**) is ineffective for the **לוּהה**, then we must maintain that **הַפָּה שָׁאֵר** is ineffective for the **עֲדִים** (that a **מְגֻוָּדֵל** like **ר' יוחנן** stated). **ר' ג' ר' מ'** obviously disagrees with **ר' ג'**.

תוספות asks an additional question:

ואם תאמר זולמא דבר הונא מיيري במודעה³ ואמנה⁴ -

And if you will say; perhaps, רב הונא מ**בָשָׁאֵץ** is discussing a case of **מודעה or אמנה** (and not the case of **פרעתה**).⁵ It is only when the **לוּהה** claims that it was a **שְׁטַר אַמְנָה** or a **שְׁטַר מְדֻעָה** that maintains that the **לוּהה** is not believed with a **מְגֻוָּדֵל** of **מְגֻוָּדֵל**. However when the **לוּהה** claims (or when have a **הַפָּה עֲדִים** **אָנוּסִים** by (they) will be believed because of the **מְגֻוָּדֵל**.⁶

תוספות will prove that we can differentiate between the claim of **פרעתה** and the claims of **אמנה or מודעה**:

דאפילו רב נחמן מודה לך⁷ -

For even **ר' ג'** who maintains that **שְׁכַתְבּוּ צְרִיךְ לְקַיְמָוּ** in a case of **מודעה** **בְּשְׁטַר** **שְׁכַתְבּוּ** **צְרִיךְ לְקַיְמָוּ** **פרעתה**, **later agrees** that by a **שְׁטַר מְדֻעָה** and **אמנה** are not believed. Perhaps **ר' ג'** also meant **מודעה** and **אמנה** only, when he said **א"צ לְקַיְמָוּ**. If that is true, **ר' ג'** does not agree with **ר' מ'**, but rather his ruling is according to the **רבנן**. It is only by **הַפָּה עֲדִים** that a **מְגֻוָּדֵל** is not effective, however by **אָנוּסִים** (**וּקְטָנִים וּכְו'**) (and also by **הַפָּה עֲדִים** and **אמנה**) (and also by **הַפָּה עֲדִים** a **מְגֻוָּדֵל** is effective.⁸

³ A means that the **לוּהה** claims that he was forced to agree to the signing of this **שְׁטַר**, even though he did not borrow any money.

⁴ An means that the **לוּהה** claims he trusted the **מלואה** with this **שְׁטַר** (to keep it for when it will be needed), even though he did not borrow any money.

⁵ See ‘Thinking it over’.

⁶ It is perhaps possible that this question is a continuation of the answer to the previous question. answered that **ר' ג'** does not distinguish between **עֲדִים** and the **לוּהה**. This indicates that **ר' ג'** may indeed make this distinction that even though the **לוּהה** is not believed, nevertheless **עֲדִים** are believed (as the **חַמִּים** maintain). It follows therefore that the statement of **לְבָשָׁאֵץ** is not a blanket statement, that no claim is effective against a **שְׁטַר**, but rather that it is a selective statement; certain claims (**פרעתה**, etc.) are ineffective against a **שְׁטַר**. If that is the case, then perhaps **ר' ג'** was very selective and the statement of **לְבָשָׁאֵץ** is referring to the claims of **אמנה** and **מודעה** exclusively. **ר' ג'** agrees that these claims are ineffective. What is s'g? See footnote # 9.

⁷ יט, ב.

⁸ See **ר' ג'** who explains as follows: In the case of **מודעה** and **אמנה** they are not believed, because according to their testimony the **שְׁטַר** was written properly. It was a properly written **שְׁטַר**. **מְגֻוָּדֵל**

תוספות answers:

ויש לומר דבר הונא סתם קאמר ולא מפליג:

And one can say; that ר"ה stated his ruling (of מבשאצ"ל) in general terms and he did not differentiate between one type of פרעתי בشرط (like מודה בשטר) to another type of פרעתי ואמנה (like מודה בשטר). Rather he maintains that in all cases, even by פרעתי, the ruling is that there is no difference between the ruling (who maintains that there is no difference between the rule and the challenged him⁹) that he should have said that הלכה כר"מ because according to the claims, who maintain נאמנים לפוסלו, they also maintain that the rule iszman by פרעתי במגו דמצויף נאמן.

SUMMARY

ר"נ disagrees with ר"י and maintains that there is no difference, concerning a claim against a rule, between the rule and the claim. **עדים שטר**

The fact that ר"ה did not qualify his statement of מבשאצ"ל, indicates that it applies in all cases; including if the rule claims. **פרעתי**

THINKING IT OVER

תוספות asked that perhaps ר"ה made his statement of מבשאצ"ל only concerning גمرا פרעתי; not מודה ואמנה.¹⁰ If that were so, how could the say that טעםא דר"מ כדרב הונא אמנה? The case of אנוסים is not comparable to מודה!¹¹

cannot invalidate a properly written שטר. This is known as לאathi על פה ומרע לשטרא. However by they are claiming that there never was a valid שטר (it was never properly signed by others), therefore the claim is effective. In the case of פרעתי (it is exactly the opposite); he is agreeing the שטר was valid. There is no attempt at all to invalidate the שטר per se. The rule is (merely) claiming that the loan was already paid. Therefore (according to ר"ג) the claim is effective.

⁹ See footnote # 6. According to this answer that ר"ה does not differentiate and maintains that מבשאצ"ל is a universal law; no claims (except for מזוייף) are effective against a rule, then the answer to the first question of Tosfos may change as well. It is not merely (as originally claimed) that ר"ג does not distinguish between the rule and the claim; but rather that (ר"ג deduces from the blanket statement of ר"ה that even) ר"ה himself does not make any distinctions; but always maintains that מבשאצ"ל (even by עדים). See following footnote # 1.

¹⁰ See footnote # 5.

¹¹ See footnote # 8.

לעולם דקאמר לוה וכדרב הונא قولוי –
In truth is was the who claimed it was a and this is according to etc.

OVERVIEW

גמרא ruled that the claim of אמנה is not acceptable. The claim of אמנה was initially questioned who claimed that it was an אמנה. Was it the לוה, the אמנה, or the עדים? In each case there was a difficulty in explaining the ruling of ר"י. ר' answered that it was the לוה who claimed that it was a אמנה, and he is not believed (with a even if the שטר was not מקוים). This ruling follows the opinion of ר"ה that a מנו is ineffective against a שטר.

תוספות asks:

ואם תאמר ואמאי לא קאמר נמי לעולם דקאמר עדים וכדרב הונא –

And if you will say; and why did not also answer that in truth the claimed that it is a אמנה; and the reason they are not believed even if because we are following the opinion of ר"ה is because we are maintaining that a מנו is not effective against a שטר. Therefore when they are not believed even though they have a הפה שאסר.¹

תוספות answers:

ויש לומר² שלא נicha ליה לאוקמי שלא כרבנן דאמר אלימי עדים לאורoui שטרא:
And one can say; that it is not appealing to establish the ruling of רבינו מאריך not according to the who argue with and claim that עדים are sufficiently powerful to invalidate the שטר with a הפה שאסר even if the לוה is not. According to the if the claim is a אמנה they will be believed according to רבא.³

SUMMARY

רבנן did not want to answer that the claim of עדים claimed for the אמנה, for the reason that they will be believed since they are not believed.

¹ See previous footnote # 9 where it seems that may be of the opinion that maintains that מושגאצ"ל is a universal law which applies to all type of claims. The wording of the answer here seems to support this contention. מודה is ר"ה ר' 'דלא נicha ליה לאוקמי שלא כרבנן' but not that in a case of גוד"ק. עדים.

² See 'Thinking it over'.

³ This seems to be in contradiction with רב ברashi and רב נחמן, רבashi who maintain (on that even if the claim is a אמנה it is not believed).

THINKING IT OVER

What was question initially?⁴ Did not state previously that the Tosfot חוספות maintain that the רבני אלימי עדים לאורוועי שטרא?!⁵

⁴ See footnote # 2.

⁵ See footnotes # 1 & 3.

רָב הַוְנָא אָמַר רָב – וּכְדֹרֶב הַוְנָא אָמַר רָב –

OVERVIEW

מודה בשטר שכתו אצ"ל cites two statement in the name of רָב הַוְנָא; namely (by) ר"י א"ר האומר שטר אמנה הוא זה אינו נאמן (ר"ה א"ר) explained that the ruling of שטר אמנה (which is referring to the לוה) follows the ruling of שטר אמנה. Our will discuss the necessity of both rulings.

תוספות asks:

ואם תאמר תרתי מילוי דבר למה לי¹ –

And if you will ask why do we need two statements of רב, which are stating the same rule. The rule of ר"ה א"ר states that a **מגנו** is ineffective against a **פרעתי** (by שטר as well as all other claims²); and ר"י א"ר states that the **לוּה** is not believed to claim שטר אמנה which we already know from ר"ה א"ר.

תוספות answers:

ויש לומר חדא מכלל חברתה אמר –

And one can say that one was derived from the other. said only one ruling [which was cited by ר"ה א"ר], which was cited by ר"י א"ר³ [who derived from this ruling of that if a claimed **לוּה**, he is not believed].

SUMMARY

שטר **רב** made only one ruling; that a **מגנו** is not believed with a **פרעתי** against a **לוּה**. Other rulings (such as **האומר שטר אמנה הוא אינו נאמן** **שאיינו מקוימים**) were derived from this ruling

THINKING IT OVER

1. claims that the two rulings are redundant.⁴ Seemingly they are not. If it would only state I **מבחן** would think that it applies only by **פרעתי** since there is a counterclaim of **לוּה**, however by **שטר אמנה** he would be believed. Conversely if only the rule of **שטר אמנה** was stated I certainly would not know that this applies by **פרעתי** as well (for **ר"ג** maintains **שטר אמנה** is believed and **תוספות** is not believed). Why does state that they

¹ See ‘Thinking it over’ # 1.

² See previous **תוספות ד"ה אימא**.

³ See ‘Thinking it over’ # 2.

⁴ See footnote # 1.

are redundant?!⁵

2. **תוס' ד"ה** merely says that one rule was derived from the other.⁶ Can we assume which was the original rule and which was the derivative?

⁵ See *ו"ז*.

⁶ See footnote # 2.

וכגון שהב לאחרים - And for instance, that it is detrimental for others

OVERVIEW

The gemara states that there is an occasion when a molaha is not believed to claim that the shetr amuna he is holding is a shetr amuna. This happens when by his admission he causes harm to others. The case is where (the first molaha lends money to (the second robon) (לוּהַ רָאוּבֵן) (the first shemeton owes money to (the second lova) (לוּהַ שְׁמְעוֹן) (the second [and first] molaha). According to the rule of dron, the first molaha can collect directly from the second (לוּהַ שְׁמְעוֹן) (the second lova). If however claims that shetr amuna owes him no money and the shetr he holds against lovi is merely a shetr amuna, then (the first molaha would not be able to collect from lovi if is telling the truth. The din is that shemeton is not believed to claim it is a shetr amuna since he is causing harm to others. A person is believed only to obligate himself but not to obligate or cause harm to others.

There is a ruling from the Shabbat that ל'ר'ו ו'ר'ו מ'ול ו'פ'ילו י'ר'ש that shemalon to shetr shemeton sold this shetr shemeton and, in shetr shemeton, has the right to collect the monies of the shetr shemeton now (ר'אוּבֵן now¹; ר'אוּבֵן still²). Nevertheless shemeton has the right to be ל'ר'ו will not be able to collect the debt from ל'ר'ו. If ר'אוּבֵן died before collected the debt from ל'ר'ו, the heirs of shemeton may also be the debt to ל'ר'ו, preventing from collecting on his purchased sh.

תוספות asks:

ואם תאמר ולהימנין ב מגו² דאי בעי מחייב ליה³ -

And if you will say; let us believe the molaha, who claims that it is a shetr amuna, with a mago, for if the molaha wanted he could have absolved the shetr amuna from repaying him. If the molaha would be the molaha (those to whom this molaha owes money), would lose their right to collect from the molaha. This power of the molaha (to deprive the achrim from collecting from his molaha) should also apply when he claims that it is a shetr amuna, thus causing the achrim to lose the ability to collect from the molaha.

תוספות will prove that the molaha has the right to be molhal a loan even if it harms others.

¹ The price paid for such a ח"ט is usually discounted from the face value (the amount of the loan) of the ח"ט. The buyer has to wait for his money and is taking a risk, for the molaha may not pay him.

² See 'Thinking it over' # 1.

³ See 'Thinking it over' # 2.

זהא המוכר שטר חוב לחייבו וחזר ומחלו מחול (לקמן זר פה,ב) -

For if one sells a documented loan to his friend and went back and forgave the from repaying the debt, the law is that the loan **is absolved**. The purchaser of the note cannot collect from the ^{לוּה} even if it causes a loss to others. We derive from this law that the can be a מוחל even if it causes a loss to others. The same power should be applied, through, if he claims that it is a ^{אמנה} (דין שלomial). The question is as follows: We derive from the that שטר אמנה (דין שלomial) that a has the right to be מוחל even if it causes harm to a legitimate buyer. It is therefore assumable that the same applies in a case of ^{שubarouda drin} If the second is the second, the ^{לוּה} is valid even though it causes a loss to the first ^{מלואה}. A person has a right to be מוחל even if it causes hardship to others. In the case of the only question is whether the ^{לוּה} is saying the truth when he claims that he is holding a ^{אמנה} (since he is harming someone). It should be assumed, however, that he is telling the truth, by virtue of the ^{אמנו}; because he could harm the first regardless, by openly being the ^{לוּה}.⁶

תוספות answers:

ויש לומר דלאו מאו הוא דשמא אין דעתו למוחל ולהפסיד חובו -

And one can say that this is no. The will not want to be the loan, **for perhaps it is not his intention** (even when he claims **to give up and lose his loan** –

דעכשו שאומר אמנה הוא לא מפסיד מיד דיין הלוּה גזלוּן -

For now when he claims that the ^{לוּה} is ^{אמנה} is not losing anything for the ^{לוּה} is not a robber. The is sure that the ^{לוּה} will still repay him, for he owes him the money.⁷ However if he is the ^{לוּה} outright then the will not (have to) repay him. Therefore, since there is no ^{אמנו}, the ^{לוּה} cannot claim ^{אמנה}, for we do not believe his admission when it causes harm to others.

⁴ There is a discussion in Tosfos ב"ב קמ"ב ד"ה המוכר as to the liability (if any) of the to the ^{לוּה}.

⁵ One may even argue that it is a ק"ו. If a who sold his ^{שטר} and (seemingly) gave up his rights to collect from the ^{לוּה}, may, nevertheless, be the ^{חוב} and harm the innocent buyer who explicitly bought this ^{שטר} to collect the ^{חוב}; then certainly a bona fide can be a ^{חוב} מוחל to his own ^{לוּה}, even though he may be indirectly causing a loss to his own ^{לוּה}, by denying the first ^{לוּה} the opportunity to collect his from his (on whom he (the first ^{לוּה}) did not necessarily depend on originally when he made the loan to the first ^{לוּה}).

⁶ The term ^{אמנו} here may be interpreted slightly different than usual. is saying that there is no concern of ^{חייב} the ^{לוּה} for the ^{לוּה} could just as easily be the ^{חוב} and cause the regardless. Therefore since there is no ^{חייב} we should accept the ^{אמנה} of the ^{לוּה} that it is a ^{לוּה} (see סוכ"ד אות לוּה).

⁷ The ^{לוּה} is claiming to prevent the third party from collecting from the ^{לוּה}. He is hoping that the will eventually pay him instead of paying the third party. See ‘Thinking it over’ # 3. [However the ^{לוּה} is not concerned that (since the ^{לוּה} is not a גזלוּן) he will pay the first (as is required by ^{שubarouda drin}), because [perhaps] paying one instead on another is not considered ^{לוּה} (and the second ^{לוּה} will ‘sweeten the deal’, somehow, so the ^{לוּה} will pay him).]

anticipates a difficulty:

אף על גב דברו פרק קמא דברא מציעא (ז"ג, ב⁸, ושם) אמרין מגו כהאי גונה גבי מצא שובר -

Even though that in the end of the first of we do say this type of a; that (s)he could be מוחל, concerning the case where someone found a receipt for a payment; the there says –

בזמן שהאשה מודה יחזיר לבעל -

In a case where the woman admits that she wrote the receipt and received her payment from the husband, the receipt should be returned to the husband as proof of payment.

דקאמר שמע מינה איתא לדשנואל⁹ -

The there states that we derive from this ruling that שמואל's ruling of המוכר שט"ח להבירו והזרו ומהלו מהול is correct.

Amuna הוא question is that just as we say here that the מלאה is not believed to say and be with a מוחיל (because he does not want to be the מוחיל); the same should apply there. How does she have the מוגן there that she could have been מוחל? She does not want to be the מוחל, for then she would definitely not collect her כתובה. However if she just verifies this (false), she imagines that she will still collect from her husband, for he is no thief. The husband knows that he still owes her the שובר; the

⁸ In our גמרא it is on ב, ט, ב, א, ט.

⁹ There is reason not to return the שובר to the husband even if the woman admits to writing it and being paid. It is possible that this woman sold her rights to someone; that when she will be divorced (or widowed) the buyer will have the rights to collect her כתובה from her husband's estate. The woman may have written this (false) receipt prior to the date of sale of her כתובה, but actually gave it to her husband after the sale took place (rendering the receipt invalid, for the כתובה now belongs to the buyer). When the buyer will come to collect the כתובה, the husband will present the receipt which predates the sale date and claim that he already paid his wife the כתובה before she sold it. On account of this concern we should not return the שובר to the husband, for it is possible that the husband and wife are in collusion to deprive the buyer of his rights. The fact that the שובר was lost and not held in safekeeping gives credence that something is amiss. The fact that we do return the שובר indicates that there is no such concern. The reason that there is no such concern is that there is a ruling of שמואל that המוכר שט"ח להבירו והזרו ומהלו מהול. Therefore the woman has the option of being מוחל from paying her the שובר, even after she sold it to the buyer; in which case the buyer would anyway not be able to collect. [The כתובה is the equivalent of a ח"ש that the husband owes monies to his wife. Let us assume the payment is two hundred ז"ו. The woman sold this note to a buyer (on לוקח) for fifty ז"ו (the note is discounted since it is possible that the husband will never divorce his wife and she will predecease him, and the buyer will receive nothing). She wrote a receipt on ר"ח ניסן that she received her payments. However, she actually received her payments in סין (or did not receive any payment at all). The לוקח is due the two hundred ז"ו, but she would rather keep the full two hundred ז"ו for herself; even if she will have to return the fifty ז"ו to the buyer (because according to the שובר it was a bogus sale; she already ostensibly received her כתובה), she will still realize a profit of one hundred-fifty ז"ו.] The woman is therefore believed to claim that the שובר belongs to her husband, because (even if she intends to cause the buyer a loss) she has a מוגן that she could have been מוחל the כתובה and the buyer would suffer the same loss. This concludes the explanation of the ב"ג in גמרא.

notwithstanding. What is the difference between our גمرا where we say there is no מינו (because he does not want to lose his debt), and the ב"מ in גمرا where there is a מינו of מהילה.

תוספה responds:

שמעה התם סמכינו אמגו כל זהו משום דאייכא שובר דמוכח¹⁰ -

Perhaps there in we can depend even on a meager, for there is a receipt that proves that the woman is saying the truth. In ב"מ this flawed is sufficient.

תוספה offers an additional answer to the original question why the מילה is not believed with the מהילה מינו:

ואם נאמר דמכירת שטר חוב איינו אלא מדרבן¹¹ הוה ATI שפיר -

And if we would assume that selling a שט"ח is not valid, but only מדרבן, then the question would be properly answered –

דמצינן למייר זוקא מוכר שטר חוב דהוי מדרבן יכול למוחל -

For we will be able to argue, that only when one sells a שט"ח, where the sale is only valid מוחל; it is only then that the seller can be the loan, and the buyer suffers a loss; because the buyer only owns the right to the חוב, מדרבן not מוחל.¹²

אבל בנושא בחבירו יכול דחייב לו מן התורה איינו יכול למוחל -

However, in the case where one has a claim against another, etc. In a case where the original לוה is also a subsequent (and second) so that the second is obligated to the original (on account of מילוה); in such a case, the original לוה cannot be מוחל the debt owed to him by his (subsequent) לוה, for his is already obligated to the original מילוה.¹³

¹⁰ The previous argument against the מהילה מינו does not completely destroy the מינו; but rather it renders it flawed and weak. There is a possibility that he risks losing his debt by claiming אמנה just as by being מוחל. The two claims may be equally detrimental. There is a difference between the claim in our גمرا that it is a אמנה and the claim in ב"מ that she wrote the שטר. In ב"מ we found a שובר which states that the woman received payment. The woman is substantiating that which is stated in the שטר. Therefore, even though there is a possibility that there is collusion between the husband and wife, nevertheless the (meager) מילוה מינה is sufficient to believe the woman that the שבר is correct. In our case however, the מילה is claiming that it is a שטר אמנה; he is not substantiating the שטר but rather he is contradicting the שטר. In order for him to be believed to contradict a שטר, a proper מינו is required. The מילוה מינה is insufficient because it has a flaw. He may not want to be מוחל and thereby lose his חוב.

¹¹ See who explains that by selling a שט"ח nothing of substance is being sold (except where the one owns קרקע), therefore it is a only מדרבן.

¹² It seems that the רבען still owes the money to the לוה. It is only that the gave the buyer a right to collect the money (in return for his payment); not that the לוה actually owes it to the buyer. Therefore if the מילוה is מוחל the loan there is nothing for the buyer to collect. ועי' באחרונים.

¹³ answer is that one can be מוחל if it harms others, only in a case where the others (who are being harmed) are not owed this חוב only מדרבן. In the case of המוכר שט"ח לחבירו וכי מילוה, the purchaser of the שט"ח

will now offer a proof that when the obligation to pay the חוב is then it cannot be by the original giver.

וכן משמע בפרק מי שמת (בבא בתרא זז קמי, ב' ושות)

And it also seem so in פרק מי שמת that if the gift is valid then the giver cannot be – מוחל

דקאמר ומודה שמואל אדם נתנו במתנת שכיב מרע¹⁴ שאין יכול למוחל –

המוכר שט"ח says there that **admits** (concerning the rule of גمرا concerning the rule of מילוה) that if the heir of the חוב can be transferred the חוב to another (not through a sale but) through a **sickbed gift**; the heir of the (i.e. a son who did not receive this loan as part of his inheritance) **cannot be** this חוב (even though that generally the heirs can be the ones that he sold) –

ומסיק מתנת שכיב מרע דאוריתא¹⁵ ואין יכול למוחל –

And the concludes there that a **sickbed gift** is transferred to the recipient and therefore the heir **cannot be** the חוב. The continues –

דאילך דעתך מדרבנן אמר אין יכול למוחל –

For if it would enter your mind that a מתנת שכ"ם is valid only why cannot the heir be the חוב. This concludes the quote from the גمرا.

משמע דברידי דאוריתא אין יכול למוחל –

It seems from that **that** concerning **תורה matters** the maker (or the heirs) of the **cannot be** the loan. The (only) explanation the גمرا gave why they cannot be because the transfer is valid מה"ת. This supports contention that there is a difference between the המוכר שט"ח which is valid only מדרבנן and therefore the second מילוה can be; and by the first מילוה which is valid מדאוריתא דר"ג and therefore the second (the first cannot be the חוב of the second (that is owed מה"ת [through שעבודא דר"ג] to the first מילוה).

rejects this last proof that if there is a דין חייב מה"ת is not valid:

is not owed money by the buyer.] Therefore the original has a right to be the חוב. If however, by being harmed is done to one whom monies are owed to, the דין is not effective. In the case of the three people where the first owes the first and the second owes the first (the second), then the second owes the first. Therefore the first cannot be the חוב and prevent the first from collecting from the second. There is no question therefore why is not the (second) believed that the first can always collect from the second. The answer is that one cannot be the חוב that is owed both to the person who is being harmed and to the person who is being harmed.

¹⁴ The rule is that a **שכיב מרע**, one who is sick and lying on his deathbed, may bequeath his assets to whomever he chooses, even by word of mouth only, without the usually required **קנינים**.

¹⁵ The גمرا there subsequently rejects this reasoning and says that a מתנת שכ"ם is only **קונה מדרבנן**; however the חכמים gave it the same power as if it was a **דאורייתא**.

ויש לדחות דחתם ודאי אי מתנת שכיב מרע DAORIYITTA אין היורש יכול למוחל -

And it is possible to reject this proof for there by the case of the heir of the **מתנה**, certainly if a sickbed gift is valid, then the heir cannot be **מוחל** the **חוב** and deprive the recipient from collecting the loan –

דמאי אולמיה האי יורש מהאי יורש¹⁶ -

For why is this heir, who wishes to be **מוחל** the loan, **stronger than this heir**, who received his power to collect the loan through the **חוב**. Both parties, the recipient and the heir, are not the original **מלואה**. Therefore the heir is not any stronger than the recipient and cannot be **מוחל** the **חוב** and deprive the recipient from the power granted to him by the **שכ"מ**.¹⁷ However in our case of **מלואה** the first is **לוּהָ שְׁעִבּוֹדָא דֶּרֶג** of the second. Therefore even if there is a **מלואה** from the second to the first, nevertheless the **מלואה** stems from the loan of the second, who is the primary to the second. This second **מלואה** is stronger than the first and can therefore be **חוּב**. The proof is therefore rejected.

מוחל **מלואה** brings an additional proof that in the case of **שְׁעִבּוֹדָא דֶּרֶג** the second cannot be **חוּב**:

ועוד יש להביא ראייה דהנושה בחבירו וחבירו בחבירו איינו יכול למוחל -

And it is possible to bring additional proof that one who has a loan by his friend and that friend has a loan by another friend; in this situation the second **מלואה** **cannot be** **חוּב** –

דאמרין בסוף האשה שנפלו (ילקמו פא,ב) הרי שהייתה נושא באחיומנה ומית והניח שומרת יבם -

For the states in the end of brother **was owed money by his own brother (שמעון) and (ראובן)** **died without children and he left over his wife waiting for her brother-in-law**, **לוּהָ שְׁמַעוֹן**, to be **מייבם** her –

לא יאמר הוαιל ואני יורש החזקתי -

should not reason since I am the heir of Raovin, I have taken possession of this debt. In addition to being a brother of **ראובן** which entitles **שמעון** to the **ירישה**; when **שמעון** all of **ראובן's** assets belong to **שמעון**; including the debt that **שמעון** owes **ראובן**. Now **שמעון** is the owner of this debt. He may argue that this debt is now owed to me. **שמעון** cannot say that and wipe out the debt (from himself to himself).

אלא מוצאיין מידו ולוקח בהן קרקעות והוא אוכל פירות ומוקמי לה כרבי נתן -

¹⁶ He is not necessarily an heir; however תוספות refers to him as an heir with equal power as the natural heir, since מה"ת is מתנת שכ"מ.

¹⁷ When the **חוב** explained that a מתנת שכ"מ cannot be since it is מה"ת, it did not mean that when the **חוב** is owed money there can be no מה"ת. Rather the **גמרא** meant that since מה"ת is מתנת שכ"מ then the heir who is מה"ת is no stronger than the recipient who acquires his gift also.

But rather we take the monies owed away from שמעון and we buy fields with this money, which now belong to the wife of the deceased and שמעון the new husband consumes the produce of these fields. The fields themselves, however, belong to the woman. The גمرا there explains that **we establish** that this follows the view of ר"ג –

דהא هوי כמו נושא בחבירו מנה וחבירו בחבירו דכל אשר לבעה משועבד לה כתובה –
For the case in this is similar the case of ר"ג, where a person has a claim of a against his friend and that friend has a claim against another friend. The גمرا explains how the two cases are similar; **for everything that her deceased husband owned is indentured to** the wife as payment for her **כתובה.** Therefore it is as follows: ר'אובן (the deceased) owes his wife all his assets (including the loan to שמעון). שמעון therefore owes the debt to ר'אובן's wife on account of ר'אובן. Therefore he must give her the monies to buy a field and he eats the fruit; as the דין requires with any monies that a woman brings into a marriage. This concludes the explanation of the גمرا. Now commences with his proof –

ואין יכול למחול אמרاي ילקח בהן קרקע יmachol לעצמו שהוא יורש יוכל למחול –

And if the חוב can be מוחל why should fields be bought with this money and given to the woman, **let be** שמעון **מוחל** the loan to himself, **for he is the heir of** ר'אובן; he is now the owner of himself; **and as a molah he can be!** Originally was the molah and the שמעון ר'אובן was the owner of the process of inheritance, now, שמעון, who inherited all the assets of שמעון. He should be capable of nullifying the חוב (as the second molah). The fact the גمرا states that he cannot be מוחל and must pay the first חוב, proves that the second cannot be מוחל the חוב to the second, and deprive the first from collecting the חוב from the second. Therefore there is no question that the molah has a right to the molah, since by שמעון ר'אובן there can be no מוחיל by the second molah.

תוספות rejects this proof as well:

ויש לדחות דעתני התם דין יורש אלא מכחה ואינו יכול להפקייע כחה –

And it is possible to reject this proof.¹⁸ For by it is different than a regular case of ר'אובן, שמעון since does not inherit the assets of his own merit, but rather he inherits on account of the woman.¹⁹ Therefore he cannot dislodge her interest. He cannot deprive her of her due, on

¹⁸ Generally in a case of שמעון ר'אובן the second can be מוחל the second, even though he is depriving the first from collecting his debt from the second.

¹⁹ If שמעון would not marry the wife he would not necessarily inherit the assets of ר'אובן. Therefore since his claim to ר'אובן's assets is based only on account of the woman that he is being married to.

账户 of his since his whole is due to her.²⁰ However in a regular case of where the second is owed the money on his own accord (not because of the he may have the right to deprive the from collecting, by being the This proof is rejected as well. The question would then remain if the can be the he should be believed to claim with a **מחלוקת** **חוב** **אמנה** **הוא** **מגנו**.

[ויש²¹ מפרשים דזוקא במכור שטר חוב יכול למחול שקדם חובו של מכור]

[**And others explain** and answer this question **that only when selling a can the be even though he harms the buyer because the debt to the seller** (the **preceded** the obligation of the to the buyer. Originally the owed the seller. Subsequently after the sale the owes the buyer. Therefore since the original loan was against the and the buyer was not involved at all, that is why the can be **מוחל**.

אבל הנושא בחבירו שקדם חובו לחובו אינו יכול למחול

However, in the case of **one who is claiming a debt from his friend; where his loan** (from the first **preceded the loan of his friend** (from the second when the second lent money, he already owed money to the first in this case the second **cannot be**. When the second lent the money, automatically the second was already to the first. He never was a only to the second as well because of **שעבודה** **מלואה** of the first **.prevents** the second from being able to be **הוב**.²²

תוספה continues to explain the case of the on this basis:

ושומרת יבם נמי קדם שטר חובה לחוב בעלה]

And also by the case of the **כתובה יבם, השומרת יבם**, **her note of indebtedness** (in which her husband owes her money for her) **preceded the debt** that was owed to her deceased **husband** by his brother. There is a similar situation; where the party who wishes to be the was already indebted to another prior to his lending the money to his. The husband lent him the money after he married this woman. Therefore the surviving brother cannot be the which he inherited from his deceased brother, since the deceased brother was already indebted to his wife prior to this loan. The surviving brother initially

²⁰ ח"ב אות רסג See.

²¹ See that the bracketed statement is from סק"ו טפ"ח.

²² This should not be interpreted to mean that the "ג'" are of the opinion that is only in a case where the second borrowed from the first after the second had already borrowed from the first. The דין **מלואה** **שעבודה** **דר"נ** applies even if the first borrowed before the second borrowed from him. The "מ'" are merely arguing that there can be no **מחלוקת** if the lent his money after he already borrowed. See (however) עב"ץ.

owed the wife the money. There can be no מחלוקת if the present initially owed the present [מלואה].^{23]}

מגנו has a final question:

ואם תאמר אכתי נהימניה במאו دائיבעי קלתייה כדאמרין בסוף זה בורר²⁴ (סנהדרין לו לא,ב) -

And if you will say; that we should still believe the that it is a מילואה which he presently claims is a שטר אמנה, as the states in the end of פרך זה בורר. If this (second) would have burnt this (which he presently claims is a מילואה), then the first would not be able to collect from the second, since the first has no proof that the second owes anything to the second. Therefore the second should be believed that the second has a מילואה and deprive the first from collecting from the second with the of מילואה!

.answers:

ויש לומר דהכא אתחזק בבב"ד -

And one can say; that here we are discussing a situation where the was שטר already established in ב"ד. It was already known by שטר אמנה (before he claimed that this has a מילואה) -

דאמרין הtmp כיון דאתחזק בבב"ד אי בעי קלתייה לא אמרין²⁵ -

For the states there, that since the was already established in גمرا we do not honor the argument that [s]he could have burnt it.

offers an additional answer to this last question:

אי נמי הכא מיيري כשהשטר הוא ביד שלישי:

Or you may also argue, that here the is discussing a situation where the was in the possession of a third party. The no longer had the option of burning it.

SUMMARY

asked that the should be believed that it is a שטר אמנה since he has a מחלוקת of מילואה.

²³ According to the case of מ"מ, the case of שטר אמנה where the is not believed, is limited to a situation where the purported 'loan' took place after the loan to the brother. Otherwise the would be accepted. Similarly in the case of יבמה, the loan to the brother took place after the marriage. Otherwise the surviving brother could be the חוב מוול.

²⁴ The case there (on לג, ב"ד) involved a wife who deposited a sum by a woman. The woman presented the sum when they came to ב"ד, and claimed, however that the had already paid up. According to one version, she was believed for she has a מילואה; she could have burnt the sum and the would not be able to collect.

²⁵ This follows the second version that she was not believed, since ב"ד was previously aware of the sum.

answered that the **חייב** of **מגנו** is inadequate (since the **חייב** contradicts the **שטר**) for since he does not want to lose the **חוב**, he will not be **מושל**.

An additional answer is that **חייב** by **מחלוקת** is valid only when the **חייב** owns the **חוב** **שטר** (as in **חוב מדרבנן**), but not when the **חייב** is owed the **חוב** **עובדא דר"ג** (as in **מדאוריריתא**).

[The answer that **חייב** by **מחלוקת** is valid only when the **חייב** was not initially owed the money (as in **המודרך שט"ח לחבירו**); however when the **חייב** was initially owed the money (as by the **יבמה** and [conditionally] by **שעובדא דר"ג**) then the **חוב** cannot be **מושל**.]

There is no **איתחזק בבי"ד** either because the **חייב** was **שט"ח** or it was **ביד שלישי**.

THINKING IT OVER

1. asks that he should be believed that it is a **שטר אמנה** with a **מגנו** of **מחלוקת**.²⁶ Seemingly this is a **שטר** **עדים** **במקום עדים** **על השטר**. **מחלוקת** testify that it is not a **שטר אמנה** (and therefore if **עדי השטר כת"י** **יוצא מקום אחר** are not believed to say **אמנה**).²⁷

2. asks that he should be believed that it is a **שטר אמנה** with a **מגנו** of **משים** **מחלוקת**.²⁸ Seemingly, we cannot believe him that it is a **שטר אמנה** since he is **משים** by keeping a **שטר אמנה** **בעצמו רשות** in his possession?²⁹

3. What is the difference if the **חייב** is **מושל** the **חוב** outright, or if he says it was a **שטר אמנה**?³⁰ A **שטר אמנה** means he never lent any money to the **לווה** and therefore it is tantamount to an admission that the **לווה** owes him nothing! What would be if the **מלואה** claimed that the debt was paid?³¹

4. Can the second **חייב** be **מושל** the **לווה** to the second in a situation of **עובדא דר"ג**?

²⁶ See footnote # 2.

²⁷ See **סוכ"ד** **אות לו**.

²⁸ See footnote # 3.

²⁹ See **פנ"י**.

³⁰ See footnote # 7.

³¹ See **משכנתה הרועים אוות רס"ה**.

מןין לנושא בחבירו כולי –
**How do we know
that someone who has a claim against his friend, etc.**

OVERVIEW

שטר אמנה ר"י אמר רב stated that if someone claims that it is a he is not believed. ר"י אמר רב interpreted that case where the moloha said it was a moloha. The reason the moloha is not believed is that he is a chab sheuboda dron in a situation of a dron laachrim.

משמעות דהלהכה כרבי נתן -

It seems that the הלכה is like ר"ג. The first collects from the last moloha. R' Na'ani derives this from the fact that R' Na'ani explains the ruling of R' Na'ani to be valid in a case of avi. The justification of the rule is based on sheuboda dron. This proves that R' Na'ani maintained that the halacha is avi, and furthermore, that R' Na'ani maintained that the halacha is cron. This maintains that the halacha is cron.

ובגיטין¹ (ז' ל' א) פירשנו –

And we explained this in הילכת GITIN; whether the halacha is cron or not.

SUMMARY

ר"ג הילכה is like.

THINKING IT OVER

הילכה says that from our גמרא it is (only) משמע [it seems] that the halacha is מוכחה [it is evident] that the halacha is cron? Why did not say that it is מוכחה [it is evident] that the halacha is cron?

¹ See there. תוס' ד"ה מדרבי actually discusses this at greater length in קידושין טו, א.

אעולה¹ לא חתמי -**They will not sign on a wrongdoing****OVERVIEW**

שטר אמנה **עדים** claim that if, כת"י הוא גמורא (the did not borrow any money from the when we signed the); then, even if כת"י אין יצא ממ"א, they are not believed. The reason is that a שטר אמנה is considered an עולה, and עדים will not sign on an עולה.

תוספות anticipates a difficulty:

והא דכוטבי שטר לולה אף על פי שאין מלווה עמו² -

And how are we to understand the ruling **that** it is permissible for **to write and sign a note for the לולה** stating that he owes a sum of money to the **even though the מלווה is not with the לולה** when the שטר is being written and signed. The עדים do not see any money transferred to the לולה from the מלווה. There should be a concern that this may be a שטר אמנה. Why are the permitted to sign this note.

תוספות responds:

הינו למוסרו לולה ולא למלואה -

That permission is granted only **to deliver the שטר to the but** they do not have permission to deliver it **to the מלווה**.³ There is an only if the is in possession of a שטר אמנה. He may forget that it is a שטר אמנה and attempt to collect with it. Therefore if the עדים do not see the מלווה actually giving the monies to the לולה, they should not sign the שטר if they intend to give it to the מלווה. However (when there is no מלווה present) they are permitted to give the שטר to the לולה. When the שטר is in the possession of the לולה there can be no מלווה; the cannot collect with it.⁴

SUMMARY

עדים may sign a שטר for a לולה not in the presence of the מלווה, provided that they deliver the שטר to the לולה and not to the מלווה.

THINKING IT OVER

¹ This חוספות is referencing the ב, גמורא on כתובות.

² If the requests from the לולה that they should write and sign a note stating that he borrowed monies from the מלווה; they may do so. To sign a שטר we require (only) the acknowledgement of the one who is obligating himself (דעת המתחייב).

³ This is understood to mean that they may not transfer it to the מלווה even with the consent of the לולה.

⁴ עדים are not believed to claim (for it is an עולה), only if they state that they delivered the שטר to the לולה (see חוספות הרא"ש).

Is the prohibition of signing a **שטר אמנה**, refer to the signing with the intent of delivering it to the **מלואה**; or is the prohibition limited to actually delivering it to the **מלואה**, but not the signing per se?⁵

⁵ See **אלילת השחר נפקא מינה** who indicates a possible **נפקא מינה** between these two options.

אם און בידך הרחיקהו זה שטר פסים וشرط אמנה –

**'If there is an iniquity in your possession, distance it from you';
this refers to a שטר אמנה and a שטר פסים.¹**

OVERVIEW

In they interpreted the פסוק of **אם און בידך הרחיקהו** to refer to a שטר פסים and the end of the verse **אל תשכן באהליך עוללה** to refer to a שטר אמנה. is puzzled that we derive two שטרות from און and one from עוללה. Seemingly we can derive them all from the same phrase. In addition why are שטר פרוע and שטר און derived from and שטר פסימן and שטר אמנה.

זה כי משמע לשון און דמעיקרה היה שקר –

For the expression of און indicates that it was initially false. A and שטר פסים were never proper שטרות; there were no monies borrowed with them –

ואל תשכן באהליך עוללה זה שטר פרוע שעטה הוא עוללה אבל מעיקרה היה אמת –

And the end of the verse 'do not let a wrongdoing rest in your tent' this refers to a **paid up note for** (only) **now it is an עוללה** (to retain it); since it was paid up; **however initially it was a true שטר**; there was a loan made with this שטר.

SUMMARY

The etymology of און refers to something which is initially false; thus the association with (אל תשכן באהליך) עוללה; while שטר אמנה refers to something that evolved into a falsehood, thus the connection with a שטר פרוע.

THINKING IT OVER

Concerning הוספה, און explicitly states that the word און means that it was initially false. Concerning עוללה, however, does not state explicitly that the word 'עוללה' means that now it is an עוללה and before it was; but rather states that the [entire] phrase of 'אל תשכן באהליך עוללה' indicates that. Is it possible that concerning עוללה it is necessary for to cite the entire phrase in order to support his contention?²

¹ A שטר פסים is when someone requests that a promissory note be given to him so he can inflate his assets. A שטר אמנה is when a prospective ליה presents his prospective מלווה with a ח"ט to be used when the loan is eventually made.

² See מהר"ם ש"ג.

זמןין דמשהו ליה אפשרי דספרא –

Occasionally he retains it, in lieu of the coins paid to the scribe

OVERVIEW

שטר records a dispute whether it is considered an עולה if a retains a מולה in his possession. One opinion claims that it is not an עולה, since occasionally a retains a מולה in order that he (the שטר) be reimbursed (by the תוספות) for advancing the scribe's fee for writing the (which is the obligation of the שטר). This will explain that this dispute is not in a situation where the שטר was retained for the פשיטי דספרא; but rather in a case where the פשיטי דספרא was owed by the שטר.

explains that since occasionally this retains the מולה for the שטר, the תוספות - פשד"ס שט"ח – explains that since occasionally this retains the מולה for the שטר, the תוספות – על ידי אותה שהיא אישתלי ליה שהותא עם אחרית הלכך לאكري ליה עולה –

And on account of that retention, where the legally retained the שטר for the פשד"ס, he inadvertently retained it another time, when there was no due¹ therefore (even) this second incorrect retention cannot be called a wrongdoing (according to this opinion). The שטר was accustomed, from previous times, to retain the שטר for the פשד"ס; inadvertently he retained it this time (mistakenly thinking perhaps that the פשד"ס were not paid up).

explains the dissenting opinion:

ומאן דאמר שטר פרוע היה לו ליזהר –

And the one who maintains that retaining a שטר פרוע is considered an עולה, will argue that the should have been careful. The שטר should take note that the פשד"ס is not due, and return the שטר at the time the loan was paid.

explains why we cannot interpret this dispute in a case where was due:

אבל אין לפרש דמשום שהייתו אפשרי דספרא קרי ליה עולה דמה פשע:

However, we cannot interpret that the argument whether retention of a שטר is considered an עולה, is in a case where was due; because a retention in lieu of פשד"ס cannot be called an עולה on the part of the שטר, for what was his wrongdoing! He is retaining the שטר until he is reimbursed for the פשד"ס.

SUMMARY

¹ See פשיטי דספרא who states that the פעם אחרית הרא"ש is that he retains it even after the תוספות are paid up.

All agree that retaining a שטר for פשד"ס is not considered an עולה. The dispute is whether the molaha can be excused for retaining a שטר when no ס is due.

THINKING IT OVER

May a molaha initially retain a שטר, for פשד"ס?

אמר רב נחמן עדים שאמרו אמנה¹ היו דברינו אין באמנים – ר"ג stated: Witnesses that claimed, our testimony was concerning a trust document, they are not believed.

OVERVIEW

מודעה הינו or אמנה הינו דברינו claim that if the shtr claim that רב נחמן שטר כשר even with a, and it is a ², דברינו seems to contradict our which states that if עדים if claim that they were קטנים ואנוסים when they signed the shtr they are believed (with a). This ruling of ר"ג also contradicts a previously mentioned ruling of that (even) a is believed to claim פרווע במגו דמזויף; why are two not believed with this (same) ³? Our will differentiate between these various claims.

first sets the parameters of s'ning's ruling:

על כרחך באין כתב ידים יוצא מקום אחר אייר, -³

You are compelled to say that we are **discussing** a case **where their handwriting is not released from elsewhere**; we cannot authenticate this based on other signatures. These ^{עדים} themselves must authenticate their own signatures.

דא כתב ידים יוצא מקום אחר פשוט דהכי פריך לעיל⁵ -

shtr מקיימים כת"י if we can be without their explicit testimony, then **it is obvious** that the ^{עדים} are not believed to claim אמנה הינו דברינו **for this** is what the asked previously. Why would find it necessary to teach us this ruling!

אין כת"י יוצא מקום"א offers an additional proof that we are discussing a case where

ועוד דמר בר רבashi קאמור⁶ אין באמנים משום שלא ניתן לכתב -

¹ אמנה means trust. The claim that the trusted the for a (possible) future loan, which the never saw take place.

² מודעה means a notification of coercion. The claim that the borrower or seller informed that they were being coerced into agreeing to this transaction. See 'Thinking it over # 3.'

³ ר"ג is teaching that even though these have a (for they could claim it is not our handwriting), nevertheless they are not believed.

⁴ They have no shtr מקויים which is presumed not to be a (in addition to being).

⁵ ר"י אמר רב באיט; where said that the claim of אמנה is not acceptable. The there asked, if the stated this, then if כת"י יוצא מקום"א it is obvious they are not believed; there is no need to teach this ruling.

⁶ ר"ג disagrees with רבashi concerning a shtr מודעה (since it is and agrees with

And furthermore; **מר בר רב אשי** maintains that the **עדים are not believed to claim that the reason is because a שטר אמנה הינו דברינו is not permitted to be written; it is an עולה.**

ו^אי בכתב ידים יוצא מקום אחר אפילו ניתן לכתב פשיטה דין נאמנים⁷ -

And if we are discussing a case where can how can it is not so, for even if it is permitted to write a שטר אמנה it is obvious that the are not believed to claim that the reason is because a שטר אמנה הינו דברינו there is a difficulty:

وكشہ ذاماً لَا مَهِمْنِي بِمَوْ

And there is a difficulty! Why are these not believed, since they have **ما**. They had the option of claiming that it is not our handwriting,⁸ in which case the could not collect with it. Therefore we should also believe them now that **אמנה הינו מודعاً** and the should not be able to collect with this **שטר אמנה**.

anticipates a rebuttal to his question and rejects it. It is possible that **ר"ג** is of the opinion (like **ר"מ** [and **ר"ה**]⁹ that we cannot invalidate a **שטר** through a **טענה**). Once we know that a **שטר** is not **טענה**, it is then deemed to be a **שטר**. No claim can invalidate it, regardless whether there is a **טענה** to substantiate the claim. According to this view once the **עדים** admit that it is not a **שטר** they are not believed that it is a **מודעה\אמנה**. Perhaps this is also the view of **ר"ג** says that this is not true –

דָהָא רַב נְחָמֵן גּוֹפִיה אֵית לֵיה לְעַילָּו¹⁰ מָגוֹ לְפִסְול אֶת הַשְׁטָר -

– שטר כ"י himself previously maintains that a **טענה is effective to void a **שטר** –**

דיקאמר כי איתו לקמן לדינה אמרין לה זילו קיימעו שטריך וחוותו לדינה –

For **ר"ג stated that when they come before us for a ruling we say to them**

אין נאמנים שטר אמנה concerning a

⁷ See footnote # 4. There is an advantage in this second proof (that the reason of would be wrong) over the first proof (that it would be a wrong reason). On the other hand there is a disadvantage in the second proof, because it is possible that **ר"ג** is discussing a different case than **ר"ג**. It is not clear that **מר בר ר"א** is addressing his comments directly to **ר"ג**. See **רב ר"מ** ש"ף who states that could have proven his point from the second statement of **מר בר ר"א**; that **ר"ג** is addressing his comments directly to **ר"ג**. It is obvious that this is only in a situation of **אין כת"י יוצא ממ"א**.

⁸ See there.

⁹ **תוספות ד"ה טעמא וד"ה מודה** ד"ה יט, א.

¹⁰ יט, א.

(the claimants with the **שטר**), first **go to authenticate** the signatures on **your** **מגו** to prevent the **שטר** of **מזויף** or **טענה** (or **and** afterward **go down to the court** case. The reason required them to be **שטר ר"ג** the **מקיים** is –

דמיהמן לומר פרוע במגו מזויף –

Because the **לוּחָה** **is believed to claim** the loan was **paid** when he has a **of** **claiming** **מזויף**. It is evident that even if the **לוּחָה** **claims** **פרוע**, which implies that it is a **proper** **שטר**, nevertheless since he has a **מוֹגֵן** he is believed to **claim** and prevent the **collecting** with this **שטר** (without first being **שטר מקיים**) –

וכל שכן עדים דאלימי לאורו עי שטרא כדאמר במאי שמת¹¹ (בבא בתרא קנד, א) –

And how much more so should this be true by two **עדים who are** more **powerful** than an individual **states in** **גמרא**; they certainly should be able **to discredit the شטר**. These have a **מוֹגֵן**. Therefore even though they agree it is not **מזויף**, nevertheless they should be believed that **אמנה\מודעה** **היו דברינו** with the **מוֹגֵן** that they could have claimed that it a **שטר מזויף**.

In summation the question is:¹² Why when a **לוּחָה** claims he is believed (even though the **לוּחָה** is in possession of the **שטר**), because he has a **מוֹגֵן**; and why are the **עדים**, who claim **אמנה\מודעה** **היו דברינו**, not believed, even though they also have a **מוֹגֵן**.

ותירץ וביינו יצחק זההינו טעמא דמודעה הויל ומודים שהשטר נכתב ונמסר כהלכה –

And the answered that this is the reason why the **עדים** are not believed to claim **שטר** **since** the **עדים** admit that the **שטר was written and delivered** (to [the **לוּחָה** or] the buyer) **properly**¹³ –

שוב לאathi על פה ומרע לשטרא אפילו במגו¹⁴ –

שטר oral declaration cannot subsequently come and discredit the even if this declaration is substantiated through a **מוֹגֵן**.

תוספות anticipates a difficulty with this concept of **שטר** and justifies it:

ולא דמי לאנוסים וקטנים דמתניתין –

¹¹ The there states that it is possible that a **לוּחָה** is not believed to claim **לוּחָה**; however who are believed to discredit the **שטר** (by claiming **שטר** **מזויף** **מגנו** **אלימי** **טפי**). See previous cites (ב"ב קנד, ב) who maintains that **עדים** are believed with a **מוֹגֵן**, but the **לוּחָה** is not believed with a **מוֹגֵן**.

¹² Who maintains that question is from מהר"ם ש"ף who states that **שטר** **מזויף** **פ魯** **במוֹגֵן** **trust** **אמנה**; why are any different? merely to forewarn that is of the opinion that **מוֹדָה** **בשטר** **שכתבו** **צורך** **לקיומו** and a **מוֹגֵן** is effective.

¹³ See footnote # 17.

¹⁴ The adds that it is similar to **חוורים** **ומגידים** **תוס' הרא"ש**.

משנה מודעא היו דברינו **is not comparable to the cases of our** which states that the **עדים** are believed if they claimed **קטנים or אונסים** הינו. Seemingly there too we should apply this rule of **לאathi ע"פ** if, **הינו** ומרע לשטרא.

now explains the difference between these cases:

שאין מודים שהיא שטר כשר כלל אלא סותרין אותו הלכ' מהימני במאי -

שטר כשר ever was **עדים** do not admit that there **עדים** which is signed by **שטר** contradicts the **עדים**. A which is signed by **שטר** is no at all! **Therefore the עדים are believed** that they were **ewith a** that they did not have to be the **篪ים** מקיים אונסים וקטנים -

דלא שייך כאן לומר דלאathi על פה ומרע לשטרא שהרי אין מודים שהיא שטר -

For it is not applicable to say here in this case that 'an oral declaration cannot come and discredit a', for the **עדים** do not admit that there was a **שטר**. The difference between **עדים** (where the **עדים** are believed) and **עדים** (where the **עדים** are not believed), is that by **עדים** testify that the **שטר** was executed properly; however they claim that there was an issue which disqualifies the transaction described in the **שטר**. In such a case the rule is that **עדים**, even if there is a **מגנו** to substantiate the claim.¹⁵ In the cases of **קטנים ואונסים**, however, the **עדים** are stating that there never was a (proper) **שטר** since they were **עדים**, therefore there is no **ע"פ** that is **שטר**, for there is no **שטר**. The **עדים** are believed since they have a **מגנו**.

goes on to explain why they are also not believed:

ואמנה נמי נראה זההינו טעמא דלא מהימני לרבות נחמן דלא מרעי לשטרא -

And concerning the claim of it also appears that this is the reason that the עדים are not believed, according to ר"ג for the עדים are not empowered to discredit the **שטר** -

הואיל ומודים שהשטר נכתב כדין מדעת הלוה¹⁷ -

¹⁵ Once the **שטר** is presumed not to be a **שטר** (otherwise there can never be a **שטר**). The **עדים** cannot void a written **שטר** through their oral testimony. [In addition, other commentaries (see footnote # 14) maintain that they are **פסול** whether the **שטר** is **ר'ב ואילך** or there is no **קיימ**.] The explanation may be dependent on the meaning of **נאמנים** (whether the **שטר** is **ר'ב ואילך** or there is no **קיימ**). See footnote # 1. See **משכנות הרועים** אות **ר'ב ואילך** footnote # 1. A simple explanation may be that once there is a valid written **שטר** enacted this rule to protect the integrity of the **שטר**; that it cannot be voided by a (contradictory) oral declaration. See 'Thinking it over' # 2.

¹⁶ **A**, which is a **שטר** without **קטנים ואונסים**; which is no **שטר** at all.

¹⁷ Previously (footnote # 13) when was discussing a **שטר**, the expression was **מודעא**, however did not say it was **מודעא**, since they claim there was a **מדעת הלוה**. See **הואיל ומודים שהשטר נכתב כדין מדעת הלוה**;

since the עדים admit that the שטר was properly written with the consent of the borrower. maintains that according to ר"ג, the claims of both מודעה היו are not believed on account of דברינו and דברינו. לאathi ע"פ ומרע לשטרא.

מודעה ואמנה תוספות anticipates that one can challenge this assumption that the reason for is the same. Perhaps the reason for אמנה is different than מודעה. The reason why אמנה is not believed may be as stated, that it was never permitted to be written. A שטר is an illegal document. It is אסור for עדים to sign on such a document. When the say אמנה היו דבריהם רשיים. The rule is that אין אדם משים עצמו רשע.¹⁸ This is the reason why אמנה is not believed according to ר"ג. מודעה maintains that according to ר"ג this is not the reason for אמנה.

דלא מפרש טעמא דאמנה משום דלא ניתן לכתב אלא מר בר רבashi.

For the reason did not universally explain that the reason is not believed is on account that it is not allowed to be written; this reason does not apply to all the opinions but rather this explanation expresses the view of מר בר רבashi only –

אבל לרבות נחמן טעם אמנה ומודעה שניהם שווה.¹⁹

However, according to the reason for disbelieving the cases of אמנה ומודעה are the same in both; namely that לאathi ע"פ ומרע לשטרא.

פרעתה still remains the original question of why an individual is believed to claim אמנה are not believed to claim (even though לאathi ע"פ ומרע לשטרא) but with the of not being מוגו addresses this issue:

והא דעת ליה לרבות נחמן לומר פרוע הוא במגו דמזוייף.

And regarding that which ר"ג maintains that the is believed to claim the loan was paid, with the that he could have claimed that the was forged; seemingly it is case of פרוע במגו דמזוייף –athi ע"פ ומרע לשטרא.

תוספות answers:

התם נמי²⁰ לא מרע לשטרא כלל הלכך מהימן במגו.²¹

There too (by נמי), the is not discrediting the at all!

'Thinking it over' # 1.

¹⁸ ר"ש"י ד"ה מודעה נתן See footnote # 24 why prefers that ר"ג and disagree.

¹⁹ It is apparent from the syntax of the гмара that according to ר"ג there is no difference between and מודעה.

²⁰ The term נמי is to be understood that just as by they are not the שטר (since there was no to begin with), so too by there is no שטר (since the שטר remains a valid [paid up] שטר).

²¹ A שטר is issued with the intent that it will eventually be paid up. The claim of פרעתה is not against the שטר per se; but rather it is against the claim of מזוייף מיBei. The שטר בידי is sufficient to support the claim of פרעתה against the claim of שטר בידי וכיו'.

Therefore the **לוֹה** is believed to claim פָרוּעַ when he has **the** **מְנוֹג** of **מוֹזִיף**. The **לוֹה** agrees that it is a proper **שֶׁתֶר**. He simply claims that he paid up (and did not retrieve the **שֶׁתֶר** in lieu of his payment).

ללאathi ע"פ שטר מרע לשטרא; the rule is that שטר מרע לשטרא. Therefore in the cases of אמנה ומודעה, where there is a valid (even) שטר according to the עדים, and the שטר are being this מרע, they are not believed even with a מנו. In cases where there is no שטר or where there is no discrediting of a שטר, a מנו is effective to be believed. Therefore in the cases of אגוזים וקטנים where there is no שטר, the עדים are believed with a מנו. In the case of פרוע (there is a שטר, however) there is no מרע לשטרא; no one is denying the validity of the שטר, therefore the is believed with a מנו.

²² וואתני שפיר רב נחמן כרבנן דרבי מאיר -

ר"מ ר"ג can properly follow the opinion of the **רבנן** who argue with **ר"מ ר"ג** and maintain that by **פרוע** במאן דמצוייף (as well as) **אנוסים וקטנים** they are believed (with a **מוץע לשטרא**), since they are not **אמנה ומודעת**; however by **מאן**, where they are not believed.

והיה בריתך דמי שמת גב זה שפּוֹ: דشرط אמנה הוא זה שאינו אמו²³ -

And concerning that which states that if the
claimed that this is a – where the ruling is that he is not believed –
דבאי לוכיר רב נחמן מוקי לה צדורי הכל:

which the **גמרא** there **wanted to establish** that it **follows** the opinion of **ר"א**; **ר"ג** **maintains that** the ruling of the **ברייתא** is according **to all opinions**, including the **תלמוד** (**for רבנן**).²⁴

SUMMARY

According to ב"ג:

לאأتي ע"פ ומרע who claim are not believed since מודעה\אמנה היו דברינו עדים לשטרא.

אין כת"י יוצא ממק"א (if), since who claim are believed (since there is no valid שטר for they claim).

Since he is not believed to be a **פרוע**, he is not considered to be **לוה**.

²² See ‘Thinking it over’ # 5.

²³ The case there (ב) is where the claimant claims it was a *עריך מודעה*. Nevertheless the proof from *עדים* to the case of *מודרך* is certainly valid. If the *עריך* cannot be *לشرطא*, certainly the *עדים* cannot be *לشرطא*.

²⁴ It would seem that if the reason that עדימ are not believed to claim אמונה is because לֹא ניְנַן לִכְתָּב אֶמְנָה, then the himself should be believed to claim לה אמונה במצוותיו; the reason that עדימ are not believed to claim אמונה is because לֹא עולֵה. However if the reason that עדימ are not believed to claim אמונה is because לֹא אָתֵי ע"פ ומרע לשטרא תוספות insists that according to ר"ג the reason of אמונה is because לֹא אָתֵי ע"פ ומרע לשטרא. See ‘Thinking it over’ # 4.

he admits that it is a valid **שטר**.

THINKING IT OVER

לאathi ע"פ ומרע claims that by **עדים מודעה** are not believed, since **שטר** must be written with the consent of the **מתחייב** (the one who is being obligated by the **שטר**). In the case of **מודעה** there is no consent on behalf of the **מתחייב** (the **מוכר** or the **לה** for they are being coerced). The **עדים** should therefore be believed!²⁶

2. What would be the ruling if other **עדים** testified that it was a **שטר** (**אין כת"י יוצא ממ"א** or **כת"י יוצא ממ"א מודעה\אמנה**) (either when²⁷)

3. What can do to protect the **מוכר** if he claims he is being coerced into this sale?²⁸

לאathi ע"פadamant that the reason of **אמנה** is on account of **ר"ג** and not because of **ר"ג ניתן ליכתב וכו'**²⁹

5. **אנוסים** and **אמנה** **מודעה** writes that since **ר"ג** distinguishes between **ר"ג** and **ר"ג ניתן ליכתב וכו'**, we can say that **ר"ג** agrees with the **רבנן**.³⁰ Seemingly we must say that **ר"ג** agrees with the **רבנן** regardless, since **ר"ג** ruled that the **בעל השטר** must be **מזהה** before the **שטר** (**די"ת שטר שכתו צRIGHT לקיימו**)³¹!

²⁵ See footnote # 17.

²⁶ See סוכ"ד אות ע"ב.

²⁷ See footnote # 15.

²⁸ See ב"ב דף מ"ט, ג.

²⁹ See footnote # 24.

³⁰ See footnote # 22.

³¹ See מהר"ם ש"ג פ"ג.

או דלמא תנאי מילתא אחריתו הוא –

Or perhaps a stipulation is a separate issue.

OVERVIEW

לאathi ע"פ ומרע לשטרא (ר"ג) previously¹ explained that (according to ר"ג) If the discrediting the שטר through their testimony (as in the cases of אמנה\מודעה they are not believed. followed this up with a query to ר"ג; what is the ruling if the stated עדים (however) there was an oral stipulation concerning this transaction (which was not yet fulfilled). On one hand it seems that they are since according to their testimony the שטר (as is), is not valid (unless the stipulation is fulfilled). On the other hand perhaps they are not believed since the stipulation is a separate issue. There are two ways how to interpret this concept of תנאי מילתא אחריתו will explain that only one is acceptable.

פירוש² לדבר אחר הן באין ולא לעקירות השטר אלא תוספת בעלמא –

The explanation of תנאי מילתא אחריתו and that therefore it is not discrediting the שטר, is that the **עדים are testifying for a different purpose and the do not intend to uproot the שטר entirely but rather the intend to merely add** details –

שופרים עדותן היאך ועד השתא קיימ השטר ואינו נוקר אם יתקיים התנאי –

They are defining in what manner their testimony in the שטר is effective, and until now the שטר is valid and the will not be voided if the stipulation is fulfilled –

הלכך אין כאן הורעת השטר³ –

לאathi ע"פ תנאי מילתא אחריתו; that we should say שטר ומרע לשטרא.

¹תוספות ד"ה אמר ר"ג.

² The term פירוש (usually) indicates that Tosfos is rejecting a more obvious understanding of the text. Tosfos will shortly cite the rejected interpretation.

³ It is different than אמנה\מודעה. In the cases of אמנה\מודעה it is the intent of the עדים to testify that (even though we signed the שטר and it was properly delivered, nevertheless) the שטר is (presently) meaningless, since it is a מודעה\אמנה. However by תנאי they are testifying that the שטר is valid, provided that the stipulation is met. They are merely modifying their קיום השטר. They are not believed. Therefore they are believed (as concludes R"g). It would seem that if the time has already expired to be the תנאי מקיים the stipulation (see however הפלאה). See (however) ר"ש ד"ה הורעת השטר (see הפלאה).

will now mention the rejected explanation:

אבל אין לפреш מילתא אחריתיה היא למורי ולא שייך לעדותן ראשונה -

However, we cannot interpret the phrase **밀תא אחריתיה היא למורי** and **לא שייך לעדותן ראשונה** – **תנאי הינו דברינו** to mean that the **is a completely separate issue and it has no connection to their first testimony** of them. Rather we should view their testimony of **תנאי הינו דברינו** as **תנאי הינו דברינו**.

כמו שאם היו מעידין שהוא פרוע שנאמנים⁴ -

As if they were testifying that the **שטר was paid up where they would obviously be believed.** We should (perhaps) view the same as **פרוע**, and believe them. rejects this interpretation.

will now explain why this last interpretation is incorrect:

אדם בן מאי פריך בסמוך⁵ אי הפי⁶ אפילו תרי נמי⁷ -

For if it were so; that **תנאי** is similar to **פרוע**; it is totally irrelevant to their original testimony of **תנאי הינו דברינו**, then we have the following difficulty; **what does the shortly ask, ‘if this is so, then it should also be the same by two** who say **עדים** **תנאי הינו דברינו**. The **עדים** should not be believed. This concludes the quote from the **גمرا**.

will now explain the difficulty with the question **גمرا's** (that the **תנאי** should not be believed) is not understood:

דכיוון דעתן מילתא אחריתיה היא למורי -

For since the **תנאי** maintains **אין לפреш** that the testimony concerning a

⁴ According to the first interpretation, the parts of their (somewhat conflicting) testimony, and **תנאי הינו דברינו**, are part of one (seemingly conflicting) testimony. However we can reconcile them by assuming that **תנאי הינו דברינו** is merely a modification of **תנאי הינו דברינו**. The **עדים** had no intent of discrediting the **שטר**. According to the **שטר**, however, we view the **עדים** as offering two separate and unrelated testimonies. One, that the **שטר** was prepared and delivered properly and for all intents and purposes is a valid **שטר** in all respects. Two, that the **שטר** does not really bind the parties, since an oral stipulation was made, which limits the power of the **שטר**. [It is as if they would say **תנאי הינו דברינו** was a week after he borrowed the money.] If we assume the second interpretation (the **אין לפреш**); the idea that **תנאי מילתא** allows their testimony to be accepted, is more readily understood (since there is no conflict between the two separate testimonies), than if we assume the first interpretation. Nevertheless rejects the **אין לפреш** because of the ensuing difficulty.

⁵ **שטר** ruled that if one of the **עדים** said there was no **תנאי** and the other said there was **תנאי**, the **רב פפא** is valid without **עדים** **תנאי**. The reason is that since both testify to the validity of the **שטר**, and only one **עד** testifies that there is a **תנאי**, therefore one **עד** cannot oppose two **עדים**.

⁶ That we consider the **עד** who claims there was a **תנאי** as agreeing to the **שטר**, **קיים השטר**, however he qualifies the **שטר** and opposes the **שטר**, by saying **תנאי**, **עד השטר** (but not that he is considered as if he is not agreeing to the **שטר** by saying **תנאי**, and thus invalidating the **שטר** [for there is only one **שטר**]).

⁷ The question is; it should be considered as two **עדים** (**תנאי הינו דברינו**) against two **עדים** (**תנאי הינו דברינו**). Why should the **עדים** be believed?!

totally different issue, then -

תרי נאמנים אפילו בכתב ידים יוצא מקום אחר -

Two are believed to testify on a separate issue even if their signatures are available from elsewhere; the can be without them, nevertheless the will be believed to testify on a separate issue such as פרווע. Therefore they should also be believed to claim since according to the the claim of is similar to the claim of פרווע. The question is not understood. How can the compare two to one עד?! If two claim עד, they are believed just as they would be believed if they claim פרווע (since they are not in conflict at all with the שטר). It is a regular testimony of two. There is no cause not to believe them –

אבל חד לעולם אימא לך שלא מהימן כי היכי דלא מהימן לומר פרווע הוא⁹ -

However when one claims עד, it appears that he is not believed just as one is not believed to claim the שטר is paid up if the molah שטר מקוים is in possession of a.

לכך נראה כזפיריםנו:¹⁰

therefore it appears that means as we explained it; that it is merely a modification of the שטר, but not that it is totally unrelated to the שטר as the אין שטר maintained.

SUMMARY

תנאי מילתא אחרית이 who maintain are believed, since תנאי היו דברינו are believed, since תנאי is not discrediting the שטר, but rather it is merely a modification of the שטר. (However the תנאי is not considered to be something irrelevant to the שטר as, for instance, the claim of פרווע).

⁸ תוספות הרاء"ש אין לפреш may (also) be alluding to the question posed on the by the תוספות. If תנאי is similar to פרווע, then should be believed even if תנאי כת"י יוצא מק"א. From the entire it seems that all the discussions are only if כת"י יוצא מק"א (see previous תוספות ד"ה אמר ר"ג).

⁹ עד אחד is not believed by שטר (against a).

¹⁰ According to כת"י, the question כת"י נמי is readily understood. If we assume that when one claims עד he is not believed, it must be because his testimony of שטר to repeal his קיום; but rather it is considered as if his original testimony of כת"י remains as a valid קיום, which he wishes to modify. This modification is not acceptable since it opposes כת"י. Similarly when two say עד, they are also not being שטר their קיום, but rather they choose to modify it. How can they be believed to modify the שטר since it is a שטר; it is כת"י?! [The גמרא concludes that even by an ע"ש who says כת"י, the must be fulfilled (to validate the שטר), for since he is not מרע לשטרא, his modification is accepted (in regards to his testimony), and therefore there are no two עדים who testify that the שטר is valid as is. (See 'Thinking it over' # 1.)]

¹¹ There are four levels (of) according to ר"ג. 1. כת"י ע"פ ומרע לשטרא [לא]athi ע"פ are believed since there never was a valid שטר. 2. כת"י are not believed since they are מודעה ואינה. 3. מרע לשטרא, for it is a שטר פרווע. 4. כת"י (by the להוה) is believed since he is not מרע לשטרא.

THINKING IT OVER

1. What is the ruling if one claims **עד** according to **תוספות** and according to the **תנאי**?¹²
2. proved from the **תוספות** that the **גמרא** is incorrect. However, why indeed did the **גמרא** not accept the view of the **אין לפרש**?!?

¹² See footnote # 10.

**ואם כתוב ידם יוצא מקום אחר אין נאמנים –
is verifiable from elsewhere, they are not believed.**

OVERVIEW

עדי השטר stated that if (current) testify on a שטר מקוין (current) that the עדים (witnesses) are not believed. פסולין etc. will discuss whether this means that they are testifying that the שטר are still now, or that they were פסולים when they signed the שטר, but now they are כשרים.

ופסולי עדות דקתי נלא שאומרים שעדיין פסוליםadam כן אמר אין נאמנים -

And concerning the testimony regarding unqualified witnesses which the mentions; it stated that currently claim that the עדים [were] (are) שטר פסולין (they are relatives or (relations); even after the was signed until (immediately preceding their death¹) now, **for if that were the case;** that they are testifying that the שטר are still פסולים why are the current not believed, If the were present and the current would testify that they are פסולים, they would be believed² and the שטר would be nullified. The signatures on the שטר cannot be stronger than the themselves.³

אלא פסולי עדות הוא אז עתה מודים שהם כשרים -

But rather the current are testifying that the עדים then when they signed the שטר **but as of now,** the current admit that the עדי relationship were severed; they did תשובה (the relationship was severed; they did, etc.). Therefore they are not believed.⁴

תוספות asks:

ואם תאמר ומכל מקום אמר אין נאמנים להימנו במגו -

¹ See ‘Thinking it over’ # 1.

² If the current testify that the שטר are currently פסולים, the cannot defend themselves (by claiming they are העדים since the testimony is concerning the themselves; they are the defendants (בעל דבר A cannot testify as a witness).

³ See Tosfos הרא"ש.

⁴ The testimony of the current is not directed towards the שטר per se; for the current are currently פסולים in all respects. Rather the intent of the current is to be the שטר through their testimony. They are not believed, since there is also a contradictory testimony from the who claim (by virtue of their signatures on the שטר) that it is a שטר כשר. In this case the are not viewed as since the testimony of the current is not directed towards them.

And if you will say; that notwithstanding the fact that they are testifying that the current פסול were (only) initially (and not that they are now), why are they not believed that the current שטר is פסול, let us believe the current עדים with a מגו –

דאיבע אומרים עדין הם פסולים –

For the current could have said that the current עדים are still currently עדים פסולים עדי השטר If the current would testify that the current עדים are currently they would be believed, as stated previously, and the current שטר would be פסול. Let us believe them with this that they were עדים פסולים מגו when they signed, and the current שטר should be פסול.

תוספות asks an additional question in the same vein:

[וכן בכלל] שתיקתי עדים המכחישות זו את זו⁵ –

[And similarly by all cases] of two groups of that contradict each other –

אמאי לא מהימני בהראי במגו דאי בעי פסל לKNOWN בזולנותא –

Why is the last group to testify, not believed with a that they could have disqualified the first group of by accusing them of (currently) being robbers!? If the latter group would testify that the former group are גולנים (instead of contradicting their testimony)⁷ they would be believed, and the testimony of the former group would be discarded. Therefore their actual current testimony should be believed on account of this, and the testimony of the former group should be discarded.

תוספות answers:

ואומר רבינו יצחק דבשו עדים לא שייך מגו דין אחד יודע מה בלב חבירו:

عدים says that (the concept of מגו is not applicable by two because neither of the group knows what is in the other's heart. The idea of a מגו is that we should believe the current claim since he had the option of presenting a superior claim (where he would have surely been believed). In the case of twoعدים however we cannot say that we should believe each עד because he could have claimed the

⁵ They contradict each other concerning the object of their testimony (one group said he borrowed money and the other denies it). This is different than הימה where the latter group merely claims that the former group could not have seen their purported testimony for they were with the latter group at that very same time in a different place.

⁶ The rule by כת עדים המכחישות זו את זה is that neither is believed, so the matter remains unresolved (or we follow the חזקה). This is in contrast to כת הימה עדי הימה, where the last כת is believed.

⁷ In a sense the second group of עדים is already testifying that the first group is גולנים; they claim that the first group is causing someone to lose money unjustly.

superior claim. It is possible that each **עד** individually is reluctant to claim the superior claim, for he is not sure that the other **עד** will claim it as well. Perhaps they colluded with each other only concerning the actual claim that they are presenting. Each **עד** wants to be certain that he and his partner (in crime) are offering the same (false) testimony.⁸

SUMMARY

If claim that the **פסולים** (of a **שטר מקוים**) are currently believed, they are **עדים**. However if they claim they were **פסולים**, they are not believed, even though there is a **מגו גזונותא**; because a **מגו** is not effective by two **עדים**.

THINKING IT OVER

1. **עדי השטר פול'** is discussing whether the current **עדים** intend to be **עדים** now, or at the time of the signing.⁹ Seemingly it cannot mean that they wish to be **פול'** them now, for the **בריתא** clearly states **'ומתו פול'**¹⁰!

2. If a **מגו** is not effective by two **עדים**, then why are they believed in the **רישא** (of the **בריתא** and the **משנה**)?¹¹

⁸ See footnote # 7]. The **גליון** (in the margin) offers two additional answers why there is no **מגו**. One that it is a **פסל** **שר** **עדים** contradicts the **עדי השטר** (**עדים** **מגו** **גזונותא**). And two, that the idea that the latter **עדים** are believed [to be the former] is a **חידוש**, for why should you believe the [latter more than the former]; therefore (since it is a **חידוש**) it is only believed when the claim of **גזונותא** is actually made, but as a **מגו** it is ineffective. **עיי"ש ועי' עוז הוס' ב"ב ל'א, ב' ד"ה הו**.

⁹ See footnote # 1.

¹⁰ See **ח"ב אות רע"ט**.

¹¹ See **תוס' ב"ב ד"ה אין גליון** and the **גליון** here in the margin.

אמר רב ששთ זאת אומרת הכחשה¹ תחולת הזמה היא –
said this teaches us that a contradiction is the beginning of a repudiation

OVERVIEW

פסולין שטר מקוימים are stated that if two עדים claim that the shtr בריתא on עדי השטר are believed and we can collect with this. The shtr asked how can we validate such a shtr; there is contradictory testimony from two groups of עדים (the shtr and the גמרא sought to resolve this difficulty by stating that the הכחשה תחולת הזמה היא; and just as by the עדים must be present to be repudiated, so too by the עדים must be present to be contradicted. Since the shtr are not present; their testimony cannot be contradicted. Therefore it is a valid shtr. Our will show that even by a shtr מקוימים can be contradicted (and even refuted).

תוספות asks:

ואם תאמר תקשי לרב ששთ בריתא דמי שמית גם זה שט² דקתני אם אמר שטר אמנה הוא –
בריתא ר"ש contradicts for the seller claims he never sold this field. He gave the purported buyer the shtr because he trusted him. The continues –

אם יש עדים פירוש⁴ דשטר אמנה הוא הלך אחר עדים –

If there are ; meaning, there are who will testify that it is a shtr אמנה –
שטר אמנה השטר and believe the seller that it is a –

ואם לאו הלך אחר השטר –

However, if there are no עדים to substantiate the seller's claim, go according to the השטר, which states that the seller sold the field to the buyer. This concludes the בריתא.

תוספות continues with his question:

¹ See previous footnote # 5 (&6) concerning הכחשה והזמה.

² ב"ב קנד ב.

³ The בריתא is discussing a case where a person (buyer) was occupying a field and another (seller) challenged him that it belongs to him (seller). The buyer then produced a shtr מכירה that this seller sold this field to this buyer. The continues with the following text.

⁴ The term 'פירוש' in Tosfos (generally) indicates that he is rejecting another (simpler) explanation. It is not clear which interpretation Tosfos is rejecting. Perhaps 'אם יש עדים' can mean that there are עדים who can testify details of the sale, etc., but not that it is a shtr אמנה (in which case there would be no contradiction).

אלמא אף על גב דעת השטר צריך קיומ -

It is evident from this, that **even though** we are discussing a case where there is no requirement to be **שטר מקיים** the **שטר**; the **שטר** is considered **מקויים**.

תוספota will now prove how we know that the **שטר** requires no **קיום**:

כדאמר התם הלך אחר השטר שמודה הלוח⁵ שכתו כدائיתא התם -

As the states there that if there are no **עדים**, then go according to what is written in the **שטר**; the **שטר** to which the **admits to writing**, (and therefore does not require **קיום as it is mentioned there** in the name of **רבי יוחנן**). If it would not be considered a **שטר אמנה מוכר**, then the **שטר** should be believed that it is a **שטר מקויים**. The fact that he is not believed indicates that this **שטר** is considered a **שטר מקויים** through the admission of the **שטר** that he wrote it. This has proven so far that the **שטר** there is considered a **שטר מקויים**.⁶

continues with his question:

[ואפילו הци] אם יש עדים הלך אחר עדים ולא אמרינו המכחה תחולת הזמה⁷ -

[And nevertheless] even though it is considered a **שטר מקויים**, if there are **עדים**, we follow the **עדים** and the **שטר** is nullified, even though these who claim **עדים**, contradict the **שטר** who claim that it is a valid **and we do not say that** 'the **תחולת הזמה** is **מכחה**' that we cannot believe the **שטר** since they are being **מכחיש** the **שטר** not **עדוי**. Rather we believe them even though it is a **שטר**. How can we maintain that we cannot have a **מכחה** **שלא** **בפניהם**?!?

answers:

ויש לומר דזאת אומרת קאמור אבל ההיא פלייג:

And one can say; that merely stated that this maintains that **הכחשה תחולת הזמה** and therefore you cannot be **מכחיש** **שלא** **בפניהם**; however that **כתובות** **מי שמת in ברייתא** argues on our here in **ברייתא**.

SUMMARY

⁵ The actual case in the **ברייתא** is with a **שטר מכירה**; however the logic is the same by a **שטר הלואה** as well. The reason why the **שטר** maintains the **הלך אחר השטר** is because of the ruling that **שטר מקויים** in **ברียתא** is considered **מקויים**. Therefore the **שטר** is not believed to claim **דמוזייף**.

⁶ It was necessary for to prove that the **שטר** there is (considered) a **שטר מקויים**. Otherwise there would be no contradiction to **עדות** **ר"ש**. **רב ששת** maintains that **עדים** **לא** **בפניהם**, only when there is a valid **עדים**. However when are contesting a **שטר** **שאינו מקויים**, it is obvious that they are believed, even though they are the **מכחיש** **בפניהם**.

⁷ See 'Thinking it over'.

It is only our **הכחשה** that maintains **ברייתא**, according to **ר' ששת**. The **זומה** maintains that **עדים** can be even though **ב"ב** in **ברียתא** **מקוימים**. **שטר** is considered.

THINKING IT OVER

asks, that (in **ב"ב**) since the **שטר** is considered by the **תוספות** **לוה** (**מוכר**) contradicts the rule of **ר' ששת**.⁸ Perhaps **ר' ששת** maintains his rule only when there can actually be a **זומה** as in our **ברียתא**. In the case of **ב"ב** however, there can never be a **זומה**; for we can claim we never signed it. Perhaps in such a case **ר' ששת** agrees that you can be the **עדים** **מכחיש**?!⁹

⁸ See footnote # 7.

⁹ See **מהרש"א** (**הארוך**), **מהר"מ שי"ג**.

ואוקי ממונה בהחזקת מריה –**And we place the money by its presumptive owner****OVERVIEW**

The taught that when there is a ברייתא שטר מקוים, and other claim that عדים הפסלים were not believed. The shtr assumed this to mean, that since the הפסלים are not believed, the molah can therefore collect with this. The challenges this assumption; for since it is עדים הפסלים against the shtr, the cannot collect with this. The concludes that רב נחמן rules since it is תרי ותרי. This seemingly means that the is exempt from paying, since he is the molah in the money. The question arises, what is therefore meant by נאמנים; seemingly the הפסלים are אוקי ממונה בהחזקת מריה. This will cite s'i's explanation and discuss it.

There is a rule of proof; that the burden of proof is on the one who wishes to extract money. The question arises what is the דין if the molah was seized from the original חופס after it was established that it is a ספק. Now the original is מוציא and the חופס becomes the molah. Is this תפיסה effective and the must bring a ראייה to be from the molah; or do we say that a תפיסה is ineffective, and the must return whatever he seized back to the original molah.

פיריש בקונטרא¹ ואין נאמני דקתני לאו דמגבין בשטר אלא שלא קרעין ליה –

explains and that which the states that the are عדים הפסלים ברייתא not believed to invalidate the it does not mean that we collect the debt with the שטר, for there is a situation but rather the term אין נאמני means that we do not tear up the shtr. The rules that a which is מקוים shtr and other claim that the were unqualified to sign, the عדים are not believed. This does not mean that the molah may collect his debt based on this; for it is אין נאמנים and the monies remain by the molah, who, in this case, is the molah. Rather, means that the shtr does not insist that the be destroyed on the basis of the testimony of the הפסלים; but rather that the molah may keep the shtr.

¹ בד"ה ואוקי

continues to cite ריש"י who explains what benefit there is to the fact that we do not destroy the שטר. Seemingly he still cannot collect his debt:

ונפקא מינה די תפס² לא מפקינו מיניה -

And the outcome of this ruling; that we do not destroy the שטר, is **that if** the seized from the whatever the שטר claims is owed to the **we do not extract it from him** and return it to the לוה. The לוה is entitled to keep whatever he seized. If the was believed, then even if the was his, he would be obligated to return it to the לוה, since there is no proof at all that the שטר owes him any money. The שטר was invalidated by the עדים הulosim. However since the meaning of is that we are not sure whether the are truthful or not, for it is תרי ותרי, therefore the ruling is that the cannot collect from the לוה, because perhaps the are truthful. On the other hand if the was undim hulosim were not truthful and the cannot claim his money back, because perhaps the שטר is a valid ב"ד מוחזק. The monies always remain in the possession of the שטר does not take away monies from the since there is a ספק (of תרי ותרי).

תוספות has a difficulty with Rishonim's explanation:

وكثة ذكر بפרק קמא דברاً م McClure (ذو وبشط) أبي سباق بكور -

And it is difficult, for the states in the first concerning a questionable first born [sheep]. A firstborn (kosher animal) is given to the Cohen. The status of this animal was in doubt whether it was a בכור or not. The owner is not obligated to give it to the Cohen, for we apply the rule of המוציא מהבירותו. The Cohen must prove that it is a בכור in order to claim it.³

The גمرا there rules that if –

תקפו כהן מוציאין אותו מידו -

כהן seized it from the Israel, and it is now in the possession of the Cohen, nevertheless we remove it from his possession. ספק בכור returns the back to the original owner. This concludes the citation from the ב"מ גمرا in Israel.

תוספות concludes the question:

אלמא תפיסה דלאחר ספיקא לאו כלום הוא⁴ -

² This תפיסה is effective even if there were no העדים saw the תפיסה. If there were no then the is certainly believed to claim with a majority of two (since there are two who support him).

³ The ישראל is nonetheless prohibited from working and/or shearing this animal for it is a בכור. In a ספק בכור (דאורייתא) we are strict and the prohibitions relating to a בכור apply to a בכור.

⁴ This (seemingly) implies that a תפיסה is a valid תפיסה. This would mean that if the was originally in the possession of the Cohen (or the had a right to it by the Cohen) could keep the שטר. The Cohen would not be obligated to return the שטר or pay back the right (and the Cohen would not be liable for the right). See the later in this Tosfos footnote # 22). See 'Thinking it over' # 1.

it is evident from that גمرا that seizing after there is a doubt; as the case is there (and here) that the seized the ספק בכור כהן after it was known that it is a (and here too, the seized the לוה' assets after we knew it was a (תרי ותרי of ספיקא). This type of seizing is meaningless. The must return the ספק בכור. Here too the should be required to return any monies he seized after it was established that it is a (תרי ותרי רשי). How can state that if the הופס is מלווה we are not מוציאין מידו!

תוספות does not immediately answer this question. Rather anticipates that there may be an additional difficulty (on the of תקפו כהן סוגיא), which will subsequently dismiss:

ומיהו אהוא דסוף השואל (שם דף קב,ב,ושם) לא קשה מידי -

However, concerning that in the end of גمرا, there is no difficulty at all from the of תקפו כהן סוגיא –

– השואל in גمرا continues to cite the תוספות –

דאמרין גבי משכיר בית לחבירו בי"ב זהובים לשנה מדינר זהב לחודש -

For the states concerning a case where one rents out a house to his friend for the rate of twelve golden dinars for the year and the landlord additionally specified that it is being rented at the rate of one golden dinar per month. The year subsequently turned out to be a leap year of thirteen months.⁵ The ruling is as follows:

בא בתחילת החודש כולו למשכיר -

If the landlord came to collect the rent at the beginning of the thirteenth month the entire additional rent of one must be paid to the landlord.

תוספות now derives a concept from this ruling that the receives the extra month's rent, even though it is a ספק if he is entitled to it –

אלמא דבחזקת משכיר הוא -

This ruling implies that the rented property is considered to be in the possession of the landlord. This explains why he can force the tenant to either pay the extra month's rent or be evacuated, since the landlord is the מוחזק of the rented property. Therefore when there is a ספק, we award it to the מוחזק, who in this case is the landlord.

⁵ The question here is whether we follow the (opening) statement of twelve זהובים per year, in which case the renter is not obligated to pay for the extra month, or do we follow the (closing) statement of a dinar לחודש, in which case the renter is obligated to pay an additional dinar for the thirteenth month. This is the ספק.

גמרא continues to cite the ruling in that –

ואפיו hei קאמר בא בסוף החודש כלו לשוכר –

And nevertheless the landlord states if the landlord **came at the end** of the thirteenth **month, it is entirely the tenant's**; the landlord cannot force him to pay up the rent for the thirteenth month. Seemingly there too the landlord was the rent from the tenant, since the landlord is the owner. What is the difference between the case of where if the landlord seized the land we are since the Israelite is the owner; and the case of where we are not from the landlord of the Israelite?!

תוספות answers that this is not a valid comparison:

דשאני התם דכיוון דלא בא בתחילת החודש⁷ איך לא מימר אודוי ליה –

For there by **because** it is different than by **because** the landlord and the tenant did not come at the beginning of the thirteenth month to collect the rent due to him, **it is possible to say** and deduce from his lack of prosecution that the landlord has indeed admitted to the tenant that there never was any intention of collecting an extra month's rent. However by **because** (and similarly here by the **full** there is no indication at all that the Israelite is forfeiting any rights to the land (or that the land is exempting the tenant from paying).

תוספות explained that there is no contradiction between the **sho'el** in Gomera (where is seemingly effective) and the **sho'el** of Cohen (where is not effective). However there still remains the original question on **Rashi**; why is effective here (by a **full** and not effective by **because** (even though both are a **doubtful manner**, and by neither is there a semblance of **claims**). **Rashi** will now explain:

יש לומר דשאני גבי בכור שכחן תפיסת מספק דין יודיע אם בכור הוא –

And one can say; that by **it is different** than here, **because** the Cohen in a **doubtful manner**, **since** the Cohen himself **does not know if this animal is a**; therefore the **sho'el** is not effective, since the Israelite is the owner, and the Cohen has no valid claim against him, only a **claim** –

אבל הכא שטוען ברוי מהני תפיסת⁸

However, here by the **full** where the **claims** that the **certainly**

⁶ If these two cannot be reconciled and there is a dispute between the **sho'el** of Gomera (which maintains that the **sho'el** is not effective), then the **sho'el** of Cohen (which maintains that the **sho'el** is effective) is not that difficult. **Rashi** can maintain that he follows the **sho'el** of Gomera which maintains that the **sho'el** is effective.

⁷ See 'Thinking it over' # 2.

⁸ Regarding the case of the **sho'el** where (seemingly) it is also a **claim** (whether **shma** or **shon** **raishon** **sho'el** and the **sho'el** is sufficient to allow a **shevra** (**shon acharon**)), nevertheless the **sho'el** is sufficient to allow a **shevra**.

⁹ See 'Thinking it over' # 3.

owes me the money **תפיסה is effective**; and the can retain that which he seized.

טענת חופש has a is valid if the **חפיסה** is valid according to רשותי. שנותל הספק therefore asks: בר' ¹⁰

ואם תאמר בחזקת הבתים (זו לד,ב) גבי זה אומר של אבותי¹¹ כולי -

And if you will say; in concerning the case where this one said it belonged to my ancestors, etc. The other litigant claimed the same.

אמר רב נחמן כל דאלים גבר -

ר"ג **ruled whoever is stronger overpowers** and takes possession.

ופריך מהמחליף פרה¹² בחמור¹³ זה אומר ברשותו ילודה זהה אומר כולי יחלוקו -

And the there challenges the ruling of ר"ג from the case where one exchanges a (pregnant) cow for a donkey; this one said it was born when the was in his possession and this one said, etc.¹⁴ The ruling is they divide the newborn calf between them. The question on ר"ג is why do we not say in the similar case of כו' זה אומר של אבותי כו' זה אמר. This concludes the citing of the **חיקת in גמרא **הבתים**.**

שיטת רשותי continues with his question on **תוספות**:

ומאי קושיא הא היהאת סומכוס ורב נחמן כרבנן¹⁵ -

And what question is there on **פרה בחמור** from **ר"ג**? **For that** of **משנה** **המחליף** **פרה בחמור** follows the opinion of **סומכוס** who maintains that **ממון** **ר"ג** and follows the opinion **of the** **חולקים** - **רבנן**

دلרבנן דאמרי המוציא מחבירו עליו הראיה היענו דינה לכל דאלים גבר -

For the **who maintain that** **that is exactly the same ruling as** **רבנן** **כל דאלים גבר -**

כיוון דמהניא תפיסה כשטוען בר' ¹⁶ -

¹⁰ We do not assume that it remains in the possession of the מוחזק at the time of the **טפק**; but rather either party has the right to (continually) seize the item from the opposing litigant. There is no definitive settlement.

¹¹ The argument was concerning a ship or property, etc.; an item over which neither of the litigants had physical possession.

¹² The cow gave birth sometime during the transaction; but not in the presence of the parties.

¹³ The transaction was effected by the original **בעל הפרה** making a **משיכה** on the **חמור**; thus exchanging the ownership of the two animals.

¹⁴ It cannot be determined if the birth took place before the transaction (thereby the calf belongs to the original **בעל הפרה**) or if it took place after the transaction (thereby belonging to the original **בעל החמור**).

¹⁵ The states that according to the **רבנן** (if the **רשות** is in neither's **בעל החמור** or **בעל הפרה**) we award the newborn calf to the **בעל החמור**, and the **בעל הפרה** is a **מוציא** **מחבירו** and **עלוי הראיה**.

¹⁶ It is evident from this that **כדא"ג** is continual. Each litigant may continually be from the other.

ברוי (according to ריש"י **תפיסה** is always) **effective when there is a claim.** If we were to disagree with ריש"י and maintain that we award the settlement to the mochazk at the time of the dispute, then would mean that from that would not be effective; only a can be from the mochazk. The ruling of would be different than the mochazk, where the object remains by the original mochazk at the time of the dispute. The question of the gemara is understood. ר' נ. is not following the opinion of the רבנן; the never mentioned, only, which is a different ruling. seems to be an original ruling of ר' נ. The rightfully asks that we should follow the ruling of [or a]. However, according to ר' נ. that and are synonymous (for in each case continual is effective), then is not stating an original but rather following the ruling of the חכמים.¹⁷ Why is there a question on according to ר' נ.?!¹⁸

ויש לומר זה כי פריך דאפיקו רבנן לא פלייגי אסומכוס -

And one can say that this is the challenge to (who) maintain (the) do not argue with - סומכוס

אלא משום דחד מיניהם מוחזק ואייכא למייר המוציא מחבירו עליו הראייה -

Only because one of them (either the בעל הפרה or the בעל הפרה (the is in someone's possession and/or the (mera kama is the and therefore it is possible for the to maintain that - המע"ה

אבל הכא דין אחד מוחזק יותר מחבירו¹⁹ מודו לסתומכוס דיחילוקו²⁰ -

However, here in the case of זה אומר של אבותי כי where neither is more than the other the admit to that they should divide the item in question; why then does maintain when there is no mochazk.²¹

¹⁷ (where there is no mochazk) seems to be an obvious result of the (牍). If we rule that even if a person was a mochazk (בשעת הספק), nevertheless his opponent may seize it from him and retain it, then certainly in a case where neither was a mochazk, that each of the litigants is entitled to (continually) seize it. See footnote # 20.

¹⁸ See פ"א מהר"ם ש"י (האריך) ומהר"ם ש"י (האריך).

¹⁹ They are arguing over a boat or a property without any documented proof, and neither has physical possession of the disputed item.

²⁰ We would be required to say that the haloka where there is no mochazk is more rightfully awarded to both parties, than where we allow the present mochazk to retain ownership by the. In the latter, the other litigant can always be тоփס; in the former, once the haloka is made, it is permanent. The reasoning may be as follows: In any case each party has an equal right, therefore the obvious ruling should be (as maintains). The basically agree to this; however they maintain that if one party is a mochazk, we have no 'right' to remove him (even partially) from this item, unless there is proof. We are not awarding him the item; it is his merely by default. If the situation changes and the other litigant retains possession then it remains by him, again only by default. However when there is no mochazk then the ruling is . We award half the item to each litigant in a legal and binding manner. There can be no . See footnote # 17.

In summation; according to the view of ר' יוספוס it is that when there is a then תיפויה לאחר שנולד הספק is effective and may continue indefinitely.

תוספות offers another approach,

ועוד יש לומר²² דהכא מיירי בשתפס קודם שנולד הספק -

and in addition we can say that in truth a **תפיסה** is invalid as indicated by the **חזקת הבתים** in **סוגיא תקפו כהן** (and the **סוגיא** which challenged the ruling of **(ר"נ)**, **however here** (by the **we are** **discussing** a case **that** the **מלואה** seized the assets of the **before the** **ספק was created;** the **מלואה** had in his possession assets of the **before the** **ספק** came to **ב"ד**, therefore now that there is a **ספק**, the **מלואה** is the **מושזק** and he may retain the assets that are in his possession prior to the **ספק**. According to this answer when the **ברייתא** states **תופס קודם שנולד הספק**, **מלואה** only if he was **אין נאמנים**, this ruling is in the favor of the **מלואה**, however once the **ספק** was **פטור** from paying and **נולד** the **ספק** **לא** **תפיסה** **לאחר** **שנולד** the **ספק** **מןני**.

תוספות offers a different interpretation:

ורבי שמשון בן אברהם נראה לו להעמידה הברייתה בשובר -

And the ברייתא prefers to establish that the **רשב"א** is discussing a receipt. The presented a receipt that was countered with a receipt that was **מלוה**. **מקוימים** and the **שטר הלואה**, **לוּהָ**, was countered with a receipt that was **מלוה**. Subsequently other would be **עדים הפסלים** came and were **פוסל**. If the **עדים** would be believed, the **שטר הלואה** would collect with his **מלוה**. The ruling is that the **עדים הפסלים** are not believed and therefore the **שטר** is valid (even though it is **תורי ותרי**).²³

ולחבי אין נאמנים דאoki ממונה בחזקת מריה ומחזקין עדי שובר בכשרים ולא יפרע:
And the cause why the **עדים הפטלים** are not believed (even though it is **תרי** (ותרי), is **for we place the money in the presumptive possession of its owner**; who is the **לוּה** and **we presume the witnesses of the receipt** (who claim that the **לוּה** repaid his debt) as being valid and the **לוּה** is not required to pay.

SUMMARY

According to (the first interpretation of) רשי' (Rashi), the word **הספוק** (the source) refers to the place where the water flows out from beneath the earth.

²¹ The there subsequently explains that ייחולקו is said only by a ספק (the is there even without their claims [as in the case of המלחיף פרה בחמור]), however by דררא, זה אומר של אבותינו וכו' (the litigants) and ייחולקו (the ספק is created only by the litigants) does not apply.

²² It is not clear (from this perspective) whether the term **חוספה מהני** (that is, **ור'ל**) is an alternate interpretation of **הספוק שנוולד** in a case of **ברוי**; however by a case of **שמא** it is only **קוודם שנוולד הספוק**, or if it is **טענה ברוי** even by **הספוק לאחר שנוולד** (and **גמרא**自己的 interpretation of the **תפסה מהני**).

²³ See ‘Thinking it over’ # 5.

where there is a מהני is not טענת ברי since it is a תפיסה that is not considered by Cohen. By we can assume that (perhaps) the משכיר was a שוכר. [By טענת שמא According to the alternate interpretation (and the רשב"א a השפָק is ineffective.

THINKING IT OVER

1. What would be the דין by a קודם שנולד הספק טענת שמא?²⁴
- 2.explains that by it is not considered a משכיר וшוכר therefore since the did not come at the beginning of the month, the הספק.²⁵ However, the rule by is that אלא בסוף שכירות; איןנה משתלמת what proof is there from the tardiness of the משכיר?²⁶
3. Why is there a difference between a case of (תקפו כהן שמא ושמא where is not effective and a case of (ברי וברי where is effective?)²⁷
4. What would be the דין of a ספק where there is no מוחזק; do we say כדא"ג or יחלוקו?
5. According to the that we are discussing a רשב"א שובר²⁸ what does the mean when it asks ?'ומגבין ביה כבשטרא מעלייא'! We are discussing a שובר, not a שטר הלוואה!²⁹

²⁴ See footnote # 4 & 22.

²⁵ See footnote # 7.

²⁶ See שם רשב"א.

²⁷ See footnote # 9. See משכנות הרועים את שצא.

²⁸ See footnote # 23.

²⁹ See שם רנו ח"ב מ"ת אות רנו.

אלא¹ אמר רב נחמן אוקי תרי להדי כולי

Rather, ר"ג said, we place the two against, etc.

OVERVIEW

עדיו השטר taught that if two witnesses testify on a case that the were not believed (that we should destroy the shtr) explained that the shtr has a דין of ותרי and we cannot collect the debt with this shtr.

There is a dispute (elsewhere) in a case where two groups of contradict each other, if each group may testify independently in other cases, or whether we say that since one of these two groups lied, they are disqualified from being witnesses in other cases as well. We do not know which the lying group is, so both are disqualified. The opinion of ר"ג (and רב הונא) is that each group of witnesses may subsequently testify in other cases. will initially compare and then differentiate between our case here and the case there.

תוספות asks:

ואם תאמר ולרב נחמן אמאי לא מגבינו ביה בשטרא -

And if you will ask; according to ר"ג, why do we not collect the debt with this shtr?

והא רב נחמן סבר לר' הונא (שבועות מז) [בבא בתרא זז לא,ב] -

For ר"ג maintains as ר"ה does –

בשני כתבי עדדים המכחישות זו את זו² דכל אחת באה בפנוי עצמה ומעידה -

Concerning two groups of witnesses who contradict each other; the ruling, according to ר"ה ור"ג, is that each group may come independently of the other and testify; we accept other testimonies (that are not related to their contradictory testimonies) from each group, as long as the witnesses of each group remain within their group and do not intermingle with each other³ -

אף על גב דלפי עדות כל אחת חברתה פסולת לכל עדות -

¹ Seemingly this should precede the previous Tosfot.

² It is obvious, therefore, that the witnesses of one group are testifying falsely, and therefore are not suitable to be witnesses in the future as well. Nevertheless, since we do not know which group is the lying group, we place each group on their presumption of innocence (חזקת כשרות) and consider them to be suitable concerning other testimonies.

³ If an עד of one group would combine with an עד of the contradicting group, then their testimony cannot be accepted. One of these witnesses certainly lied in the contradictory testimony and is therefore disqualified.

Even though that according to the testimony of each group its companion contradictory group is disqualified for all other testimony; each group it saying by implication that the other group is lying and therefore (besides that we should not accept their testimony in this case), they should be permanently disqualified from being עדים. Nonetheless the ruling is (according to ר"ה ור"ג) that even though we cannot resolve the contradictory case, we accept any other testimony where these two groups (or any other groups) do not contradict each other –

הכא נמי כיון שאין מכחישין אותם לומר שלא לוה כלום –

Here too, where one group claims that the were עדים, and there is an קשרים that contradicts them and claims that the are עדים השטר אנחנו סהדי since שני כי עדים המכחישות זו את זו, we should follow the same ruling here as by עדים השטר are not contradicting the עדים הulosim, and saying that the did not borrow anything; the עדים הulosim are not testifying concerning the loan whether it took place (as the עדים are indeed testifying), or not –

אלא אומרים איןכם נאמנים בדבר זה דפסולים היותם ואמאי לא מוגבינו ביה בשטר –

But rather the עדים הulosim are testifying that you (the are not to be believed concerning this loan, for you were disqualified to testify; either because you were קשרים or עדות פסולי עדות etc. So why do we not collect the debt with this שטר??! The contradictory testimony is only concerning the status of the עדים. We cannot conclude whether or not the השטר were עדים, since this is a case of two קשרים עדים השטר. However concerning whether or not there was a loan there is only one group of that are testifying; namely the עדים השטר who claim that there was a loan. This is (seemingly) a ‘new’ case, where only one group of עדים are testifying unchallenged. There is no reason not to believe them (according to ר"ג ור"ה) that the loan took place.⁴

תוספות answers:

ויש לומר דהנתם באה כל אחת בפני עצמה ומעידה –

And one can say that there by, שני כי עדים וכו', the reason each group may come independently and testify, is –

משמעות דמוקמין כל אחת בחזקת כשרות –

Because we place each group in a presumption of innocence; we assume that each one individually has a כשרות. Before this case, each of the was עדים.

⁴ One cannot argue that since there is a doubt (on account of the תרי ותרי) whether the השטר were עדים, therefore we cannot accept their testimony; for in every case of two קשרים עדים וכו', each group claims that the other are עדים. There is in fact a ספק whether or not they are עדים, and nevertheless they are believed in other testimonies (on account of their כשרות). The same rule should apply here. They should be believed concerning the loan even if there is a ספק that they may be עדים.

presumed to be. This supports them so we cannot disqualify them. כשר therefore they can testify in other cases.

אבל הכא שאומרים קטנים היו או קרובי משנולדו עד עתה שנתרחקו -

However here, that the were minors when they signed the claim that the were minors or the claim that the were relatives to one of the parties from birth until now, when they became distanced, they are no longer related,⁵ therefore -

לייכא למיימר אוקמינחו אחזקתייהו דפסליןו אותן משנולדו -

We cannot say: ‘place them on their presumption of for the each are disqualifying them from birth. In the case of each we are not sure which is the other from this testimony onwards. However since it is, and we were each has a right to testify from before this case, where even according to the opposing side, at that point they were. Therefore we accept their future testimony on account of this right. In our case, however, the claim that the were either in which case there is no prior or that they were from birth, in which case there is also no right. There never was a time when we know for certain that the were to testify on this. When the opposing testimony does not allow for a loan, they cannot be believed to claim that there was a loan. They have no right for the time when the loan took place, since the claim that they were from then, from the time of birth onwards.

עדי, אונסים מהמת נפשות anticipates the following question; that by the claim of do have a right. Before they signed on this claim that they were. Before they signed on this claim that they were. The reason the explains:

אונסים היו נמי מהמת נפשות לא שייך לאוקמי אחזקה דהא לא פסליל להו כלל -

And also in the case where the were claim that the were we also cannot believe the that there was a loan; it is not possible to place them on their right and therefore believe them, for the do not disqualify at all. The reason the are believed to testify in other cases, even though they are contradicted and considered by the opposing side is because since there is a right if they are

⁵ See footnote # 8 and ‘Thinking it over # 2. עתה נתרחקו, that we must be discussing a case where they say that they became related to each other some time before the was signed (but not from birth), in which case the right (from before they became related, or from before they were related), then we would collect with this as in a regular right. See footnote # 8 and ‘Thinking it over # 2.

⁶ Even though there is a right that nevertheless that is not a right in these, rather it is a right regarding the writing of a note (see מהר"מ ש"פ שטר הגהה).

⁷ See ‘Thinking it over # 3.

עדים הפסלים resolves the **חזקת כשרות** in their favor. However here the **חזקת כשרות** claim that the **עדן סהדי** claims that it is a valid claim that the **אנוסים מהמת נפשוו** were **עדוי השטר**; there is therefore a **ספק** whether or not they were **אנוסים מהמת נפשוו**. There is no **ספק** that can resolve this issue. The **עדים הפסלים** are not impinging on the integrity of the **חזקת כשרות**.⁸ Since there is no **ספק** that can resolve the issue; therefore the **ספק** remains a **ספק**. We cannot accept testimony when there is a **ספק** if this testimony is true or not.

אוקמי אחזקתייהו offers another explanation why we do not say here **תוספות**:
רבי שמשון בן אברהם אומר דהכא לא מוקמינו להו אחזקה⁹ -

חזקת כשרות רשב"א explained that here we do not place them in a because –

כדאמר לעיל ממשום דעתו קמן דלמא הו מודה:¹⁰

As the just stated previously, ‘because if the would be before us perhaps they would have admitted’ that they were or **אנוסים**, **קטנים ותיר** that they were **פסולי עדות**. Therefore it may not be considered as **פסולים** that is clearly stating that the **עדים הפסלים** are **עדוי השטר**. It is possible that the **עדוי השטר** would agree with them.

SUMMARY

באה בפני עצמה the rule, that by **שניהם כתיה עדים המכחישות זו את זו** they can each, is limited to situations where the contradictory testimonies allow for a **חזקת כשרות**. However if the testimony does not allow for a **חזקת כשרות** (or does not impinge on the **חזקת כשרות**) then they cannot testify.

Alternately they can only testify if they openly contradict the opposing **עדים**, **אנון סהדי**, etc.)

THINKING IT OVER

1. There seem to be differences between the case here (**שניהם החתוםים על השטר**) and the case there (by **תיר ותיר**):

פסולים are **עדוי השטר** are testifying directly that the **עדים הפסלים** (and their intent is to be **פושל** the **שטר**); there, the **עדים** are merely

⁸ It would seem that if the **אנוסים מהמת ממו** were **עדים הפסלים** would claim that the **עדוי השטר** were **עדים הפסלים** on the basis of the **חזקת כשרות** of these that they would not sign if it was ‘merely’. **אנוסים מהמת ממו**. See footnote # 5 and ‘Thinking it over’ # 2.

⁹ According to the answer of the **רשב"א**, there would not be a **חזקקה** even if they testified that they were or **became קרובים** (**מנולדו**). See footnote # 5.

¹⁰ See ‘Thinking it over’ # 5.

contradicting each other concerning the case; the פסלות (for other cases) is merely implied.¹¹ The עדים המחייבין זאת have no known intent to be the opposing עדים (for all future cases).

B. There, the opposing עדים are explicitly contradicting each other (and therefore implicitly stating that the opposing עדים are פסולים and cannot be פסול others); however here, no one is directly opposing the פסולim and claiming that the פסולים are עדי השטר; it is ‘merely’ a claim that the was done בכשורת.¹²

C. There, the which will be accepted lies in the future; here, the which wants us to accept is in the past.

D. There, the conflicting testimonies cancel out each other and the חזקת (which was never invoked) remains. Here, the claim of the פסולים seemingly cancel out each other. However the claim is seemingly based ‘merely’ on a presumption of כשרות. Once the פסולים cancel out each other there no longer remains a חזקת כשרות! The פסולים was ‘used up’ in cancelling the חזקת כשרות.

Are these differences sufficient to make a distinction להלכה between the two cases, and if they are, why does not consider them?

2. explained that when the פסולים claim עדים משנולדו there is no support to support the חזקת כשרות if they claimed because of גולנות or, but not קרובים. This implies that if and similarly then there is a חזקת כשרות and we can collect with the as in ¹³. Why then does the ask גمرا in שטרות ¹³? Perhaps the is discussing these types of cases where the have a חזקת כשרות and we can collect even in a case of תועת?!

3. explains that by אנוסים הוי there is no impingement on their כשרות and therefore we cannot accept the testimony of the ¹⁴.

¹¹ הפלאה כב,א תוד"ה תרי.

¹² Are there that, according to סברא who maintains that רב החכמים are פסולים להעид, then the should be פסול since there is a against them on account of the (¹³?! אנן סהדי ז"ל).

¹³ מהר"ם ש"ג.

¹⁴ See footnote # 7.

Seemingly in the case of אנוסים הוי, there never was a question initially that the עדימ הפטלים should be believed. The הפטר are not merely claiming that the פטלים להעיז are עדימ הפטר, but rather they are claiming that there was no loan. This is the simple meaning of אנוסים הוי; they were coerced to sign on the שטר (by the מלואה, etc.) even though there was no loan. Otherwise why was there a need for coercion?! How can there even be a הוי א that the עדימ הפטלים claim there was no loan?!¹⁵

4. initial question is that we should believe the עדימ הפטר that there was מלואה על פה. Does mean to ask that it should be considered as a הלואה or a מלואה בשטר?¹⁶

5. The explains that there is no חזקת כשרות רבב"א since it is possible that הוודאה cannot (seemingly) destroy their חזקים ומגידים, which is ineffective! We will not consider them as קטנים וככ'¹⁷¹⁸

¹⁵ בית יעקב See.

¹⁶ עיין משכנות הרועים אחרות שצוי ושבז.

¹⁷ See footnote # 10.

¹⁸ שער המשפט (חו"מ סי' כת ק ב) and מהר"ם שי"ף.

ואוקי ארעא¹ בחזקת בר שטיא**בר שטיא ב presumptive possession of the field****OVERVIEW**

רביashi ruled that if a **בר שטיא** (who was alternately lucid and deranged) sold a field when his mental health status could not be determined (it was **תְּרִי וְתְּרִי**), the sale is void. The land returns to the **בר שטיא** since he is (certainly) the original owner, even though the buyer is currently occupying the field.

רביashi qualifies this ruling of **תוספות**

דוקא בקרע הוא דאמרינו כי אבל במלטליין אמרינו דהו בחזקת המוחזק² -

It is only specifically concerning land (real estate) **that we rule thus;** that the presumptive original owner (not the present owner) retains possession, **however, concerning movable assets, we rule that they are considered presumptively owned by the actual possessor;** not by the original owner (as in the case of **בר שטיא**), but rather by whoever is presently in possession of the items in question –

כదאמר בפרק השואל (בבאו מ齊יא זז ק,א) גבי המחליף פרה בחמור -

As the states **concerning** the case of '**one who exchanged a cow for a donkey**'. The cow gave birth during the transaction and we are not certain whether it was before the transaction (whereby the calf belongs to the original owner **בעל הפרה**) or it was after the transaction (whereby the calf belongs to the original owner **בעל החמור**).³ The **גמרא** there comments –

וליהז פרה ברשותא דמאי ולהוי איזיך המוציא מחבירו עליו הראייה -

And let us see in whose domain the פרה and the calf are to be found; whether it is in the domain of the **בעל הפרה** or the **בעל החמור**, **and let the other party** in whose **רשות** the **פרה** (and the calf) was not found be considered as **one who attempts to extract money from his friend**, and the ruling is **that it is incumbent on the to prove** his claim. The one in whose **רשות** the was found should retain the **ולך**, unless his adversary can prove that it belongs to him; i.e. he brings witnesses as to when the calf was born.

ומשני דקיקימה באגס⁴ -

¹ In our the **גמרא** **גירסא** is **גירסא**. See the marginal notes on the **גמרא**.

² **אוקי ממונא** בחזקת מורה (which refers to the current **תוספות**) is (perhaps) distinguishing between the expression **אוקי ממונא** בחזקת **בר שטיא** and **טט"ה** (which refers to the **מ"ק**) regarding the **טט"ה** (footnotes # 12-14).

³ See previous (footnotes # 12-14).

⁴ See 'Thinking it over' # 3.

And the there **answers that** the cow **was standing in a swamp;** in a place that belongs neither to the **פרה** nor to the **בعل החמור**. There is no **מוחזק**. It is evident from that if the **פרה** was found on the property of the original owner, **בעל החמור גمرا** that the calf (and the **פרה**) would belong to the original owner, even though the **בעל החמור מרא** was the **תולפני** (**טטלין**). This proves that concerning we do not award ownership (in the case of a **קמא**) to the **קמא**, but rather to the current owner.

תוספות anticipates a (different) difficulty and resolves it.

אומר רבינו יצחק דהכא לא שייך למי מר -

The ר"י says that it is not applicable to say here in our case - **גمرا**

כదאמרין בסוף קדושים (זרע עט,ב) ובמי שמת (בבא בתרא קג,ב)⁵ -

that which the states **in the end of קדושים** **גمرا**; **פרק מי שמת** **and in** **מסכת קדושים** namely -

אם שכיב מרע הוא עליהם ראייה שבריא היה -

If the benefactor is currently a **שכיב מרע** it is incumbent upon them (the recipients) to prove that he was healthy then when he wrote the **שטר**, and only then can they receive the gift. Otherwise we assume that since he is currently a **שכיב מרע**, he was also a **שכיב מרע** at the time of gifting, and therefore he may retract his gift -

ואם בריא הוא قولוי

And if the benefactor is currently healthy, etc. then the benefactor must prove that he was a **שכיב מרע** at the time of gifting (and may retract the gift); otherwise it remains in the possession of the recipients. It is evident from that **גمرا** that the status of the benefactor at the time of (the writing of) the **שטר** is determined by his current status. Seemingly here too by the **בר שטייא** his status at the time of writing the **שטר** should be determined by his current status; whether he is currently **חלים** (the sale should be valid) or whether he is currently a **שוטה** (and the sale is void). Why is it that by the **בר שטייא** we follow the **שכיב מרע** of ownership and by the **בריא** we follow the current health status?!

שכיב מרע answers that our case is different than the case of the **תוספות**:

דבר שטייא דהכא כיון דעתים חלים ועתים שוטה אין ראייה ממה שהוא עכשו:

For the whom we are discussing here, since at times he is lucid and at other times he is deranged; there is no consistency in his status; it

⁵ The there (**קג,א**) discusses a gift document (**שטר מתנה**) that did not indicate whether the benefactor was healthy or seriously ill (**שכיב מרע**) at the time the **שטר מתנה** was written [it was customary to indicate the health status of the benefactor]. A **שכיב מרע** may retract all gifts that he wrote while he was a **שכיב מרע** (while he is still alive). A **בריא** however can (obviously) not retract any gifts given while he was a **בריא**. The benefactor and the recipients were arguing whether the benefactor was a **בריא** or a **שכיב מרע** when he made this gift.

varies continuously, therefore **there is no proof from whatever he is presently** as to how he was previously, at the time of the sale. Normally, we can depend on the status quo; we assume whatever he is now this is how he was previously. However the **בר שטיא** is always in a state of flux; we cannot derive anything from his current status.

SUMMARY

In a concerning ספק we award it to the **מרא קמא**; in a concerning ספק we award it to the **מווחזק מטלטין**.

A **חזקת הדשה** is not valid when the status of the item in question fluctuates.

THINKING IT OVER

1. Why is the ruling by **מטלטין** different than by **קרקע**? Why is a awarded to the **מרא קמא** and not the current **מווחזק**; and by **מטלטין** it is awarded to the current **מווחזק** and not to the **מרא קמא**?!?

2. Why does not prove his contention (that there is a difference between **תרוי ותרוי** and **אנוסים היו וכו'** of **גمرا קרקע מטלטין**) Here it is and the monies remain by the current **מווחזק** (and not by the **מרא קמא**)?

3. Why was it necessary for to cite the answer⁶? Seemingly can prove that by **מטלטין** we award it to the current **מווחזק**, from that which the says **גمرا ולייחזיב רשותה דמן קיימת ולהוי אידך המע"ה**!

4. What connection is there (if any) between original differentiation between **מטלטין קרקע** and **שכיב מרע** and the latter distinction between the **בר שטיא**?

⁶ See footnote # 4.

Perhaps he indeed forged the signatures

دلמא זיוףא זייף –

OVERVIEW

שטרות מקוימים שטר may be provided that from two שטר taught that a רב Shim'i ברashi these were not in the possession of the current holder of the שטר to be מקוימים. However if those שטרות were in his possession, then there can be no שטרות קיום from those שטרות. There is a concern that since those were in his possession, he forged the signatures on the שטר to be מקוימים, by copying them carefully from the שטרות in his possession. תוספות will qualify this limitation.

אומר רבינו تم דזוקא היכא שאין אלו מכירין החתימה –

The ר"ת says that this concern of forgery is specifically only in a case where we do not recognize the signatures directly; the authenticators are not familiar with these signatures –

אלא על ידי דמיון החתימה להחתימה –

But rather they were the שטר מקיים by comparing the signature (on the שטר to be מקיים) to the other signature (from the two fields, etc.). In these cases since the שטר are not intimately familiar with these signatures therefore we are concerned for the possibility of forgery –

אבל היכא דמכירין חתימת העדים בטביעת עין¹ –

However in a situation where the witnesses recognize the signatures of the witnesses by the ‘impression on the eye’; the authenticators are (intimately) familiar with the signatures. They have no need to compare them to other signed documents, then –

אף על פי שיש לו חתימה אחרת תחת ידו ליכא למיחש דלמא זייף –

Even if the possessor of this has (an)other signature(s) of these עדים (ים) in his possession; he is in possession of other שטרות upon which these שטר were signed, nevertheless, there is no concern that perhaps the possessor of the other forged the signature of these שטר on the current שטר which requires קיום –

דכיוון דמכיריהם החתימה אם זייף היה נבר היטב²:

For since the witnesses recognize the signature innately, if he forged the signatures it would be well noticeable, to the extent that this is a forged signature, and not the authentic one. However if שטר מקיים is ב"ד this from other שטרות,

¹ The term 'טביעה עין' (usually) refers to the act of recognizing something by sight, without being able to express explicitly how the item is recognized. For instance one may recognize his (worn out) hat among many other similar hats. However he could not transmit to someone else the identifying features of his hat.

² See ‘Thinking it over’ # 3.

without knowing the actual signatures of the **עדים**, a small deviation will not be noticed.

SUMMARY

The rule prohibiting קיומ השטר from which are in the possession of the **בעל השטר** is only if the קיומ is done by comparison; but not if it is accomplished through **טביעה עין**.

THINKING IT OVER

1. If the **בעל השטר** is in possession of **שטרות** in which the same (as are on his שטר to be **מקויים**) signed, can we, nevertheless be the **שטר** from other **שטרות** which are not in his possession?
2. In the case of **טביעה עין**, is it necessary at all to compare the **שטרות** to (two) other **שטרות עין**; or is the **טביעה עין** itself sufficient?
3. Why indeed can a forgery be detected (only) by **טביעה עין** and not by comparison?³

³ See (footnote # 2 and) ב"ב דף קסז, א וצ"ב

ורבי יוחנן אומר אף על פי שאינו זוכרה מעצמו

And ר"י says even if he does not recall it independently

OVERVIEW

There is a dispute between **רבי יוחנן** and **רב הונא** concerning the rule that one may rely on his personal notes to testify before **ר"ה ב"ז**. **ר"ה** maintains that he may use these notes only if he remembers parts of testimony without the notes; then he may use the notes to fill in the rest. **ר"י**, however maintains that even if he remembers nothing without the notes he may still offer testimony based on the notes. **תוספות** will be offering various views as to the permissibility of relying on notes and not violating the rule of **'מפיקם ולא מפיק'**, in view of the fact that a **שטר**, which is presumably **'כתבם'**, is always accepted as valid testimony.

פירוש¹ אבל על ידי השטר זוכרה -

The explanation of the phrase **'אע"פ שאינו זוכרה מעצמו'**, does not mean that he does not recollect the testimony at all; even after he reads the **שטר**. Rather it means that he does not recollect the testimony independently – **מעצמו**, before he reads the **שטר**; **however through** the reading of **the shtr he recalls** the testimony.

אבל אם אינו זוכרה כלל לא דמפיקם ולא מפיק כתובם -

However if he does not recall the testimony at all, even after he reads the **שטר**; then he is **not** permitted to testify. The reason is, **for** the testimony must come '**from their mouths, and not from their writings**'. The **תורה** writes² **על פי שני עדים וגו' יקום דבר**; substantiation of a fact is accomplished through two witnesses. The **חכמים** interpreted the words **על פי**, literally; 'through the mouth'. The testimony of **עדים** is valid only when it comes from their mouth; but not if it comes from their writings. Therefore in our case, even though the **עדים** are testifying 'with their mouth'; nevertheless since they do not recall the testimony; it is based solely on their writings, therefore it is considered **מפיק כתובם** and the **עדות** is invalid.

תוספות will now prove that testimony which is based solely on the **שטר**, is invalid when the **עדים** who present it, do not recall it at all:

¹ The term 'פירוש' (or 'כלומר') in **רש"י** (**תוספות**) indicates that the valid explanation is different from what one may understand from a cursory reading. Here too is rejecting the following explanation.

² **דברים (שופטים) ט,טו**.

כదאמרין בפרק ד' אחין ייבמות זף לא,ב,ושם גבי מפני מה לא תקנו זמן בקדושין -
As the states in, concerning the discussion as to why they did not institute that a שטר קדושין should be dated (similar to agett; which is dated) –

דקאמר לינחי גבי עדים³ אי דכרי לייתו ולסחדו -

Where the said; should we leave this dated by the witnesses; then let us see, if the remember when the took place let them come forward to and testify when the took place; there is no need that it be written in the שטר קדושין –

ואי לא זימני דחו בכתבה ואתו ומסחדי ואמר רחמנא מפיהם ולא מפי כתbam -

And if it will be in a situation where the do not remember when the took place, then we cannot leave the with the, for occasionally when the will forget the date, they will look in the written שטר קדושין and they will come to and testify orally, the date which they saw in the שטר. The problem with that is, but the Merciful One stated in the תורה that witnesses are valid only, but not. This concludes the citation of the גמרא. It is clear from that, that the oral testimony of which is based solely on a שטר (where they have no recall⁴), is considered and is an invalid testimony.

תוספות asks:

ואם תאמר הכא נמי אמאי לא אסרין לכתוב עדות על השטר -

And if you will say; why do we not forbid here (in our as well, writing the testimony on a שטר. The stated that a witness may write down his testimony to assist him in testifying at a later date. Concerning a שטר קדושין we do not allow it to remain in the possession of the, for we are concerned that they may use it to testify even if they totally forgot the עדות. Here too, why is there not the same concern that –

שמא ישכח לגמרי ואתו ומסחדי מכתבה בדוחיישין התם -

Perhaps the will totally forget the testimony and will nevertheless come to and testify based only on what he has written in his, as we are concerned there, by the שטר קדושין?! Why, on one hand, do we not date a שטר קדושין?! Why, on one hand, do we not date a שטר קדושין?!

out of concern that it may eventually turn out to be a get; and here, on the other hand, we permit to write their testimony, and we are not concerned that it may turn out to

³ The גמרא there explains why the שטר cannot be placed by either the husband or the wife.

⁴ The גמרא there [when rejecting this testimony] certainly includes the case where the do not remember at all (according to ר'ה, the גמרא may also include a case where he is reminded by the שטר)

be?! מפי כתובם

תוספות answers:

ויש לומר דודאי הtmp חשו חכמים לפי שבית דין מוסרים לו השטר -

And one can say; that certainly there (by a שטר קדושין) were concerned that it may turn out to be that the man gives the שטר to his wife, after the man gives the שטר to her will deliver the (one of) the عדים. Therefore there is indeed a concern –

ויסבור שלכך מסרווהו לו שייעיד אפילו לא זיכור -

For the will assume that indeed this is the reason that they delivered the שטר to him, in order that he should be able to testify even if he does not remember the testimony (otherwise why are they giving him the שטר –

אבל הכא שמעצמו כותב עדות על השטר לא חשו חכמים לכך -

However here where he is writing the testimony on the on his own volition; had no part in it, therefore **the חכמים were not concerned for the** violation of העדים. The did not assume that the will consider this permission (to write down their testimony), as a right to testify (if they cannot recall the עדות).

תוספות asks an additional question:

ואם תאמר ואמאי לא מצו חזון בכתב ולא סתום -

And if you will say; why indeed are they not permitted to see the שטר and testify (and similarly here also to testify from his note) even if they do not remember anything –

הא תנן בಗט פשוט (בבא בתרא דף קפח,א) **מי שנמתק שטר חובו -**

For we have learnt in a שט"ח if someone's was erased and he was concerned that he will not be able to collect his loan with this שט"ח, the should –

מעמיד עליו עדים ובא לבי"ד ועושין לו קיומו ומפרש בגמרא מהו קיומו⁵ -

produce witnesses who are familiar with what was written in this שטר and the comes to **בדי"ד עדים and will validate** a שטר for him, **and the** there explains **גמרא what this validation is.** This validation is based on העדים who merely saw a שטר. They were not present at the loan. Their testimony is completely عדים; it is what they saw written in a שטר. It seems identical to the עדים who testifies what he reads in the note, when he does not recollect anything. How can **בדי"ד**

⁵ עי' במהר"מ שי"ף. TosfosInEnglish.com

grant the a new based on a testimony of שטר molah משלו כתובם?!⁶ It is evident from that that an 'oral' can be a valid testimony.⁷ This contradicts (our גمرا as well as) the concerning a notes in גمرا שטר קדושין.

will bring an additional example that seemingly an 'oral' is valid.

וכן בהגוזל קמא (בנה קמא זר זה,א) דאמירין גבי שורף שטרותיו של חיירו -

And similarly in states concerning the ruling that if one burns the notes (of debt) of his friend –

פטור מדיני אדם כולי -

He is exempt from the judgment of man; cannot obligate the pay for the loss that he caused to the molah etc.⁸ The comments on this –

היכי דמי אי דאיכא טהדי דיזעוי מה הוה כתוב ביה בשטרא -

How is this case like: if there are witnesses that know what was written in this that was burnt,⁹ then –

נכטוב ליה שטרא אחרים נא -

Let write a different for the molah! There is no loss. He will be able to collect with this new שטר. This ends the citation of the Tosafot. Gmarah concludes the question:

אלמא לא חשבינן ליה מפייהם ולא מפי כתובם -

It is evident (from the two in גמורות that we do not consider this to violate the ruling of even though their entire testimony is based only on what they read in a שטר! Let us say the same here and in. When the testify orally it is an acceptable testimony even though their testimony relies completely on the שטר.

differentiates between the cases of and the cases of כתובם in יבמות or מפי כתובם:

ויש לומר דברך ד' אחין יגמאות לא,ב,ושם) חיישין דלא אתי ומסהדי בסתמו -

And one can say that in we are concerned that perhaps the will come to and testify regularly –

כאילו זוכריין העדות -

⁶ If an who was present by the incident cannot testify from a שטר if he has no recall, then certainly one who was not present at all at the incident should not be permitted to testify from a שטר.

⁷ argues (at this point) that the of סול should apply only in a case where the is an עד; he cannot speak. Alternately, it may only apply in cases where the עדים do not testify orally at all; they merely send in their testimony. However when they testify orally in person, it should be a valid testimony, even though they rely completely on the שטר. See 'Thinking it over' # 1.

⁸ The reason is that he merely burnt papers which have little or no intrinsic value. It is considered a היקש. The fact that he caused him damage, by burning the שטרות, is considered merely a גרא – an indirect cause of loss – and the ruling is that פטור גרא בזקון.

⁹ This means that they saw the שטר; however they were not (necessarily) present by the loan.

as if they actually remember the testimony; when the קדושין took place. This is considered עדים. They do not independently know when the קדושין took place (they are merely repeating what they read in the שטר), but are testifying as if they do remember. The manner of their testimony renders it a ¹⁰ מפי כחכם.

אבל ודאי אם היו מעדים שכך ראו בחתימתן הא לא חשיב מפיהם ולא מפי כתבים -
However, certainly if they would testify that this is what they saw in their signed document; in the שטר קדושין; that testimony would not be considered that it violates the rule of מפיהם ולא מפי כחכם. The reason is –

עדדים החתוםין על השטר נעשה כמו שנחקקה עדותן בבית דין -

For witnesses who are signed on a שטר, are considered as if their testimony was fully investigated and substantiated – ב"ד –

והו כיילו מעידין ראיינו עדות שנחקקה בבית דין -

And when these testify that they saw what was written in the signed שטר, **it is as if they testify we have seen a testimony which investigated** and substantiated. This is considered a valid testimony. Similarly when they testify what was written on a signed שטר it is also a valid testimony.¹¹ This also explains why in ב"ב and in ב"ק the עדדים are believed to testify what they saw in a שטר חתום.

In summation; שטר may testify what the שטר stated, provided they state clearly that they saw it in a שטר. However they may not testify what the שטר stated if they are testifying as if they actually remember the incident.

תוספות asks an additional question:

ואם תאמר והכא אפילו אין זה זכרה כלל מה בכח יביא שטרו בבית דין -

And you may ask; and here (where he is not permitted to testify what he wrote in his journal), **even if this does not recall his testimony at all** (even after reading his journal); **what of it; let him bring his journal to ב"ד!** Why do we say that if the עד does not remember the testimony at all, he cannot testify at all?¹² Let him show his ב"ד שטר. ¹³ It is seemingly not different than the עדדים (in ב"ק וב"ב) who testify what they saw in the שטר.

תוספות answers:

ויש לומר דעת אחד בשטר לא חשיב שטר אלא אותו שיש בו שני עדדים -

¹⁰ They are testifying that they witnessed an event; when in fact they do not know that this event took place. All they know is that there is a שטר that states they were present when this event took place. Other commentaries claim that this is really a פול of עד (rather than מפי כחכם). See footnote # 21.

¹¹ This is also (part of) the explanation why every שטר is not invalidated on account of מפי כחכם.

¹² It seems from the גמרא that if he does not remember the עדות; there is no way that he can testify.

¹³ See ‘Thinking it over’ # 2 & 3.

And one can say that if only **one עד** signed in a journal, that journal is not considered a **שטר**. The rule of **עדים החתוםים על השטר** נעשהomi שנקראת עדותן does not apply to a document that is signed by only one, **but rather only** a document, **in which there are two עדים**, as signers, is considered a **שטר**, with all its ramifications –

דומיא דספר מקנה -

نبיא **similar to the 'ספר מקנה'** ('the book of acquisition') which is mentioned by the **ירמיהו**.¹⁴ Many rules of **שטרות** are derived from there, including that a **שטר** requires two **עדים** in order to be considered a valid **שטר**. Therefore since in our **גמרא** the journal was written (signed) by one only, it is not a **שטר**. We cannot say that the **עד** is testifying on something which was **בחקירה עדותן בבי"ד**.

In summation; **עדים** may testify what they saw in a **שטר**; provided that it is a valid **שטר**, signed by two **עדים**. They cannot testify what they saw in a document (without two **עדים**), unless they are reminded of the testimony.

anticipates a question:

והא ذאמר בגט פשוט (כנא בתורא זו קשה, א) **עד אחד בשטר ועד אחד בעל פה אין מצטרפין** -
And that which the states in **פרק גט פשוט**, **that we cannot combine** the testimony of **one עד in a and one orally¹⁵** –
דמשמע הא שניים בשטר אפילו בשתי אגרות מצטרפין -

This indicates that if however **both עדים** testified **in a**, even if the testimony **was in two separate journals** their testimony **may be combined** for a valid testimony.¹⁶ This seems to contradict what previously said that a **one עד journal** is not considered a **שטר** at all.

answers:

התם מיררי כגון שהאחד בשטר -

There the is discussing a case where **for instance (only) one signed on the שטר**; that there was a loan –

והאחד בעל פה לא שאומר שראה הוא המלאה אלא שראה מסירת השטר מלאה למלואה -
And the one עד who testified orally, he is not testifying that he saw the loan; for if that were the case even if both testified in two that they saw the loan it would not be a proper **שטר**, **but rather the עד בע"פ** is

¹⁴ לב, יא

¹⁵ This is the opinion of **אמיר**; however **אביי** disagrees and maintains that they are **מצטרף**.

¹⁶ Otherwise the **גמרא** should have said **עד אחד בשטר זה וע"א בשטר שני אין מצטרפין**, this is a greater than **ע"א בשטר וע"א בע"פ**.

testifying that **he saw the delivery of the** **שטר** (which the other signed) **עד** – **from the borrower to the lender.** Therefore it is a valid – **שטר**

דוחי כשנים החתוםים בשטר לרבי אליעזר דבר עדי מסירה כרתי¹⁷ –

For then it is as if two **signed on this, according to who maintains that the** **עדים** **who testify concerning the delivery of the** **שטר**, **שטר** **they are the ones who validate** **שטר**.¹⁸ However if both would sign on separate **שטרות** it would not be valid; for a **שטר** with one signature is no **שטר** (unless there are **עדים** **מסירה**).

ע"א בשטר וע"א בע"פ גמרא gives an additional answer for the case of:

ועוד דברו שלמי¹⁹ **מפרש עד א' בשטר הינו ששתים החתוםים בשטר** –

And furthermore in **it is explained** **that תלמוד ירושלמי** means **that there were two** **that signed on the** **שטר**; however –

וקיימו כתוב ידו של אחד ולא מצאו לקיים כתוב ידו של שני –

They were **only able to authenticate the handwriting of one of the witnesses, and they were not able to authenticate the handwriting of the second witness.**²⁰ The case in question is discussing a **שטר** with two **עדים** **פשות**. However a **שטר** with only one **עד** is not a valid **שטר**, as previously stated.

תוספות concludes:

ומכל מקום נהי עד אחד לא חשיב שטר –

And nonetheless, granted that an **ע"א** **on a document is not considered a** – **שטר** –

לענין שם יבואו עדים ויאמרו כך ראיינו בשטר דחשבינו להו עד מפי עד²¹ –

Regarding a case where if come and testify this is what we saw in a **שטר** **signed by one**; in that case it is not a valid testimony, **for we will consider it as hearsay;** a witness repeating what he heard from another witness, which is not a valid testimony. However; this note itself –

עדות מיהא هو יכול לשלוח כתוב ידו בבית דין –

¹⁷ The word **כרתי** literally means to ‘separate’. This term is used because the ruling of **ר"א** concerning **עד** was initially stated by **גיטין**. Therefore the term used is **עד מסירה כרתי**; the **עד** actualize the divorce. However **ר"א** maintains **עד מסירה כרתי**, by all **שטרות**. This means that even if no **עד** signed on the **שטר** it is a valid **שטר**, provided that two **עדים** saw the delivery of the **שטר** to the **לווה**.

¹⁸ One of the **עדים** is the one who testifies and the other is the one who signed on the **שטר**. He is also considered as one of the **עדים**. See **ב"ב** **תוספות ד"ה אמר** there in **ב"ב**. However, **ר"א** maintains that it is nevertheless, since the two **עדים** do not testify in the same manner.

¹⁹ **דרכם פ"ב ה"ד**. In our texts on **כתובות פ"ב ה"ד**.

²⁰ A third witness came and substantiated the testimony of the **שטר** orally; he was present at the loan.

²¹ See footnote # 10.

Is considered a valid testimony, and an עז may send his handwritten note to ב"ד as a valid testimony –

ולא חשיב מפיהם ולא מפי כתבם כיון שהוא זכר העדות –

And it is not deemed to have violated the restriction of מפיהם ולא מפי כתבם since the remembers the testimony. It may be difficult for the עז to appear before ב"ד; therefore he may deliver his testimony in writing.²²

To summarize; an עז who is reminded of the testimony from any written document is permitted to either testify in ב"ד personally or to send the document as a testimony. However an עז who does not remember the testimony at all, may only testify what he read in a valid שטר signed by two עדים.

תוספות cites an opposing view:

ורש"י פירש בפירוש החומש מפיהם ולא מפי כתבם שלא ישלח בכתב עדותו לבית דין –
And מפיהם ולא מפי in his explanation on explained²³ פסוק to mean that the witness may not sent his handwritten testimony to כתבם בית דין.

תוספות offers a different approach to resolve the difficulty from where we attempted to infer that an ע"א בשטר is valid:

אי נמי אומר רבינו יצחק דעת אחד מועיל בשטר –

Or if you wish you may also say according to the ר"י that the signature of one validates a עז, שטר, and –

אם יש שני שטרות בכל אחד חתום עז אחד חשוב בשטר שלם –

If there are two, one signed on each שטר, it is considered as a complete and valid שטר. This explains why ע"א in אבוי maintained that only ע"א is in two in two ע"א בע"פ – כשר is شטרות but ע"א בע"פ;

תוספות anticipates the obvious question –

וכי תימא אם כן בשמעתין יביא כתבו לביד דין אפילו אינו זכור כלל –

And if you will say; if this is so, that an שטר is ע"א בשטר then in our case let him bring his handwritten journal to ב"ד even if he does not remember at all! Why is his handwritten note less of a than a שטר בע"א?!

תוספות answers:

²² It seems from כתובות that the exclusion of מפי כתבם is limited to testifying from a note without remembering the facts.

²³ דברים (שופטים יט,טו).

- **ויש לומר שלא חשיב שטר אלא כشعורי מדעת שנייהם** -

And one can say that in order to be considered a **שטר**, it is only when it is written with the knowledge and consent of both parties; the **מלוה**, whose consent is assumed since the **שטר** is in his favor, and mainly –

מדעת הלוה שהוא חייב אז חשיב שטר -

With the knowledge and consent of the who is being obligated by the **שטר**; only then is it considered a **שטר**. Therefore if two **עדים** signed separately on two **שטרות** they are valid, since each was written **שטרות** –

אבלanca שכותב עדותו שלא מדעת הלוה לא חשיב שטרא -

However here, where he is writing his testimony without the knowledge of the **לוּהָ**; the **לוּהָ** is not aware that the **עד** is recording this testimony, therefore this self-serving journal is not considered a **שטר**. Therefore he cannot use it to testify before **ב"י**²⁴ based on this note alone, for since it is a self serving document which was written without the consent of the **לוּהָ**, it is not a **שטר** and therefore it is subject to the stricture of **ולא מפני כתובם**.

In summation; according to this view, one may testify what he saw on a document that was written (even if signed by only one **עד**),²⁴ without being aware of the incident. If it was not written **מדעת המתחייב**, then this document may be used only if the **עד** is reminded of the testimony.

תוספות asks an additional question:

והקשה הרבה רבי שמואל מורדזון דאמר בחזקת הבטים (כנא בתרא זר מ,א²⁵ ושם) -

פרק חזקת הבטים states in גמרא ה"ר **שמואל מהאה בפנוי שניים**²⁶ **ואין צריך לומר כתובו** -

A protest against one who is (allegedly) occupying the protester's field is to be made in the presence of two **עדים**, and the protester is not required to tell the **write** down this **מהאה**. Rather even if he does not request that they write the **עדים**, the **עדים** are permitted to write the **מהאה** and hand it to the **מערער** as a proof that he made a **זהקה** to nullify the **מהאה**. This concludes the citation from the **גמרא** **תוספות**. continues with his question:

ומה מועיל כתובו כיון שאין עשוי מדעת המחזיק -

But what will (even) telling the **עדים** to write accomplish, since it is not

²⁴ See 'Thinking it over' # 4.

²⁵ The **גמרא** actually begins on **דף לט,ב** בסופו.

²⁶ The rule is if someone occupies a field for three years and claims that he bought it from the previous owner, the occupier may retain the field even if he lost the deed; provided that the previous owner made no protest during the entire three year period.

written with the consent of the owner. מהזיך, who is currently occupying this field, is the owner in this case. This is detrimental to his ownership of the field. He did not give any consent to write this. Therefore this is not considered a valid title. Of what avail is this title to the owner?! It is considered since it is not a valid title. The owner cannot use this title to prove that he made a mark, it is. מפי כתובם

ולפי הוספה answers:

ולפי מה שפירשנו דעתך מיהא הויל זמן שזוכר העדות אני שפיר -

However, according to what we previously explained that a self serving journal is considered a valid testimony as long as the one remembers the testimony, the ruling is well understood. The owner writes the title and it may be used in as long as the title remembers the testimony (even from this). שטר מהזיך ב"ד

ה"ר שמואל מוורצו"ן offers an additional answer to the question of הוספה:

מיهو ולא זה מתרץ רבינו יצחק דגבי מהזיך הקילו שאינה אלא מדרבנן²⁷ -

However, without resorting to the previous answer, the ר"י explains that there is no difficulty, for concerning a which is only a issue, the Rabbanim were lenient and do not require מפי כתובם חכמים is also sufficient.

מקיל offers proof that since the owner is only therefore the were:

דרכי נמי הקילו לומר דמחאה שלא בפנוי הויל מחאה אף על פי שלפעמים לא ישמע -

For in a similar manner the were also lenient, saying that a which is not in the presence of the owner is a valid; even though occasionally the owner will not hear of the owner.

וסמכו על זה דחברך חברא אית ליה -

And the relied on this understanding that your friend has a friend, etc. Therefore eventually we assume that the owner will hear the owner, even though it is not necessarily so. The reason is the same; for the requirement to make a mark to undermine the title is a title (for the owner does not establish the title as the owner and the owner ruled that even a title is sufficient to destroy the title).

חכמים offers an additional example that occasionally the were lenient when it came to writing without the title:

וכן מודעה²⁸ בפניהם הקילו לכתוב להציל אנוס מאונסו -

²⁷ It seems that שטר a cannot be from a מושיע (or שטר קמא) rather than the Torah. Therefore the requirement for a title to be מבטל the title is only that even a mark is sufficient to be the title. מבטל

And similarly by a notification which is required to be delivered **in the presence of two**, **עדים** ה^{כמ}ים were lenient and permitted the **to write up** this (as a proof for the **אנוס**) **in order to save the oppressed from his oppressor.** This was allowed even though there was no (the buyer of this property). Therefore even though generally a **שטר** must be written, nevertheless occasionally (by a **דרבן** or an **אונס**) the **הכמ**ים validated a **שטר** that was not written.²⁹ מדעת המתחיב

offers an alternate approach to the issue of:

ועוד אומר רבינו יצחק דלא בעינן דעת שנייהם -

And furthermore says the ר"י that a **does not require** that it be written **with the knowledge** and consent **of both** parties. In reality if sign on a **שטר** it is a valid even though it was written without the (and [perhaps] a **שטר** with only an **ע"א** is a valid **שטר** -

והכא היה יכול להביא שטרו אם היה כתוב כתיקון שטרות -

And therefore here he could have brought his testimony, provided that it was written in the correct manner of - **שטרות**

אבל הכא מיירני שאינו כתוב בסדר השטר אלא זכרון דברים בעלמא -

However here we are discussing a case where his journal was not written in the proper order of a **שטר; but rather it written merely as a memorandum;** therefore it becomes disqualified on account of **ולא מפני כתבם**.

To summarize; according to this (last) view if an **ע"ז** does not remember the testimony he may rely on any written in the proper format of a **שטר**, regardless if it is signed by one or two **עדים** and/or if it is written **מדעת המתחיב** or not. However a self serving memorandum cannot be used, unless the **ע"ז** is reminded of the testimony.

סוגיא offers a different interpretation of our:

ומתווך הירושלמי³⁰ נראה לפרש בענין אחר סוגיא זו -

And from the context of the Talmud Yerushalmi it seems that this may be interpreted in a different manner altogether -

דקאמר התם רב הונא כרבי ורבי יוחנן כרבנן³¹ -

²⁸ מודעה is the process which a seller utilizes when he is being coerced to sell his property unwillingly. He approaches two **עדים** before the actual sale takes place and he notifies them that this is a coerced sale, and the seller intends to nullify the sale when the opportunity arises.

²⁹ The previous example showed that we are lenient by **מחאה** (שלא בפנוי), in general. This example shows that occasionally **דעתי המתחיב** is not required.

³⁰ פ"ב ה"ד דף יא,ב.

('והוא שזוכרה מעצמו' **ר"ה** ירושלמי that (who maintains follows the opinion of **ר"י** (על כת"י הם מעמידים and (who maintains that follows the view of the **רבנן** (ר'אע"פ שאינו זוכרה מעצמו' על מנה שבستر הם (that **רבנן** follows the view of the **ר'אע"פ** (מעמידים –

פירוש כשהעדים באים לקיים חתימתן אם זכרין המלווה שלא שטר –

The explanation of the **עדים** come to be **עדים** is; when the **עדים** is **ירושלים**; if they remember the loan without reading the **שטר**, then –

אפילו לרבי אין צורך לצרף עמהן אחר מן השוק דעת מנה שבستر הון מעידין –

Even according to **רבי** it is not necessary to for them to combine with another outside **עד**; these two that testify individually on their own is sufficient, for the **עדים** המקיים are testifying about the loan. They remember the loan, and when they authenticate their signatures they are implicitly testifying that the loan took place.

וכשאין זכרים המלווה אפילו על ידי השטר אבל מודו צריכים לצרף עמהן –

However if they cannot recollect the loan even by reading the **שטר**, then even the **רבנן** admit that it is necessary to combine with them another who will authenticate their –

דעתם אין מעידין אלא על כתוב ידו –

For we are forced to say that in this instance **they are only testifying concerning their handwriting**; however they cannot be testifying about the loan, since they do not remember the loan even after the saw the **שטר** – שט"ח –

וכי פליגי היינו כשזכירים המלווה על ידי השטר –

And when do and the **רבנן** argue, in a case where the remember the loan through reading the **שטר** –

ולרבנן חשיב זכירה ועל מנה הון מעידין לרבי לא חשיב זכירה –

According to the **רבנן** this reminding is sufficient to be considered a remembering and therefore we say that **they are testifying concerning the מנה** of the **מלואה**; however according to **רבי** this is not considered **ירושלמי** and therefore they need to be one from the **שוק**. This is what the **רבנן** said that **ר'אע"פ** because they both maintain that **ר'אע"פ** is not a sufficient **זכירה**. However **ר'אע"פ** since they both maintain that **ר'אע"פ** is not a sufficient **זכירה**. According to

³¹ In the following there is a difference between the **רבנן** and the **ר'אע"פ** concerning what is required to verify the content of the **שטר**. According to the **רבנן** if each authenticates his signature (but not of his partner) a third person must authenticate both, in order that two are each other. The **רבנן** argue and maintain that if each authenticates his own signature, that is sufficient. The **רבנן** subsequently states that this argument hinges on what the **עדים** are testifying when they are their. If they are merely being their then each requires two **עדים** for **קיום** (the view of **ר'אע"פ**). If, however, each is verifying the content of the **שטר** then these two alone are sufficient (the view of the **רבנן**).

this interpretation and ר"י are not discussing the issue of מפיהם ולא מפי כתובם ר"ה. Rather they are discussing whether it is necessary to be מזכיר אחד מן השוק, when the עדים remember the incident only through the aid of the שטח. This would remove (many of) original questions.

However is not satisfied with this explanation:

ולשון כותב אדם לא ממשע הפיכי:³²

The expression that the גمرا uses to teach us this גזין, namely **a person may write** his testimony on a שטר and give his testimony based on this many years later, etc. **does not support this** interpretation of the ירושלמי. The כותב לשון of ירושלמי indicates that we are permitting for him to write the testimony; not that he is permitted to testify on a שטר that he signed. According to the ירושלמי the expression should have been כותב אדם על כת"י אפילו לאחר כמה שנים וכו'; not מעיד אדם על כת"י.

SUMMARY

If an עז cannot remember the testimony even after reading the document stating the testimony, there are various views in which manner he may testify that he knows this testimony from the document:

A. He may testify, only if two עדים sign on the document; i.e. if it is a valid שטר.

B. He may testify only if it is written מדעת המתחייב; regardless if only one signs on the שטר.

C. He may testify in any case; if it is written כתיקון שטרות.

If the עז remembers the testimony after reading the document; he may testify in ב"ד; or alternately he may send this document to ב"ד (according to רש"י); however disagrees and prohibits sending any testimony בכתוב.

THINKING IT OVER

שטח asked why here is he not permitted to testify and by מפי הכתוב Tosfos. Why did not ask simply from a regular שטר? We accept the testimony of a שטר; there is no מתחוק הכתוב חסרונו, then why cannot he testify?!³³

³² See 'Thinking it over' # 5.

³³ See footnote # 7.

תוספות 2. asks that he should bring his journal to ב"ד.³⁴ Why did not ask that he should testify that he saw it in his journal?³⁵

3. Why did not ask the previous question (#2) on the **תוספות** in גمرا, that the should bring the **עדים** to שטר קידושין (that תוס' ב"ד will not apply since there it is a שטר with two!³⁶ ע"א בשטר לא חשיב שטר

4. Can one testify based on what he saw on a handwritten note by the **לוה?**³⁷

5. asks on the **תוספות** ירושלמי (which states that the **מחלוקת** between כותב אדם לשון does not coincide with the פ' same as ר' ורבנן) that the **תוספות** understands the **ירושלמי** to mean that the (on which there is the **מחלוקת** between ר' ור' is discussing a case of בריתא לשון, and therefore has a difficulty with the **תוספות** קיום שטרות. However, why cannot we assume that the **ירושלמי** interprets the (and the ensuing **מחלוקת** between ר' ור' as we do [regarding **הגדת עדות**]), the merely adds that the **מחלוקת** between ר' ור' parallels the **מחלוקת** between ר' ור' (as explained in the **תוספות**)?³⁸³⁹

³⁴ See footnote # 13.

³⁵ See מהר"ם ש"ג.

³⁶ See מהר"ם ש"ג.

³⁷ See footnote # 24.

³⁸ See footnote # 32.

³⁹ See רש"ש.

אחד חדשות ואחד ישנות –**Whether they are new or whether they are old****OVERVIEW**

The גמרא cited a משנה that hillocks that are close to a city or a road are טמא; whether they are new or old. A new hill should not be that suspect of harboring טומאה for since it is relatively new, the people would be aware if someone was buried there. Nevertheless the תנא teaches us that even החדשות are also 新. The order seems somewhat puzzling, why mention החדשות which is more novel, before which is more understandable.¹ There are also (numerous) other where indeed the פשט is mentioned first. Why the change here?! תוספות will answer this question.

תוספות asks:

תימה דהכא מזכיר שאיןו פשט קודם –

It is astounding! For the mentions here in this case (חדשות), משנה, the case (in which the ruling is not so simple) that it is, **before** the case (ישנות) where the ruling is more obvious than it is. טמא

פשט offers another example where the איןו precedes the תוספות:

וכן בהחולץ (יבמות ז' מא,א) לא יתארסו ולא ינשאו עד שייהיו להן ג' חדשים –

And similarly in states concerning women who were previously married or betrothed that **the should not become betrothed, nor should they marry until three months** passed from the end of their previous relationship; this rule applies –

אחד בתולות ואחד בעולות² –

Whether these women are **virgins** or **whether** they are as משנה as well, the תנא –

מזכיר אירוסין קודם נישואין ובתולות קודם בעולות דהינו שאיןו פשט תחלה –
פשט which is not so **before** (פשט) **נישאין** which is more, **and he mentions before;** **בעולות** meaning that he mentions **first** the

¹ The preferred order is that the lesser חידוש is mentioned before the greater.

² The text in our reads: לא יתארסו ולא ינשאו וכוי אחד בתולות וכוי אחד נשואות ואחד אروسות משנה (אחד נשואות ואחד אروسות) he does mention the first.

³ The reason for this ruling is in order for us to distinguish any child she may bear within nine months of her separation; if it is from her previous husband, or from her current husband. Once three months pass and she is not pregnant we know that any ensuing child is from her current husband.

case which is not (so) פשטוט⁴

will now contrast this with other instances, where the פשטוט is mentioned first:

ובראש השנה (ז' לט' ב) תנן אחד יבנה ואחד כל מקום שיש בו בית דין -

However in הבנאה states ‘whether it is in הבנאה or whether it is in any place where there is a שופר⁵; ’ב"ד השופר is blown on שבת.

התם נקט דבר פשטוט בריישא -

יבנה mentions the simpler and more obvious **ruling first**; was the seat of the **טנזרין**. It is more obvious that one can be more readily than in other **בתי דין**.

offers another example where the פשטוט is mentioned first:

וכן בבבא קמא (ז' נ,ב) אחד החופר בור שיח ומערה -

And similarly in ב"ק states that one is obligated to pay for the damages caused whether he dug a pit, a שיח, or a מערה. The **בור** is the more obvious one, for that is written clearly in the תורה,⁶ as opposed to שיח and מערה which are not written in the תורה.

offers an additional example where the פשטוט is mentioned first:

ובמסכת סוטה (ז' מג,א) אחד הבונה ואחד הלוקח כולי גבי מערכבי מלחמה -

And in concerning those who are required to leave the battlefield, the states ‘whether he built a new house or whether he bought a new house, etc., he should leave. In that case as well he mentions the פשטוט (בונה) first, for that it what is clearly written in the תורה,⁷ as opposed to לוקח.

הפשטוט brings a final example that the תנא mentions:

ורש"י נמי גריש⁸ בפרק קמא דסוכה (ז' כ,א ושם) גבי מחצלת גדולה שעשאה לשכיבה -

And also is in the first concerning the status of a large mat that was made for lying on it, the rule is that it is susceptible to become –

⁴ It is obvious that in order to allay our concerns of distinguishing to whom the child belongs, it is necessary that she should not get married; but not that she should be prohibited from merely אירוסין (where there is no relationship between husband and wife). Similarly if she remained a בתולה from her previous marriage there is no concern to whom the ensuing child belongs to; as opposed if she is a בעוללה from the previous marriage, where there is a valid concern.

⁵ The there is discussing where the תקיעת שופר is performed on מזזה.

⁶ וכי יפתח איש בור וכו', בעל הבור ישלם'; שמות (משפטים) כא, לג ולד.

⁷ דברים (שופטים) כ,ה.

⁸ will shortly state what is the רשיינית of the פשטוט.

טמא ואין מסכין בה⁹ רבי אליעזר אומר אחת קטנה ואחת גדולה - **and therefore it cannot be used for ר"א סכך states whether it is a small mat or whether it is a large mat there is no difference.¹⁰** This concludes the citation from the there (on משנה יט,ב).

ופריך א' גדולה וא' קטנה מבעי ליה והיה כתוב בספרים להפץ ורש"י מהפץ הגירסה - And the there challenges that ר"א should have said whether it is large or whether it is small; not 'אחד קטנה ואחת גדולה' as it says in the משנה. However, in the texts it was written (in the and in the in the reverse. The question was that the should have said משנה גמרא' s משנה 'א' גדולה וא' קטנה were גמרא' s in the and the question was that the should have said משנה גמרא' s both in the and in the to read as has just quoted above. The reason why reversed the is – גירסה ר"י.

משמעות הדברים התנאים להזכיר הפשט קודם -

Because it is the manner of the תנאים to mention the first; it is more than that a is than that a is. **כשר קטנה גדולה פשט** We have therefore conflicting in some the is mentioned first (here and in the **יבמות**), and other places the is mentioned first (ר"ה, ב"ק, סוטה, וסוכה).

תשובות answers:

ואומר רבינו יצחק¹² דהיכא דקאי אפלוגתא או אקרא מזכיר הפשט קודם -

And the answers that wherever the dual statement is referring to a dispute or to a פסוק, then the תנא mentions the first.

המשך continues to enumerate and begins with the factor:

כי היה דפיג רבי אליעזר אתנא קמא בסוכה -

As in that case where; סוכה **ת"ק argues with the ר"א concerning a** where the asked (according to the amended version of ר"י) -

והו ליה לומר אחת גדולה שאתה מודה לי כך תודה בקטנה -

כשר is מהצלת **ר"א should have stated** the order in the reverse; a large mat is more likely to be used for 'whether it is a large (that is the case) which you (the agree with me, so too should you (the agree with me that a **ת"ק** is also. It is

⁹ A mat that is used for covering (a hut, etc.) is not a כלי and is considered טומאה. A mat that is used for covering (a hut, etc.) is not a כלי and is not a כלי. A large mat is more likely to be used for covering (because of its hardness, it is uncomfortable for lying), therefore the maintain that it is כשר לסכך.

¹⁰ In either case a mat that was undesignated (for either טומאה or שכיבה) is presumed to be for covering.

¹¹ See previous footnote # 9, that a large mat is more likely to be used for than שכיבה.

¹² See 'Appendix'.

therefore understood why in a פלוגתא פשט first, for the second is saying to the first, just as you agree with me in the first, you should also agree with me in the second.

פלוגתא continues with the other case of Tosafot:

וכן אחד יבנה פלוג אדרבי אליעזר -

And similarly in the case where the Rabbanim stated whether in, **יבנה**, etc.; there these argue on - **ר"א ר"ב** Rabbanim

דאמר לא התקין רבנן יוחנן בן זכאי שיינו תוקען אלא ביבנה בלבד -

Who maintained previously in the case that **ריב"ז** משנה only instituted that they should sound the shofar exclusively. It follows therefore that the respond that not only in **יבנה** but rather anywhere where there is a **תוקע בר"ה** shall it be sounded.

Tosafot continues with the last two examples of mentioning the first:

ובבא קמא (ג,ב) ובסוטה (מג,א) קאי אקרא -

And in (concerning the cases and in) **מסכת סוטה** (בור ושיח) and **מסכת ב"ק** (בונה ולוקח בית חדש) those cases are referencing the **פסוק**, where the first is mentioned clearly in the ¹³ תורה, therefore the **תנא** gives it priority. This concludes the explanation where the **תנא** mentions the first.

concerning where the first is mentioned:

אבל הכא ובחולץ לא קאי אמידי אין להזכיר איזה נשנה תחליה :

However, here and in, the dual statement is not referencing anything in particular; neither a פלוגתא, nor a **פסוק**, therefore there is no need to be particular which of the two is mentioned first.

[יעין Tosafot שבת כ,ב ד"ה אחד מבושל פשחים פה, א קה, ב סוכה כ, א זבחים צב, ב ד"ה אוי הכהי ומנהות סג, ב ד"ה אחד שבת עיין Tosafot קדושים יג, א ד"ה כשם:]¹⁴

SUMMARY

When a dual statement is made; if it is referencing a dispute or a **פסוק**, the **פשט** is mentioned first. In all other cases there is no concern which is mentioned first.

¹³ See footnotes # 6 & 7.

¹⁴ See (in the margin) that some say that **חדשות** is mentioned first because precedes (?!), and similarly precedes as does **נשואה** precede **בעולה**. However he rejects this from another source (which mentions **עצם** before **מהו** and concludes that we must accept the answer of the **ר"י** in Tosafot). See also 'Thinking it over'.

THINKING IT OVER¹⁵

Can there be some explanation why in our case (and in the following) **יבמות** is mentioned first?

APPENDIX¹⁶

The (in the margin of the text) **תוספות ישנים** states as follows:

ויש מפרשים¹⁷ הכא נקט אחד חדשות לפि שכל דבר חדש הוא תחילת ואחר כך ישן¹⁸

And some explain that he mentions here first, because anything is first new and later it becomes old Therefore it is appropriate to mention ‘new’ first, even though it is - **איןנו פשוט**

ונמו כן באירוסין קודם נישואין ובחוליות שם קודם בעולות –

And similarly by, it is mentioned first (even though **נישואין** is more), since **אירוסין** is before **נישואין** just as **בחוליות** is before **בועלות**.

ומכל מקום קשה דברוק ביצה צולין (דף פה, א) קאמו –

However there is a difficulty for which cites a **פרק ביצה צולין** the **גמרא** states, that the prohibition of (not to break a bone of the **בשר**) applies -

אחד עצם שיש בו מוח ואחד עצם שאין בו מוח –

Whether it is a bone which contains marrow, or whether it is a bone which has no marrow -

אג עיל גב שאין בו מוח פשוט יותר שיש בו משום ועצם לא תשברו בו –

Even though that regarding a bone it is obvious that the prohibition of **עצם שיש בו בשר** applies to it more readily than to an **עצם לא תשברו בו** of

והתם לא שייך הא טעמא וצלייך לפרש לדפירוש ובינו יצחק¹⁹. Tosfot ישנים על הגולין

And there this explanation (of following a chronological order) does not apply; therefore it is necessary to explain the differences as the **ר"י** explained. The above was found **tosfot ישנים** on the margin of a text.

¹⁵ See ‘Thinking it over’ in the following **תוספות ד”ה טמאות**

¹⁶ See footnote # 12.

¹⁷ These explain why (only) here and in the following, he mentions the **יבמות**.

¹⁸ This requires additional clarification, for (in this case) the **תולילות ישנות** preceded the **חדשות**!

¹⁹ This refers to explanation of the **ר"י** in our **tosfot ישנים** (footnote # 12).

טמאות -**They are טמא****OVERVIEW**

The states that **תלוליות** (hillocks) that are close to a city or a road are presumed to be **טמא**, whether the **תלוליות** are recent or old. There is a concern that a fetus, etc. was buried there. However if they are far from the city then the recent ones are **טהור** and the old are **טמא**. The **גמרא** explains the difference [between **רחוקות** and **קרובות**] (חדשות) and states that when it is close to the city, a woman can go herself and bury the fetus; however when it is far, then she has a man accompany her and goes to the cemetery. There is a dispute between **תוספות** and **רש"י** how to interpret this ruling.

פירוש בקונטרס זבקירות אפיקו¹ חדשות טמאות -

רש"י explained that if the hillocks are **close** to the city or the roads then even new **תלוליות** are **טמא**. The reason is –

משמעות דאזרא איה לחודה ואין ידוע אם קבורה שם² -

Because since it is close to the city **she goes there alone and** therefore **it is not known if she buried** a body **there** in the **תלוליות**. There is the possibility that she did bury someone there –

אבל רחוקה דברא אין יש בהדה ואלמי קבורה אין יש בהדה היה מגלה³ -

However if the **תלוליות** are **far** from the city or road, then the woman will not venture there alone, but rather she will **take a man along with her**. Therefore, **if she buried** a body there, **the person who accompanied her would reveal it**, and it would be known. Since it is not known it is assumed that no one was buried there.

ולפיכך ישנות טמאות דאף על פי דברא אין יש בהדה נשכח הדבר⁴ -

And therefore⁵ old **תלוליות** are **טמא** (even if they are far); **for even though she had a man accompany her** if it was far (who would ostensibly reveal any burial that took place), nevertheless [even if we are not aware of any body being buried there, the **תלוליות** are **טמא**, for] even if she did bury a body **it was forgotten** since it took place in the distant past. This concludes **רש"י's** explanation.

¹ Seemingly we should assume that **חדשות** should always be **טהור**; for if someone was buried there, people would be aware of it.

² See **רש"י** ד"ה אחד חדשות (בסוף).

³ See **adam aita denkbar biva** who writes **רש"י** ד"ה החדשות טהורות.

⁴ See **רש"י** ד"ה ישנות טמאות.

⁵ Since the only reason why **אין יש דברא בהדה** are **חדשות רחוקות** is because the **טהור** would tell, this reasoning does not apply by **ישנות**.

has a difficulty with s"y's explanation:

وكش [لربينو يחזק]adam kon amai tsrik lomar b'smooz -

And [the] has a difficulty with this explanation; for if it is so as states,⁶ then why was it necessary for the **גמרא to state shortly -**

דобра איןיש בהזה ולבית הקברות אולא -

'That a person accompanied her and she went to the cemetery',⁷ -

לא הוה לי למימר אלא דברא איןיש בהזה ותו לא -

It was not necessary for the **גמרא to state but rather to only say that a man accompanies her; and say no more -**

ולכך טפי חדשות טהורות adam aiita zikraha shem hih zikra yidou,⁸ -

And therefore (since the **תלוליות** are distanced **more** than the prescribed amount, the **new** **טהורות** **תלוליות** are **for if she buried** a body **there it would have been known.** [There is no relevance (according to (ר"י) in saying that **ולבית הקברות אולא**].

has an additional question on (ר"י):

ועוד⁹ אי לבית הקברות אולא ישנות אמאו טמאות -

And furthermore if she goes to the cemetery when she is accompanied; why are the old **תלוליות טמא??!** She went to the **בית הקברות** to do the burial, not to the **תלוליות**!

offers his interpretation:

ונראה לריבינו יחזק קר宾ו חננא דפירוש דישנות טמאות אפילו רחוקות -

And the **ר"ח prefers the interpretation of the **ר"י** who explained that the reason **רחוקות** **are even** if they are **ישנות טמא** is (not because she went with an escort and it was forgotten¹⁰, but rather) -**

חייבין טמא קרובות הי שהייתה עיר עצלה וחרב -

Because we are concerned that these **תלוליות were once **close** to a city; for there was a city nearby and the city was destroyed.** At that time it was close and the woman went there alone -

ולפי זה לא נאמר משום דברא איןיש בהזה היה ידוע יותר -

⁶ According to (ר"י) the **חדשות רחוקות** are because the accompanying person would make it known.

⁷ This reason indicates that the reason **טהור** is because she goes with her escort to the cemetery (not because the escort would make it known). However, according to (ר"י), this is not the reason.

⁸ See in the margin who attempts to answer this question, writing; **ומצוי למימר דברי טעמי לשיבותא** **ישנים תלוליות**, and it is possible to say that the **גמרא** mentions two reasons to permit these **תלוליות**.

⁹ Not only is **רישנות רחוקות** not relevant (to **טהור**); it contradicts the ruling by **רשות**.

¹⁰ This cannot be the reason; for the **גמרא** states that with the escort she goes to the cemetery, as previously asked in the second question.

And according to this interpretation of the ר"ח, we do not assume that since a man accompanied her it would have been better publicized, had she buried someone.¹¹ The escort is no cause to assume that there was no burial (for otherwise he would have made it known). We do not assume this at all -

ולהכי איצטראיך לומר ולבית הקברות אזלא -

Therefore, in order to explain why **חדשות רחוקות** are, טהור are **חדשות רחוקות** it is necessary to state that **she went to the cemetery** with the escort, and did not bury in the **تلוליות** (it has no connection to the lack of publicity).

SUMMARY

ריש"י maintains that קרובות טמא are always קרובות טמא, since she can bury by herself. require an escort. Therefore **חדשות רחוקות** are טהור for the escort would inform us of any burial; however by **ישנות רחוקות** any report from the escort was forgotten. difficulty with **ריש"י** is based on the גمرا which states that by **רחובות** she takes an escort and goes to the cemetery. A. why mention going to a cemetery? An escort is sufficient reason to make it טהור by **ישנות רחוקות**. B. if she goes to the cemetery with an escort why is **רחובות רחוקות**? **ריש"י** agrees with **קרובות טמא** concerning **תוספות רחוקות**. However, because we are concerned that they were once **קרובות טמא** and the woman buried by herself without an escort. טהור are **חדשות רחוקות** for an escorted woman buries in the cemetery.

THINKING IT OVER

ריש"י is of the opinion that an escort should cause publicity. It follows that **ישנות טמא** are more liable to be **טמא** because things were forgotten (even if there was an escort). Nevertheless **חדשות קרובות** are also **טמא** (despite the fact that an escort causes publicity), for by **קרובות טמא** there may have been no escort.

תוספות רחוקות is of the opinion that an escort does not add to the publicity. It would therefore seem that by **קרובות טמא** there is no difference between **ישנות טמא** and **חדשות קרובות טמא**. They are both equally **טמא**. Why then did **תוספות רחוקות** assume previously¹² that the status of **ישנות פשט** is more than **חדשות טומאה**?¹³

¹¹ Alternately; **ריש"י** is proving that **דברא אין יש בהדה** is not a reason for publicity (as **ריש"י** maintains). According to **ריש"י** the **טפי** **ברא אין יש בהדה ויה ידוע יותר'**. Instead the **גمرا** states **טפי גمرا אין יש בהדה ולבית הקברות אזלא**. That being escorted lends us to assume that she goes to the cemetery.

¹² **תוספות ד"ה אחד**.

¹³ See פנ"י ואליהו הרבה וה"ב אות שב בד"ה אחד.

עילה מצאו –**They found a pretext****OVERVIEW**

The gemara states that in doubtful situations there is no presumption of in עילה מצאו. The gemara supports this assertion by citing ר' ל' who said (concerning עילה מצאו וטהרו את ארץ ישראל) that עילה here¹ interprets the word עילה to mean an excuse; a pretext. A minimal excuse was sufficient cause to neutralize the טומאה and declare the area to be a מקום טהור. Our Tosafot offers an alternate explanation.

פירוש רבינו חננאל צלע ותלו הטומאה באוותה צלע והשאר טהור:

The ר"ח explained that the word עילה here means: ribs (of a skeleton).² They found ribs of a skeleton and they attributed the to that skeleton only; and the rest of the area was proclaimed to be טהור.³

SUMMARY

ר"ש¹ interprets עילה מצאו that they found an excuse. The ר"ח interprets it that they found a rib (of a skeleton).

THINKING IT OVER

What are the respective merits of the two interpretation of עילה מצאו?

¹ ד"ה עילה.

² In the text reads אל"י' עילא מצאו' instead of א' עילא. The word עילא refers to the ribs or side of a person (or animal). (ויבן את תרגום בראשית ב,כ בז' תרגומיים עילא is usually in other places).

³ This is referring to the laws of קברים (in שכונה קברים) where one has to check that there are no other graves in the vicinity. It is stated (there) that we can presume that this צלע or עילה is the only one in this vicinity. The חכמים did not want to cause difficulties for the כהנים in א' so they minimized the חששות of טומאה.

על כתב ידן הן מעידין –**OVERVIEW**

The **קיטובות** cites a dispute between **רבי** and **רבנן** concerning whether two witnesses are required for each signature. **רבי** maintains that each witness requires two signatures for themselves. **רבנן** maintains that each witness can be his own signature; while the **חתיימה** maintains that each witness can be his own signature. **רבי** explains their positions as follows. **רבי** maintains that the two witnesses merely say that this is their signature (they are not testifying concerning the content of the **שטר**). Therefore two witnesses are required for each (it can be the two witnesses themselves). This is similar to a case where other witnesses (two) are the same two witnesses (they may be the same two witnesses required to be each other). The **חתיימה**, however, maintains that the two witnesses, who are being the same two witnesses, are (really) confirming what is written in the **שטר**.¹ When two witnesses testify that the content of the **שטר** is true, that is a valid signature. It is not clear, however, why **רבי** and **רבנן** assume their respective positions. Is it because they judged and found the intent of the two witnesses to be so; or is it something more basic in the application of the **קיטובה** through **תוספות**? Our view prefers the latter view.

נראה דרבי אפילו אומרים בפירוש דמעידין על מנה שבשטר –

It seems that according to **רבי** who maintains that **תוספות** that even if the two witnesses explicitly state that they are testifying (not merely² on the loan of the **מנה** which is written in the **שטר**, nevertheless -

חייב כאיilo מעידין על כתב ידן –

It is considered as if they are testifying (only) about their signatures (and two witnesses are required for each).³

וכן לרבן אפילו אומרים בהזיא דעת כתב ידן הן מעידין⁴ –

And similarly, according to the **רבנן** who maintain that

¹ When they say **כת"י הוּא זֶה**, it is implicit in their statement that everything written in the **שטר** is true.

² It seems that they are testifying, **כת"י הוּא זֶה**, and are adding that they remember the loan.

³ The explanation given is that even if they testify that the loan took place, nevertheless there is no **קיטובה** if there are no two witnesses each other. At best it would only be a **פנוי** and **מלואה ע"פ**. See 'Thinking it over' # 1.

⁴ It would seem that they are saying we are testifying only to the veracity of our signatures. However it (seemingly) cannot mean that they are saying that they do not recall (at all) what the **שטר** states. See previous note **ורוי** (**בسوוף**) **ד"ה ורוי**.

even if the *עדים* openly declare that they are merely testifying about their signatures, nevertheless it is considered that they are testifying על מנה (and each can be his own חתימה⁵).⁶

proves his assertion that stating a change of intent is irrelevant:

דאמרין בסמוך ואי ליכא תרי אלא חד היכי נעבד –

For the shortly discusses: ‘what should be done if there are no two outside who recognize the signature of one of the signers; rather there is only one עד **who recognizes his signature’.**⁷ The fact that this is problematic –

משמע שאין יועיל לרבען אם ייעדו בהדייא על כתוב ידו –

indicates that even if the will explicitly testify concerning their signatures only, it will be of no avail to change the thrust of their testimony from עד ידו to surviving שברטר. Otherwise (the should have answered) let the surviving explicitly state that he is testifying only עד; which will therefore require two to authenticate each signature. The surviving together with an outsider will be able to authenticate both signatures. The fact that this solution is not offered proves that it makes no difference what the state; their testimony is directed in the appropriate manner, regardless of their intent. proved his assertion according to the רבען, and presumes that the same applies according to רבי.⁸

SUMMARY

על כת"י or על מנה שברטר retain their respective position whether רבי or רבען, regardless of what the proclaim.

THINKING IT OVER

1. על מנה שברטר maintains that according to רבי even if they say nevertheless two *עדים* are required for each; because in order for it to

⁵ See footnote # 3. Nevertheless, the explains that (according to the opinion that רבען is this is קיום). Once we know that the loan took place (and each verifies his signature) it is considered a מוקיים.

⁶ The dispute between רבי and רבען is not dependent on the intention of the *עדים*; but rather it is intrinsically bound with the basic nature of the loan; it is either a קיום of the signatures (רבי), or a קיום of the loan (רבען).

⁷ The גمرا asks (according to the opinion that ר' עמשבשה"מ) what is to be done in a case where one of the *עדים* died before he authenticated his signature. In this situation two are required to be his witnesses. However if there is only one (outside) to be the witness of the deceased עד, there is a difficulty, for we cannot have the surviving join him in being the witness (as the גمرا explains). [This difficulty does not exist if we maintain עכתייה"מ (see ר' ד"ה ונפקא).] The גمرا offers a solution to this problem.

⁸ See ‘Thinking it over’ # 3.

be a must be the **תוספות** **תומחות** **מלוה** בشرط **מקוים**.⁹ Why then does conclude and say **חשייב** **כאליו** **מעידין** **על כת"י**? this is seemingly irrelevant?! should have said **מ"מ** **צרייך** **שני** **עדים** **על כל** **חתימה** or something similar!

רבען 2. When **תוספות** is discussing **רבינו**, he writes **'בפירוש'**; while by the **רבנן** he writes **חשייב וככו** concludes by that **רבינו**; however by the **רבנן** there is no (such) conclusion?

3. How does the proof for the **רבנן**, (certainly) apply for **רבינו**?!¹⁰

⁹ See footnote # 3.

¹⁰ See footnote # 8.

And only on a potsherd exclusively

– ודוֹקָא אַחֲסְפָּא –

OVERVIEW

The ב"ד states that if one desires to tender his signature to for (future) verification purposes, he should sign only **אַחֲסְפָּא**. Otherwise if he signs it on a parchment and an unscrupulous person will find it, he may write above the signature whatever he pleases causing (great) loss to the signer. However if he signs on a **חַסְפָּא** there is no such concern. For by a **חַסְפָּא**, since it can be forged, any claim on a **חַסְפָּא** (even with a signature) will be disregarded. It would seem from this that a **שֶׁתֶר** cannot be written on a **חַסְפָּא**. However תוספות will cite that permit **שֶׁתֶר** גמרות to be written on a **חַסְפָּא**. This will resolve this difficulty.

There are two types of **שֶׁתֶר** מולה A. **שֶׁתֶר רַאיָה** and **שֶׁתֶר קִנִּין**. **שֶׁתֶר רַאיָה** is a **מִלּוֹה** borrowed money from the wife. It does not create a loan; it (merely) proves that a loan took place. **שֶׁתֶר קִנִּין** is a **גֵט**. It creates the divorce. It severs the bond between husband and wife; and makes the wife a divorcee.

offers another option for presenting with a signature:

וְהוּא הַדִּין אֲרִישָׁא דְמַגְלָתָא כְּדֹאֲמָר בְּגַט פְּשׁוֹת (בַּבְּאַתְרוֹא זֶה קָסֶב¹ וְשֶׁמֶן) –

And similarly one may write his signature **on the heading of a scroll**; at the very top of the parchment **as the states in** גמרא **states in**,
דְּלִיכָא לְמִיחַשׁ לְמִידִי -

For there is nothing at all to be concerned about, if he signs (either or) **אַחֲסְפָּא** or **אֲרִישָׁא דְמַגְלָתָא**. A **שֶׁתֶר** is **פְּסוֹל** for a **חַסְפָּא**, since any forgery on a **חַסְפָּא** is not apparent. Even if something were written above his signature, no one would be able to claim anything if it is written on a **חַסְפָּא**. If he signs **אֲרִישָׁא דְמַגְלָתָא** no one can write anything above his signature, to cause any loss.

תוספות anticipates a difficulty with the above mentioned presumption that a **שֶׁתֶר** which is written **אַחֲסְפָּא** is not valid:

וְהַא דְתַנְיָא בְּפֶרְקָה קְמָא דְקָדוֹשִׁין (זֶה טָא וְשֶׁמֶן) –

And that which we learnt in a **פֶרְקָה** **in the first** **בְּרִיתָה** - if a person **כְּתָב עַל הַנִּיר או עַל הַחֲרֵס בְּתַךְ מִקּוֹדְשָׁת לֵי כּוֹלִי** - **wrote on a paper or on pottery** ‘your daughter is betrothed to me, etc.’;

¹ This appears to be incorrect; it should read **קָסֶב**.

and presented it to the father of this girl, the rule is that the daughter is betrothed to him (if she is not a **בוגרת**) -

וכן גבי שדה (שם כו,א) כתוב על הנייר או על החרס כولي הרי זה מכורה -

And similarly concerning a field, if a person **wrote on a paper or on pottery, etc.** that my field is sold to you; the ruling is **that the field is sold.**

It is evident from those that a **שטר** is valid (even) if it is written on a **חרס** (which is the equivalent of a **חספה**). This seems to contradict our **גמרא** that anything written on a **חספה** has no validity since it can be forged, without being noticed.

תוספות responds:

נראה דעתיא רבבי אלעזר דעת ר' מוסיריה כרתי -

It seems that those follow the ruling of **ר"א** who maintains that the **witnesses** who observe the **transference** of the **שטר** (from one party to the other), make the **שטר** **effective.**² It is only according to **ר"א** who maintains that these which are written on something that can be forged (such as a **חרס** or a **נייר**) are effective³ (when the **עדין מסירה כרתי** testify that they were properly transferred). This would (seemingly) resolve the contradiction.⁴ [If there are (and if we maintain that **עדין מסירה כרתי** then there is no concern of forgery; for the **עדין מסירה** will testify to the veracity of the **שטר**.]⁵

- **ר"א** will prove his contention that the aforementioned **tosfos** follows the view of **ר"א** that **דרבינו מאיר כיון דעתך כתימה כרתי לא מהני על דבר שיכול להזיף -**

For according to **ר"מ** who maintains that the **witnesses who sign** on the **שטר** make it **effective**, a **שטר** which is written **on something that can be forged is not a valid**. According to **ר"מ** who maintains that the **שטר** which was written on a **שטר** (or any **שטר**) which was written on a **שטר** **להזיף** is invalid [even at the point of the transaction⁶ (and even if the **עדים** certify that nothing was changed on the **שטר**)]. For a **שטר** to be **effective**, it is necessary (according to **תוספות**) that the veracity of the **שטר** be ascertained (only) through the signatures (**עדין כתימה כרתי**); however since it is **יכול להזיף**.

² The word **כרתי** actually means to cut off. This refers to a **גט** which cuts the bonds between husband and wife. This term is used because the **מלוקת** between **ר"א** and **ר"מ** was originally stated concerning **גיטין**. However it affects all **שטרות**.

³ It would seem that (even) according to **ר"א** one may tender his signature on a **חספה**. There are no **עדים** at all, only his signature. Anyone who will write anything above the signature will not have any to verify that it is not forged (**מהר"מ שי"ג**). However, see **קדושים** (ט,א,ה, כתוב) in **תוספות** where (seemingly) states that this is (only) according to **ר"מ**. See **הארוך** (**ר"מ**) that the **רשותם** is (only) according to **ר"א**.

⁴ **עדין מסירה כרתי** is **כשר להזיף** on a **שטר קניין** according to **ר"א** who maintains that **שטר קניין** is **כשר** to **להזיף**.

⁵ Presently the bracketed sentence is not necessary. There can be no concern of forgery at the moment of **קדושים** or at the point of sale. All parties are present. See later in this **תוספות**.

⁶ See footnote # 5.

⁷ See footnote # 5.

nothing can be ascertained by the signatures (only though oral testimony). It is possible that the signatures was altered. The signatures cannot tell us if there was a forgery or not. Therefore, according to ר"מ, it cannot be a valid שטר. This applies by all other as well; since עדיה כתימה כרתי, they are not valid on a שטר. Therefore those ברייתות cannot follow the view of ר"מ and must follow the view of ר"א.

לר"מ only לשטר בדבר שיכול להזדייף proves this point that a שטר is not and not:

כדאמר בפרק ב' בגיטין (ז' כא,ב ושם) אין כתיבין לא על הנירcoli כולי וחכמים מכשiron -

As the states in the second of פרק גט 'a is not written, neither on erased paper, etc., because it can be forged; however the החכמים permit it' -

ומפרש בגמרא⁸ מאן חכמים רבii אלעזר -

And the explains; who are these, who permit writing a on a שטר that can be forged? It is ר"א who maintains that שטר depends on the effectiveness of a שטר; who maintains that the effectiveness of a שטר depends on the moment of (where there is no concern of זיוף). [Therefore if the (or even the testify that this is the original (it was not tampered with), it is effective and the woman has the status of a divorcee.] The same would (seemingly) apply to other שטרות. Those קדושין by ברייתות and follow the view of ר"א.

גט anticipates a difficulty with this last assumption that according to it is permissible to write a שטר on דבר שיכול להזדייף other than a שטר:

ואף על גב ذאמר התם⁹ לא הכשיר רבii אלעזר אלא בגיטין אבל בשאר שטרות לא -

And even though the states there that did not permit to write on a שטר but he did not permit to write them on a שטר. The difficulty is; how is it to write a שטר קדושין or a גיטין; דבר שיכול להזדייף on a שטר מכירה or they are not?!

This responds:

הכי פירושא אלא בגיטין ודכוטייהו דהינו שטרות שאין עומדין לראייה -

This is the explanation of the phrase 'only by'; that means by גיטין and their counterparts, which means that are not intended for proof -

כגון אותו שאינו עשיי אלא לקניות בו אשה ושדה -

for instance those that are not written in order to retain proof of a transaction; but rather that are used to acquire a woman or a field. The שטר

⁸ דף כב,א.

⁹ גיטין כב,ב.

effects the transaction at the moment of transference -

כעין גיטין שעשוין לפי שעה לגרש בו -

Similar to גיטין which are used for the moment as an instrument of divorce; similarly the שטרות which the ברייתות are discussing are שטרי קדושין ומכירה and not שטרי ראייה. When the שטר שטר ר"א meant the types of גיטין said גمرا. A שטר קניין is a שטר גט which actualizes the divorce. Similarly a שטר קדושין actualizes the betrothal, and the שטר מכירה actualizes the sale of the property. In all these cases שיבול להזדייף permits writing them on a שטר קניין. The purpose of all these עדימיסירה is to actualize the transaction presently (in the presence of שטר קניין). There can be no concern of forgery, for both parties (and the עדימיסירה) are present.¹⁰

תוספות anticipates a difficulty

אף על פי שיכול השטר של קניון להועיל לראיה -

Even though the שטר קניין can be utilized as a proof of the transaction; the person who bought the field can use the שטר קניין of acquisition as a proof of purchase. Similarly the woman can use the שטר קדושין as proof of marriage. How can we say previously that the שטר קדושין are merely (merely), when they can be used as a proof? **שטר ראייה**.

תוספות responds:

גם הגט יכול להויל כדאמר בההכותב (לעמו זר פט,ב) ובפרק קמא דברא מציעא (זר יח,א ושות) - גمرا שטר ראייה that she is divorced; as the states in ב"מ פרק ההכותב and in the first - מסכתה ב"מ פרק ההכותב

And if you will say that we should rip up the **טג** after it has been given to the woman and the **כתחובה** was collected¹¹; this is not proper because the woman can argue that ‘**I need it to remarry**’; it serves her as a proof of her divorcee status. We see that a **טג** can also be used as a **שטר ראייה**, and nevertheless the **גמרא** clearly states that by a **טג** it is permitted to write it on a **שטר שכיל להזדיין**. The same applies to **שטר ראייה קדושין** ו**שטרין מכבר** - **שטר ראייה**:

אלא שעיקרו לא בלבד נעשו -

However, that which distinguishes (and גיטין), is **that initially they were not written for the purpose** of but rather to perform the שטר קדושין ומכר. ראייה Therefore they can be written on a להזיהיף. They may be used (also) as a קניין. שטר only if the will testify to the authenticity of the עדית חתימה (or עדית מסירה).

¹⁰ According to זיוֹן, even though there is no concern of קניין, nevertheless, if שטר קניין is forged, it is still considered מוכחה that it was not tampered with.

¹¹ The **גנראות** there is discussing a place where they do not write **כתובות**. The women collect their **כתובות** on the basis of the **טג**. The issue at hand is what should be done with the **טג**, once the **כתובה** was collected, in order to prevent the woman from collecting again.

שאר שטרות גمرا excludes when it refers to:

ולא ממעט אלא שטרות שעיקרן לראיה ועשויו לעמוד ימים רבים -

And the does not wish to exclude all besides; but rather only those that are initially written for proof and are made to last many days. Those cannot be made on a day for it defeats its purpose -
- **כדייתי התם קרא ירמיהו לב, יג) ונתתם בכל חרש וגומר :**

as the there cites the (as a proof that by it cannot be on a day; **‘and you shall place the in an earthenware utensil, etc.** in order that it should last for many days'. The idea of keeping it for many days is inherently applicable to a day only.¹²

SUMMARY

Signatures may be submitted and on a document. According to ר"א, signatures may be written on a day; but, according to ר"ב, they may be written on a day or not. ¹³ According to ר"מ, neither may be written on a day. ¹⁴

THINKING IT OVER

1. What would be the if a signature (for a day or ר"מ or ר"א) is written on a day and the witness (or a witness) testifies that it is not valid; would it be a valid signature or not?
2. Is there any connection between the beginning of the additions (that a signature can be tendered) and the rest of the additions?
3. What would be the if a purported buyer of a property presented a document written on a day, signed by the seller (the signature was authenticated) that the field was sold to the buyer; and the seller claims I never sold it to you, nor did I ever give you such a document?¹⁵

¹² Those cannot be written on a day even if we maintain that the signature is valid; for since they are held for the original the original may no longer be available, and we may rely on the witness, which cannot vouch for the authenticity of the signature since it is invalid.

¹³ The witness are effective to actualize the signature since it is valid. These can also be used in the future as a witness provided that the witness or the witness testify (orally) to the authenticity of the signature. However which are initially made to last a long time (beyond the scope of oral testimony), cannot be written on a day.

¹⁴ According to ר"מ a signature must be that it is valid. There is no evidence in the signature that can guarantee its authenticity. Therefore it does not have the power of a signature.

¹⁵ See footnote # 3.

הוציא עליו כתב ידו שהוא חייב לו גובה מנכסים בני חורין –

He presented to him in his own handwriting that he owes him; he can collect from the unencumbered properties

OVERVIEW

The cites a gemara that if the presents the handwriting of the on a document that the owes monies to the ; the may collect that sum from the of the . The issue in this is; what is the claiming? Is he claiming I never borrowed the money; or is he claiming I paid the loan already? Perhaps there is no difference. states that this is a between the ר"ף and the ר"י.

פסק רב אלפס¹ דוקא כשהוא אומר לא היו דברים מעולם –

The ר"ף ruled that this ruling applies exclusively only if the claims this never happened; I never borrowed money from you. In such a case the is not believed, since the has a signed document from the stating that the borrowed money from the – מלוה

אבל נאמן הוא לומר פרעתי ולא מצוי אמר ליה שטרך בידי מי בעי –

However the is believed to claim that I paid this loan; and the cannot counterclaim; what is your doing in my hand if you already repaid the loan. Seemingly the should not be believed to claim, for the is holding the . If the indeed repaid the loan he would have demanded the back in return. Nevertheless the maintains that this claim of ר"ף is not effective in the case of a of the , but rather this claim is effective –

אלא בשטר שיש בו עדים דגובה בו מנכסים משועבדים –

Only by a which signed on; for with such a can collect (even) from encumbered properties (properties which the sold after the loan).³

¹ In the end of ר"ף (in our מס' ב"ב פג,ג).

² The 'ר' is the common abbreviation for ר' י'זחאל אלפסי or ר' י'זחאל אלפסי lived in the city of פאס (today the city of Fez in Morocco). Hence the abbreviation ר' י'זחאל אלפסי – ר' י'זחאל אלפסי;

³ The commentaries offer various explanations as to the difference between כת"י and עדים. 1. By he is not concerned if the retains the ; because even if the claims a second time the can sell all his properties, and the will not be able to collect. 2. By a , the is (mainly) concerned that the should not retain it, for it will hamper the in selling property, since all his properties are subjected to the lien of the ; there is no such concern by כת"י. 3. By it is more likely that the forgot that the is in possession of a ; as opposed to where he is more likely to remember. 4. Since כת"י is not a 'real' the is not so concerned if it remains by the . [In addition since the

תוספות cites a differing opinion

וain nerah leRabbi no yizchak ci manio lo zo haChiluk -

And the ר"י does not agree with the ר"י ר' ה; **for, claims the ר"י, from where does the ר"י derive this difference** between כת"י and עדימ תוספות. **explains the ר"י ר' ה** - **כיב סבר**⁴ **דבכל שטר איינו רוגיל לפרקע עד שיחזיר לו שטרו** –

Because the "שטר" maintains that by every "שטר" (regardless if it is or not), it is not usual for the "לוּחָה" to pay until the "שטר" returns the "לוּחָה" to the "לוּחָה". Therefore the claim of "מי בא בעי" is always valid even by "כתחתי". According to "כתחתי", the "שטר" is not believed to claim, even if the "שטר" is only "לוּחָה", without "עדים" (according to "בכתבי").

SUMMARY

In a case of ר"פ הוציא עליו כת"י the maintains that the is not believed to claim however he is believed to claim. The argues and maintains that the or להד"מ is not believed to claim either פרעתה or להד"מ כת"י.

THINKING IT OVER

1. According to the ר' ה' if the claimant believes in the claim, why then are we concerned not to tender the signature on a forged document? If an alleged false will present it, the claimant can claim full value, and will not suffer any loss, for he is believed⁵!

2. Similarly according to the ר' י"ח why is not the לוה believed with the of טענה פרעתי מגו לה"מ?

3. What would the שטר בעדים maintain if it was a ר"ף; however it stated clearly that the can only collect not from בני חורין; מנכדים משועבדים will the be able to claim נאמן?!⁶

לוּהָ will collect from the **מלוּחָה** without the **משׁׁעֲבָדִים** being present to protect them. Subsequently the **לוּהָ** will return to the **לוּהָ** and demand payment for the **נכְסִים** which were taken from them. Therefore, he makes every effort to retain the **שטר**, when he repays the loan. However by "כַּתֵּחַ" he is not so concerned that the **מלוּחָה** will have the audacity to claim the loan a second time from the **לוּהָ** personally after he already paid him.] See 'Thinking it over # 3.

⁴ In other editions this is amended to read סברא (instead of סבר).

⁵ See מהר"ם שי"ף.

⁶ See footnote # 3. See ש"ר חו"מ ס"י סט ס"ק יד נתיה"מ שם ס"ק ו and ש"ר חו"מ ס"י סט ס"ק יד.

A witness and a judge can be combined**עד ודין מצטרפין –****OVERVIEW**

ר' יהודה stated in the name of שמואל that the testimony of an עד and a דין can be combined. This is understood to mean¹ that if the לוה challenges the חתימת העדים (together with the signatures), then one of the העדים can testify together with one of the דין to verify their respective signatures, and the שטר (with the חתימה) is affirmed.

משמעותה של מילוי שטר מקוים –

It appears from this statement of ר' יהודה, that even by an authenticated שטר, there is a concern; perhaps the signatures of the judges were forged and the needs to be affirmed. For, if there is no concern of זיוף on the שטר, why is there any need for the עד and the דין to be מצטרף? What are they testifying; it is a שטר מקוים!

וכן משמע בירושלמי דגיטין² ובפרק בן סורר³ –

And so it also seems in מסכת גיטין that there is a concern of זיוף on the שטר itself, and if the challenges the needs to be מקוים.

ר' יהודה anticipates a question:

והא דעתנו בתוספתא דשביעית⁴ פרוזבול⁵ המקשר –

And that which we learnt in a Tosefta concerning a ‘tied’ –⁶ פרוזבול –

ר' יהודה אומר עדים חותמים מבחוץ והדינים מבפנים –

ר' יהודה claims that the sign on the outside (back) of the שטר and the sign on the inside; where the שטר is written –

¹ See ר' יהודה (and the response of רבא).

² פ"ט ה"ז.

³ ס. פ"ג.

⁴ פ"ח ה"ט.

⁵ A פרוזבול is a document in which the לוה transfers his outstanding loans to ב"ד, enabling the ב"ד to collect them after he would be forbidden to collect.

⁶ The שטר is similar to a גט (document) מקשר. In a גט a few lines of the גט are written; the written lines of the גט are folded over the following blank lines. This fold is sewn or tied together and the עדים sign on the backside of the fold. This process is repeated several times until the entire גט is written and folded (like an accordion). In a פרוזבול המקשר the עדים sign on the blank lines under the written lines, it is then folded over, and according to ר' יהודה the sign on the back, to authenticate the signatures of the דין; the reverse of a usual קיום, where the דין authenticate the signatures of the עדים.

אמרו לו אין מעשה בית דין צריך קיומ –

פרוזבול A. **קיום** said to **ר"י** that an act of **ב"ד** does not require **קיום** חכמים signed by **ב"ד**, is an act of **דיינים**; therefore once the sign on the inside there is no need for the **דיינים** to sign on the outside of the **פרוזבול**. It would follow that since a **הנפק** is also a **קיום** it does not require any further **קיום**. This contradicts our assumption that the **הנפק** may be challenged and it requires the **דיינים** to be the **הנפק**.

קיום responds; this rule that a **מעשה ב"ד** does not require **תוספתא** -

הינו דוקא בפרוזבול משום דנאמן אדם לומר פרוזבול היה לי ואבד –

applies only to a person is believed to claim 'I had a pruzbul and it was lost'.⁷ Therefore the **לוּה** cannot challenge the **פרוזבול** and refuse to pay the loan if a **מלואה** is not presented; for the **לוּה** can always claim I wrote a **מעשה ב"ד** (**פרוזבול**), in which the **לוּה** cannot challenge the underlying **שטר** (the **פרוזבול**), that we maintain **קיום** שטר. However by a loan where the **לוּה** can claim that the underlying **שטר** is **מזוייף**, he can also claim that the **הנפק** is **מזוייף**.

תוספתא anticipates an additional question and resolves it:

ואפילו למאן דאמר איינו נאמן מודה הוא שלא בעי קיומ:

And even according to the one who maintains that the **לוּה** **is not believed to claim** **פרוזבול היה לי ואבד** (it would seem therefore that the **לוּה** can challenge the **פרוזבול** concerning the (lack of a) **מלואה** and nevertheless there is no requirement for **קיום**); nevertheless even this **admits** that if the **לוּה** does produce a (regular) **פרוזבול** (**it does not require** **קיום**); the **לוּה** cannot challenge it and claim that it is **מזוייף**.⁸ Therefore, since the **לוּה** cannot challenge the **פרוזבול** on a **דיינים** need no **פרוזבול** **קשר** from the **לוּה**. However a regular **שטר** where the **לוּה** can be challenged, the **הנפק** can be challenged as well.

SUMMARY

מזוייף requires if it is challenged that it is **הנפק**.

⁷ גיטין לו, ב. The reason is because since the **לוּה** could have made a **מלואה** without any difficulty, we assume that he made it. There is a presumption **שביק היתירה ואכליל איסורה**. A person will not forgo permitted food and eat forbidden food.

⁸ לא שvik היתירה ואכליל איסורה # 7; [Nevertheless this maintains that if the **לוּה** shows no **פרוזבול** at all, this erodes the **חויה** of the **פרוזבול**.] Alternately, a **קיום** is required for a **לוּה** to claim that the **לוּה** is **מזוייף** for it has to be written with his consent. However how can he claim that the **פרוזבול** is **מזוייף**; the **פרозבול** can be written without the consent of the **לוּה** (see **אלית השחר** **לוּה**).

THINKING IT OVER

1. Why is there (even) a (slight) reluctance by הנפק to assume that a קיומ requires if challenged? Why should the לוה not be believed to claim that the הנפק is מזוייף?!

2. According to תוספות (that there is no need for קיומ by a since the cannot challenge it) why do the הרים say that there is no need for קיומ since it is a מעשה ב"ד?! Seemingly that is not the reason; rather it is what תוספות says because נאמן המלה וכור!

But said this verification

האמר רב פפי האי אשרתא -

OVERVIEW

The cited a ruling (some say it in the name of רָב הַונָּא and others in the name of רָב קִיּוֹם) that if in the process of writing a שְׁטֵר on a קִיּוֹם, two of the recognize the signature and one does not; then if the two did not as yet sign (the third (אֲשֶׁר תָּאַתָּה) they may testify for the third דין (as to the authenticity of the שְׁטֵר) and he may also sign. [However if the two signed already, they may not testify for the third דין.] The challenges this ruling. How is it permissible to write the third (in which it says that we three verified the signatures of the witnesses) when in fact at the time of the writing, one of the three could not verify the signatures of the witnesses. The cites רָב פְּפִי גִּמְرָא who states this restriction (in the name of רְבָא) and explains that this would be for it is מַחְזִי כְּשֻׁקְרָא פְּסוֹל אֲשֶׁר תָּאַתָּה states that the signatures are verified by three דין, when in fact, when these words were written, one of the three could not verify the signatures. will discuss whether this ruling of רָב פְּפִי and the concern of מַחְזִי כְּשֻׁקְרָא is an accepted ruling or whether it was rejected and we are not concerned for מַחְזִי כְּשֻׁקְרָא.

תוספות asks:

תימה דפריד מדבר פפי¹ -

And it is incredible; that the challenged the previous ruling of שלשה גمرا

- **רב פפי** from a ruling of **לקיים את השטר וכו'**

² ובספר **הכוטט** (לקמן דן זה פה, א' ושם) מסיק דליתא לזרב פפי מדרב נחמן בולי.

For in פפי' s ruling the court concludes that רב נחמן's ruling is negated on account of רב נחמן's ruling -

ועוד דברך כל הגט (גייטין כו, ב' ושם) מסיק דבר לית ליה דבר פפי³ -

¹ ר' פפי may (also) be asking how can we refute a ruling by ר' or ר' הונא from a ruling of who was also (only) an אמורא (and of a later generation than ר' or ר' הונא). This goes on to strengthen his question.

² התיימה לשמה כתיבה לשמה ר' מ' who maintains that a ט does not require (only), a person who finds a ט in the rubbish, may have it signed and delivered to his wife for a proper divorce. It is evident from רב נחמן that we are not concerned for מהוי בשקרא; otherwise this ט would be פסול (even if לשמה is not required) for it was not written at all for this man and wife.

³ ר' maintains there that by all שטרות (except ג') one may write the entire טופס (the legal format of the document minus the relevant details, such as the names, date, etc.); even though ultimately the שטר will be מחייב כשרות for it was not written for this transaction; disagreeing with ר' פפי.

And furthermore in the general conclusion of the chapter it concludes that רב disagrees with – רב פפי

והיכי פריך הכא מדרב פפי אמיילתיה דרב⁴ –

so how can the here present a challenge from on a statement of רב; when it is evident that רב clearly disagrees with רב –

מיهو הא איך לא לתרץ דאלישנא דאמרי לה משמייה דרב הונא פריך⁵ –

However, this last question can be answered, that the is challenging the view that claims that the foregoing statement of was said in the name of רב הונא and not in the name of רב. The challenge is to from רב פפי we do not find elsewhere that רב disagrees with רב. However the original question remains that the writes 'دلיטה דרב פפי מדרב נהמן' the cursive in general.

entertains a possible answer; that the question may be as follows:

ואין לומר דהכי פריך כיון דאמר משחתמו אין מעידין לפניו וחותם –

And we cannot answer that this is the challenge; since said (רב or) רב הונא said that once the signed, they may not testify in the presence of the third דין and have him sign –

אלמא חיישנו למיחזי כשקרא⁶ –

This proves that רב הונא is concerned about ‘false appearances’; that רב agrees with the proposed question –

אם כן משכתבו עד שלא חתמו נמי דעתיבנה נמי מיחזי כשקרא⁷ –

If so then even in the case where they wrote it and had not signed it yet, it should also not be permitted for the two to testify before the third דין and have him sign; because the writing of the (before all the are acquainted with the signatures of the also appears as a lie.

rejects this (proposed question as an) answer:

דם כן הוה קשיא דרב דהכא חייש למיחזי כשקרא ובפרק כל הגוט (שם) לא חייש –

For if this is so; that the reason why after the two signed they may not testify before the third דין, is on account of, מיחזי כשקרא, then there is a contradiction from one statement of רב to another. For here חייש is רב

⁴ According to the this ruling of רב הונא 'יאמרי ליה' was said by in the name of רב.

⁵ See ‘Thinking it over’ # 1.

⁶ We are presently assuming that the reason for it is because it is since the third did not recognize the signatures at the time the was signed.

⁷ The question on would not be so much from רב הונא, but rather that there is an inconsistency in the statement of רב was mentioned as an adjunct, since רב פפי, משחתמו אין מעידין לפניו. רב הונא indicates that agrees with that חיישן למיחזי כשקרא (see).

according to this proposed answer (for he forbids testifying after the signing); **and in**⁸ **he is not concerned** for **פרק כל הגט**⁹ We, therefore, cannot say that the reason why is on account of מיחזי משחתמו אין מעידין לפניו וכיו' מיחזי כשלגרא.

אלא טעמא דמשחתמו דמי לנוגעים בעדות⁹ -

But rather the reason why **is**; **for once they signed** on the two **asherata**, their subsequent testimony **is similar to a biased testimony**. Once the two signed on the third **dien** they (seemingly) have a vested interest in completing it, therefore their testimony before the third **dien** appears tainted.

כען שפירש בקונטרס¹⁰ **גביה הוא שקרא ערער על אחד מהן** -

Similar as to how **רשב"** **explained** the case **where a controversy arose on one of** the two. However there is no indication that either **רב** or **חיש** **למייחזי** **כשקרא** are **רב** or **חוןא**. The question remains how the **גمرا** can challenge them from the ruling of **רב פפי**, which is a discredited ruling.

תוספות answers:

ותירץ רבינו תם **דדרך הש"ס להקשות אפילו מדבר שלא הויל הلقטה הכל** -

And the answered; that this is the custom of the **ר"ת** to present a challenge even from a ruling that is not the accepted **הלכה**.

continues with a halachic ramifications:

ופוסק רבינו תם **דכתבינו אורכתא**¹¹ **אפילו אמתלטלי**¹² **דכפריה**¹³

And the ruled that we do write a **הרשות** even for movable property which the defendant denies that he has in his possession; nevertheless the **הרשות** may be written -

דא קיימא לנו **רב פפי** **דחייש למייחזי** **כשקרא אף על גב דפריך מינה** -

For we do not follow the ruling of **רב פפי** **who is** regardless that the **גمرا** bases challenges on his ruling of - **מיחזי** **כשקרא**

⁸ See footnote # 3.

⁹ See 'Thinking it over' # 2.

¹⁰ **ריש** (**בסוף העמוד**) **ד"ה** **משחתמו** there discusses a case where a suspicion arose concerning one of the two that was meant to sign on the **dien**. The other two can testify to nullify this suspicion only before these two signed on the **dien**, but not after the two signed, for the same reason; they are **נוגע בעדות**.

¹¹ **אורכתא** is a **הרשות** or 'power of attorney'. If a plaintiff wants to send an agent in his place to prosecute a claim, he must invest in this agent a power of attorney stating that the agent is claiming and collecting on his own behalf. Otherwise the defendant can argue that he has no dealings with this agent. See **ב"ק ע,א**.

¹² The plaintiff claims that the defendant has some of his **מטלטלי** in his possession.

¹³ The **הרשות** states that the agent may collect the **מטלטלי** in question as if it is his own. However since the defendant denies possessing the **מטלטלי**, it seems that the **עדם** who sign on this **הרשות**, are signing on a false document, since according to the **נתבע** there are no **מטלטלי** in his possession.

ופריך נמי מנהרדע¹⁴ בכמה מקומות בפרק שבועת העדות (שבועות זך לגב, ושם) -

And the also presents challenges from the ruling of in various places in including in sh"s - **פרק שבועת העדות** in various places including in sh"s

ובפרק יש בכור (בכורות זך מט,א) והאמרי נהרדע לא כתיבין אורכתא قولיל -

נהרדע where the asks in these two places, **'but the rule that we do not write a etc.,** in a case of **הרשאה**, for it is mahzi, מטלתי דכפריה, nonetheless we do not follow the rulings of **רבי פפי** and **נהרדע**; but rather we maintain that even on **הרשאה** even on **הרשאה** we do write a **מטלתי דכפריה**. And we do write a **הרשאה**.

רב גمرا offers an additional answer to the original question; how can the ask from when the states concerning that his ruling has been negated:

ויש מפרשים וליתא דקאמר בהכותב¹⁵ ובפרק כל הגט¹⁶ (גייטץ' כו,ב, ושם) -

And others explain that the term **'וליתא'**, which the uses in **גمرا** and in **פרק כל הגט** -

דלא בעי למימר דליתא לדרב פפי אלא דליתא לקושיא -

That it does not mean that ruling is negated, but rather that there is no question. The difficulty that was raised in those on account of is nonexistent; it can be resolved -

שאין לדמות אשרתא שהוא מעשה בית דין לשאר שטרות -

שטרות מעשה ב"ד אשרתא to other which is a

By an one must be careful that it should not be however by other mahzi 캐셔רא, since they are not. **מעשה ב"ד**, since they are not. **דבמעשה בית דין למלוא עולם חיישין למיחזי 캐셔רא¹⁸ -**

חוושׁ However by a **מעשה ב"ד everyone agrees** (even **רב ב"ד** that we are

רב פפי we ask from, since here It is therefore understood why in our we ask from, since here we are also discussing the identical case of **מעשה ב"ד אשרתא** which is a. The challenge from **רב פפי** will be on as well.

¹⁴ See following paragraph.

¹⁵ The cites a case of a woman who was obligated to swear. She requested that a document be written beforehand that she discharged her properly and was vindicated. This document was to be given to her after the time of the writing she has not yet sworn.

¹⁶ See footnotes # 2 & 3.

¹⁷ This resolves the difficulties in **פרק הכל הגט** and in **פרק הכותב**, for in both of those cases it was not a **מעשה** **שבועה** (see following footnote # 18) which was **מיחזי 캐셔רא**. In it was the note concerning her **שבועה** (see following footnote # 18) and in it is concerning **מעשה ב"ד**, but not **שאר שטרות**.

¹⁸ See in the margin who writes; **והיא דהכותב לא חשיב מעשה בית דין דבעדים סגי שייעידו שנשבעה** - and that case in **פרק הכותב** is not considered a (**מעשה ב"ד** even though she asked to write a release for her that she swore) for it is sufficient that **עדים testify that she swore**.

offers an additional answer on the original question:

ורבנו יצחק מדנפייר¹⁹ תירץ לכתלה ודאי חישין למחיizi בסקרא²⁰ –

And the answered that initially we are certainly concerned for **מהזי בסקרא** and therefore no document should be written if it is for **לכתלה**.

who even according to proves his point that we are **לכתלה** argues with:

כదאמר להו רב לספריו כי יתיבתו בהני כולי (בבא בתרא זז קעב,א) –

As ordered his scribes that when you are working in, etc.; you should write in the place where the **שטר** is being written is, even though the instructions were given to you in a different place. It appears that even is concerned for **לכתלה** is only for **מחיizi בסקרא** **לכתלה**. However, this restriction of **מחיizi בסקרא** **לכתלה** –

אבל בדייעבד לא חישין ולהכי פריך הכא דחווי לכתלה –

However, once it was done we are not concerned whether it is or not; and therefore the **here challenged** the ruling of **here it is** a case of **לכתלה**. They are writing the **קיימם** before all the are aware of the authenticity of the **שטר**.

והא דקאמר דליתא לדרב פפי היינו דיעבד –

And that which the states (in and **פרק כל הגט** in **գمرا**) **that** the ruling of **רב פפי** is discredited; that refers only to case of **דיעבד**; not in cases of **לכתלה**.²¹

רב פפי will now show that where the **גمرا** states concerning the ruling of (that even though it appears to be case of **רב פפי**'s **לכתלה** [where ruling should apply] nevertheless) it is similar to a **דיעבד** –

דזהיא איתתא דהכותב (לקמן זז פה,א ושם) –

For by the case of that woman in – **פרק הכותב** –

כיוון שהיתה צריכה לחזור לבית דין בדייעבד דמי –

Since if we would not write the **שטר זכות** for her now, **she would be required to return to**, a second time,²² therefore it is similar to a **בדייעבד** situation.

והרשאה נמי דכתביין אמטלטלי דכפירה –

¹⁹ Tosfosah Shabbat ק מג,א ד"ה ואם See

²⁰ See 'Thinking it over' # 3.

²¹ Concerning **בסקרא** which are permitted to be written **לכתלה** (even though it is **טופסי שטרות** nevertheless since it is for **ודו"ק**). **בדייעבד** it is considered **תקנת ספרדים** (שבועה).

²² The plaintiff in that case (to whom the woman 'owed' a **שכונה**), requested that she swear in his city. The woman agreed provided that the local **write** and give her now the **שטר זכות**. If they would refuse and only give it to her after she swore, she would have to return to this **בב"ד** a second time.

And also in the case of **הרשאה** which we do write for the which the **denies** (even though it is **נתקבע**) - (מחוזי כשרא נתקבע

הינו משום כיון שאין יכול לילך שם בדייעבד דמי:

It is because since the **cannot go there** and present his claim to the personally, **it is similar to a** **בדייעבד** situation. Even though in both of these cases we write it **לכתהלה**, nevertheless they are considered **דייעבד** situations.

SUMMARY

ת^ר maintains that we are not concerned about **מחוזי כשרא**. [Therefore a may be written even for **הרשאה**.] Others maintain that we are **לכתהלה** only by a **ר"י מדנפייר**. The maintains that **מחוזי כשרא** **בדיעבד**, however not **חוושש** **למחוזי כשרא**.

THINKING IT OVER

1. attempted to answer that the question from was according to that said this **ר"ב פפי** **תוספות**. **רב הונא** **גمرا** **דין** in the name of **ליישנא**.²³ The subsequently answers that the **הלכה** should read not **משחתמו** but rather **משכתחבו**. However according to who is not **חוושש** **למחוזי כשרא** why would he say, it should say **משחתמו?!²⁴**

2. says that the reason once the two signed on the **שטר** **דיניהם** **תוספות** they cannot testify before the third **דין** is because it is **דמי לנוגעים בעדותן**.²⁵ Is the because they want to substantiate their original stance (that it is a valid **נגיעה**) or is the **נגעה** that they do not want their signing to be for naught?²⁶

3. According to the **ר"י מדנפייר** who maintains that all agree that we are **אפי' מצא** **ר"ג** **חוושש למחוזי כשרא**, how will he explain the ruling of that **בашפה חותמו ונותנו לה!** **לכתהלה**?²⁷

²³ See footnote # 5.

²⁴ See **ח"ב** **אות ש"ה רע"א**; see **ש"ה**.

²⁵ See footnote # 9.

²⁶ See **משכונות הרועים** **אות תקג**.

²⁷ See footnote # 20.

²⁸ See **איילת האבים** **פנ"ז** and **פנ"י**.

ושמע מינה דיניין המכירין התיימת עדים אין צורך להעיד בפניהם –
we derive from this that judges who recognize the signature of the witnesses, it is not necessary to testify before them.

OVERVIEW

עד שלא כתבו מעידין בפניו גمرا states that we can derive from the ruling of שטר that recognizes the signatures on the basis alone. They are not required to hear testimony from other who recognize the signatures on the basis alone. This ruling seems to be so obvious, to the point that it is seemingly unnecessary for the גمرا to teach it to us. תוספות will explain why the גمرا felt justified in teaching this ruling.

explains that is it necessary for the גمرا to teach us this ruling -

דקא סלקא דעתך צריך להעיד בפניהם –

for it would have entered our minds, that it is necessary for who recognize the signatures to testify before the גרים, even if the גרים do recognize the signatures of the העדים.

תוספות anticipates the difficulty with this:

אף על גב דלא תהא שמיעה גזולה מראייה¹ –

Even though that hearing (from witnesses) should not be greater than (the seeing) the signatures and recognizing them; therefore why should we even think that it is necessary for the העדים to testify?

תוספות explains -

לפי שהיו נראה יותר בית דין –

Because they appear more like a **ב"ד**, when testify in their presence -
דכשאין מעידין בפניהם אין נראה אלא עד מפני עד –

However when there is no testimony in their presence it merely appears as **hearsay**; and not as a **ב"ד**. When the testify before **ב"ד**, then writes in the **ב"ד** that the received testimony that the signatures are authentic. It will be obvious that it is a **ב"ד** that is acting on the basis of testimony. However if the **ב"ד** will not hear testimony, they will merely write in the **הנפק** that we know these signatures to be authentic. It will appear later, when the **שטר** is acted upon based on the **קיימם**, as if we are

¹ The argument of ר"ה כה,ב uses this to prove that if one saw the new moon (by day), they can be based on their ראייה, without קבלת עדות from others. The same should apply here.

merely supporting the **שטר** on the basis of the **שטר** via the **עד ההפך**². This is similar to hearsay or **עד מפי עד**³.

ומטעם זה הצריכו ג' בקיום שטרות דהוה סגי בב' –

And it is also for this reason that three are required for three dinim – **קיום שטרות דהוה סגי בב'** – **for in truth two would have been sufficient** – **קיום שטרות דהוה סגי בב'** –

אלא משום דברינו שיהא בית דין כדרישת –

But three are required in order that it should be a as I just explained. For if there were only two it would also appear as if it is **עד מפי עד**.

offers an additional explanation why we may have thought that it is required that testify before the **ב"ד**: **ועוד אומר רבינו יצחק דסלקא דעתין צריך להעיד בפניהם** –

And furthermore says the ר"י that we would have thought that it is necessary to testify before – **ב"ד** – **משום דפעמים אין מכירין אלא על ידי שראו בלילה** –

Because occasionally the recognize the signatures only because they saw the signatures and recognized them at night – **דשמעה אינה יכולה להיות בלילה** –

دلיכא למימר לא תהא שמיעת גזולה מראייה –

For now we cannot say that hearing cannot be greater than seeing. Tosfos' original question was that wherever **ראיה** is effective, then **שמיעה** should certainly be effective; however here the **ראיה** was at night, and at night **שמיעה** is not effective – **דשמעה אינה יכולה להיות בלילה** –

For hearing testimony cannot be done at night –

כదאמר בר"ה (דף ושמ) דחקירת עדים בתחילת דין דמי –

As the states in that examining the witnesses is considered as the beginning of a case –

ותחלת דין אינו אלא ביום כדאמרין בסנהדרין (דף לב.):

ומסתת סנהדרין states in **גמרא** **תחלת דין**. Therefore since **שמיעה** is not effective at night, we cannot argue that the time should be effective. In such a situation additional testimony would be required by day.⁴ We would therefore have thought that there is this concern that perhaps the **דיינים** saw it at night and we should always require hearing the testimony by day. The **גמרא** teaches us that there is no such concern; and unless we know that the **דיינים** [initially] recognized the **חיה** by night, there is no need for them to hear the testimony by day.

² See פנוי of פסל **עד מפי** **הושע**. This is merely a concern how it may appear to people; however, it is not a real concern (**השימת העדים** since the **ב"ד** writes that we recognize [on our own] the **עד**).

³ However by **עד מפי עד** it is not and therefore it can be done.

⁴ See 'Thinking it over' # 1 (& 2).

SUMMARY

We may have thought that **דינים המכירים חתימת העדים** are required to hear testimony either because otherwise it seems like or because of a concern that the **דינים** recognized the signatures at night.

THINKING IT OVER

1. **תוספות הירושלמי** explains (in the second **הירוז**) that if they saw at night it is not valid.⁵ However what does it matter that they saw it at night; they are seeing it now again by day when they are **מקיימים שטר**, why would we require testimony from **עדים?!⁶**
2. What would the ruling be if indeed the **ביבון** recognized the signatures at night (only); is **הגדת עדות** required or not?⁷

⁵ See footnote # 4.

⁶ See footnote # 4.

⁷ See footnote # 4.

Before each and every one

– בפני כל אחד ואחד –

OVERVIEW

The **גמרא** derived from the **שלשה שישבו וכוכ' דין** that it is necessary for the **עדים** who are authenticating the signatures on a **שטר**, to testify before each of three **דיננים**; all three must hear the testimony from the **עדים**. Seemingly this is obvious! How else can the **הנפק** sign on the **שטר** unless they heard the testimony from the **עדים**? **הו סוףות!** **עדי קיום** will explain the necessity to teach us this rule.

- בפני כא"א **עדים** must testify **תוספות** explains that it is necessary to teach us that the

DSLKA דעתינו כיון שהעידו בפני שניים יכול השלישי לחתום על סמך השניים -

For we would have thought that since the witnesses testified in the presence of two of the three, the third would be able to sign the **הנפק on the basis of the two** who heard their testimony¹ -

אף על פי שלא העידו בפניהם -

even though they did not testify in the presence of the third. Therefore the **הנפק** teaches us that the **עדים** must testify before all the **דיננים**².

SUMMARY

If not for the **גמרא** we may have thought that if two **דיננים** hear the testimony from the **עדים**, the third may also sign the **הנפק**.

THINKING IT OVER

1. Why is not every **הנפק** considered as **עד מפי עד**??!

2. If the reason the third **דין** must hear from the **עדים** directly is on account of **עד מפי עד**,³ then again the question remains: does the **גמרא** need to teach us the **din** that **עד מפי עד** is **פסול**?

¹ The third **דין** hears from two **עדים** (the other two) that the signatures are authentic.

² Otherwise it is considered **עד מפי עד** (**תוספות ר"ד**).

³ See previous footnote # 2.

הנה לעדות החדש דאוריתא – **דאורייתא** new moon, for that is a

OVERVIEW

קדוש asked how we can say that קיומ שטרות by עד נעשה דין when by קדוש החודש the rule is that אין עד נעשה דין. The answered that קיומ דאוריתא is קדוש החודש should be dropped from this discussion since and will explain why תוספות is שטרות. Our will explain why, and to what extent do we say that אין עד נעשה דין (בדאוריתא).
אין עד נעשה דין.

גמרא's answer explains the crux of the question:

ובדאורייתא אין עד נעשה דין -

And in matters that are תורה laws, an עד cannot become a דין; therefore by אין עד נעשה דין we say that קדוש החודש.

(בדאוריתא) אין עד נעשה דין explains why תוספות:

وطעמא דין עד נעשה דין משום דברינו שיעידו לפניו הדיינין -

And the reason why an דין cannot become a עד is because there is a requirement that the עדים testify before the הדיינין -
כמו שפרש רבינו שמואל ברבי מאיר¹ -

As the Rashbam explains -

דכתיב² ועמדו שני האנשים אלו העדים³ לפניו ה' אלו הדיינין⁴ -

That it is written in the 'and the two men shall stand'; this refers to the witnesses. The continues 'before ה'; **this refers to the הדיינין**. The inference of this is that the עד should testify before the דין (not that the עד should be the judge⁵). If the עד would become a דין, he would not be able to testify in front of himself.

(מדאוריתא) אין עד נעשה דין offers a different explanation why תוספות:

ויש מפרשים משום דברינו⁶ עדות שאתה יכול להזימה -

¹ ב"ב דף קיד, א ד"ה ואין

² רעמדו שני האנשים אשר להם הריב לפניו ה' וגוי: פסוק דברים (שופטים יט, יז).

³ This is based on the гגרא in גגרא.

⁴ This seems to be obvious.

⁵ See הראה ש.

⁶ See פסוק ד"ה אין רשות. סנהדרין מא, א. The explains that otherwise we could not fulfill the requirement of the הימה דין (it concludes with the דין of השופטים יט, יח).

⁷ refer to the type of refutation when new עדים come and testify that the original הימה were with these

And others explain that אין עד נעשה דין is because there is a requirement that the testimony be such, that it can be refuted -

ואם העדים נעשו דיניין עדות שאין אתה יכול להזימה היא שלא יקבלו הזימה על עצמן -
עדות שאין אתה יכול will become the **it will be an עדות** **דיניים** **עדים** **לזהימה** **הזמן** **על עצמן** -
 And if the will become the it will be an **דיניים** **עדות** **דיניים** **דיניין** **להזימה** **להזימה** **ונרשותם**. The will not accept any on themselves. The will not allow anyone who attempts to be them, to testify in their ב"ד.

ומיהו לפי טעם זה אם העדים קרובים לדיניין -

However, it would turn out according to this reasoning of the מפרשים, that in any case where the **עדים** are relatives to the **דיניים** -

איןם יכולים להעיד שלא יקבלו הזימה עליהם -

They would not be capable of testifying, since the will not accept **דיניים** **עדות** **שאי** **אתה יכול להזימה** **עליהם**. עדות שאי אתה יכול להזימה on their relatives; it would be an **דיניים** **הזמן**. This obviously is not the case. Relatives of the **דיניים** are able to testify -

אלא כיון דבני הזימה נינחו בבית דין אחר עדות שאתה יכול להזימה קריינה בהו -
 for we rather maintain that since these are vulnerable to another (where the there are not their relatives), therefore we consider them as (even when they testify in the of their relatives). The can go to another and be ב"ד **עדים המזימין** **עדים** **ב"ד** **דיניים** -
הכא נמי יהיה הדין נעשה עד -

עדות שאתה יכול להזימה is considered an **עד דין**; and it is considered an **עד**, since in a different these **דיניים** **ב"ד** (who are here) are **בני הזימה**.

ходит goes on to a different topic:

ודוקא بعد המעד אמרין דין עד נעשה דין דשייכי הני טעמי -

אין עד נעשה **who is actually testifying do we say that עד** **דין**, for the aforementioned reasons are applicable -

אבל עד שאינו צריך להעיד כמו שיש אחרים שייעידו -

However an עד who is not required to testify, for instance where there are others who can testify. Many people observed the incident and others are testifying -

new עדים in a different place, at the very same time that the original claim they saw the incident (in a different place). In this instance the latter are believed and the former testimony is discarded, etc. See 'Thinking it over' # 1.

או כגון שראשו ביום שאינו צריך להעיד שלא תהא שמיעה גדולה מראיה⁸ נעשה דין -
Or for instance in a case of **ב"ד** where the saw the moon by קדוש החודש; in which case, the who saw the moon **are not required to testify**, in order to be מקדש **דיינים** who saw the moon can be מקדש **הוּא**. The who saw the moon can be without **עדות** **חודש** since in this case we can apply the logic **that hearing cannot be greater than seeing**; Therefore in these aforementioned and similar types of cases, an **עד דין** can become a **דין**. There is no problem of העמדת **עדות** **שאתה יכול להזימה**, and there is no problem of **עדות שני האנשים**, because this is not **din** **din** testifying.

ודוקא בדיני ממונות אבל בדיני נפשות אפילו עד שאין צורך להעיד אין נעשה דין -
And this ruling that an **is exclusively by**
עד שאין צורך להעיד can become a **monetary cases. However in capital cases even an** **cannot become a** **דין** **in the case which he witnessed. This restriction by** **(only) -**

לרבי עקיבא דאמר במסכת מכות (זב ו. ושת) אפילו הון מאה כולו עדים -

According to ר"ע who maintains מסקנת מכות that even if there were a hundred witnesses, they are all considered עדים; including that (in order for קרוב to take effect all the עדים have to be מזום and) if one of the hundred was a קרוב or a קורבן הוצאה, the entire group of the hundred become disqualified to testify.

ו吐עה מפרש בפרק ראוهو בית דין (ר'ה דר' co. ושם) משומך כתיב ו הציב העדה -

And the reason why the **עָד** who saw the incident cannot be a **דִין** is explained in **פרק ראוּה ב' ז'**, for it is written in the **תורה** ‘and the congregation shall judge, etc. and the congregation shall save, etc.’

וְהַנֵּד בֵּיו דָחֶזֶו דְקַטֵּל תֹּו לֹא חִזִּי לִיהְ זְכוֹתָא -

And these לְיִנְמֹר since they saw that the alleged murderer killed, they will no longer find any merit on behalf of the murderer, and they will vote to condemn him to death.¹⁰

⁸ See previous ד"ה וש"מ.

(ושפטו העדה בין המכחה ובין וואל הדם וגור). והציגו העדה את הרוצה וגור: The פסוקים (פסוק) במדבר (מסע) לה, (גד) כה⁹

גמרא's answer offers the conclusion of the s' **תוספות**

ודוקא בדאוריתא אבל בזרבן אפילו עד המעד נעשה דין:

And this is specifically limited to cases; however by cases even an who testifies can become a דין. Therefore by which is עד נעשה דין we say that דין זרבן.

SUMMARY

We say or ועמדו וגוו' because we require an דין by cases (either because of דין by נעשה דין is עד הרואה). An עדות שאתה יכול להזימה (עדות שא"א יכול להזימה) for we require נפשות דין נפשות (according to ר"ע), but not by העודה והצילו העודה (similarly what can there be by קידוש החודש)?!

THINKING IT OVER

1. The explain that because it is an דין י"מ עדות שא"א יכול להזימה because it is an דין י"מ. How can this apply to what will the claim of mean in this case (similarly what can there be by קידוש החודש)?!¹¹
2. Why does maintain that דין ממן by עד נעשה דין? Why does not the requirement of העודה apply there as well?!

¹¹ See footnote # 7.

¹² See פג"ג.

תרי ותרי נינחו –**They are two against two****OVERVIEW**

ערער גمرا (in the name of ר' הונא אמר רב) cites a הלכה that if there was an ערער on one of the two witnesses of ב"ד דין; then if the other two did not sign, they may testify to vindicate the third דין. Once the two signed however, they may not testify and have him sign. The גمرا challenges this and asks what type of ערער was it: if it was an גזלוות, then it is תרי ותרי (the question does not clarify what is the question exactly); if it was an גمرا (merely) of פגמ משפה, then it is גילוי מילתא בעלמא (again the question does not clarify). will cite רשות interpretation (and challenge it), and the ר' ה' s interpretation.

פירוש בקונטרס¹ וכי אמר לא גזל הו להו תרי ותרי ולא מתכשר בהבי –

explains; and when the will testify that the in question did not steal, it will be a situation of תרי ותרי (where two contradicts two others), and the accused will not be vindicated through the testimony of the two.²

פירוש הקונטרס has a difficulty with the תוספת:

وكשה דהכא אליבא דבר הונא³ קיימין דעתך ליה⁴ (שבועות זז מז): –

And there is a difficulty with the aforementioned interpretation. **For here** in this case we are following the view of **רב הונא** who maintains in a case of תרי ותרי –

דו בא בפני עצמה ומעידה דעתך לו למימר אוקי גברא אחזקתייה⁵ –

ב"ד That each group of the contradictory may come independently and testify (regarding other cases). The reason is that we do say that we place the person (each) on his presumptive status of **עד**.⁶ Similarly here,

¹ ג"ה תרי.

² In a case of תרי ותרי the accused will lose his rights according to רשות.

³ אמר רב אבא אמר רב הונא וכו' ג' שישבו וכו' גمرا states:

⁴ When two groups of contradict each other, each is suspect of being a liar; for each may be the lying group.

⁵ Just as by the testimony of (say) the latter group cannot impinge on the rights of the former group (even though the latter accuses them of lying) because the former group contradicts the latter group, similarly here the testimony of the two groups cannot impinge on the rights of the third, since the other two contradict the testimony of the first. See footnote # 18.

⁶ Each of the two had a right before this contradictory testimony. This resolves the ספק.

חזקת כשרות כשרות דין cannot diminish this תרי ותרי; the subsequent חזקת כשרות דין had a third. He should be despite the תרי ותרי. For can remove a third.

וועוד דלרב חסדא אמר (שם) בהדי סהדי שקרי למה לי –

And furthermore (even) according to ר' חסדא (who argues with ר' הונא) and maintains that in a case of תרי ותרי we say ‘why get involved with these false witnesses’. ר' חסדא is of the opinion that these two cannot testify elsewhere, for each is suspect of being false. Nevertheless would –

מודה הכא דהאי גברא ממילא מתקשר –

Admit here, that this person (the third would be naturally vindicated and able to serve as a witness. דין explains:

שהרי אם כת אחית מאלו מעידה על אדם אחד שהוא פסול –

For if one of these contradictory (subsequently) **testify concerning a certain person that he is unfit** for, etc.; the כת –

לרב חסדא דחויב להו סהדי שקרי לא היתה נאמנת אף על גב דין אדם מכחישה⁸ –
ר' חסדא, for, **Rabbi Huna** considers the members of each as false. עדים This is true in spite of the fact the no one is contradicting this in this testimony, which claims that a certain person is – פסול –

וכל שכן היכא דאייא סהדי דמחשי דלא מהימני –

And certainly in our case where there are who contradict the two עדים will surely not be believed; and the alleged פסול would be.⁹

רש"י has an additional difficulty on:

וועוד קשה לרביינו יצחק דקאמר אי ערער דפוגם משפחה גלווי מיילטא בעלמא הו –

עדים כשרים, פסול.

⁷ אליבא דרב הונא asks his question according to ר' חסדא 헤ספה previously said that ר' חסדא states this in the name of רב הונא, perhaps because רב follows the view of תרי ותרי and not of רב הונא concerning the alleged. Alternately want to clarify that in a case of תרי ותרי the accused retains his rights according to both רב הונא and ר' חסדא.

⁸ They were contradicted (only) in the initial testimony (in a different case); nevertheless their פסול מחמת carries over and extends to all cases, even those in which they are not contradicted.

⁹ It is only concerning the two עדים themselves, that ר' חסדא maintains that the ספק פסול is stronger than their חזקת כשרות (since there are who contradict them). However concerning the alleged (as in our case) since there are two כת ערים who contradict each other (and ר' חסדא considers them as סהדי שקרי) they cannot invalidate his rights. [Alternately: The עדים המכחישים are considered סהדי שקרי.] חזקת כשרות can therefore not testify again. However the דין was allegedly גפסל, (only) through; they cannot diminish his rights. See ‘Thinking it over’ # 1.

And the ר"י has an additional difficulty; for the states, ‘if it is a contention concerning a family type blemish, then it is merely a revelation of the facts’ -

ופירש הקונטרס בדבר העשיי לigelות הוא שיבדקו עד שיתברר הדבר –

And explained, that this is something that will eventually be revealed, for they will search out the facts until the matter will be clarified. Therefore even if the signed, they should be able to testify, for it is not a real witness, merely a גילוי מילחאה, הגדרה עדות –

תוספות asks:

זהו תימה איך יתברר הדבר לעולם כיון שאלה ב' אומרים שהוא עבד –

And this is astounding! How can the matter ever be clarified, since these two witnesses claim that he is an עבד, therefore –

אין כל העולם יכולם להכחישן דברי כמאה –

The entire world cannot refute them, for two עדים are as effective as a hundred. No matter what evidence may show up, once these claimed that the witness is an עבד, they cannot be refuted

תוספות offers an alternate explanation of the גמרא:

על כן נראה כפירוש רבינו חננאל שלא אייר בעדות דיניין¹⁰ אלא בעדות אחרים –

Therefore prefers the interpretation of the ר"ח; that we are not discussing the testimony of the witness (the witness are not testifying about the third), but rather the testimony of others concerning the third –

והכי פירושה אם עד שלא חתום קרא ערער על אחד מהם –

And this is the explanation of the גמרא; if there was a contention concerning one of the witness before the others signed, then –

מעדים שניים מן השוק¹¹ עלייו וחותם –

Two people from the market can testify concerning the witness and he may sign the witness. The reason is –

זהו כאילו ישבו בית דין אחר שהכחירו והלא בטול ועד המושב וחותמים¹² –

For it is considered as if the convened after the witness was vindicated, and the committee meeting place was not annulled, and all the witness sign. However –

משחתמו השרים ולא הספיק השלישי לחתום עד שקרה עליו ערער –

¹⁰ According to the ר"ש, the question is whether the other two witness are דין. Not so according to the ר"ח.

¹¹ See ‘Thinking it over’ # 3.

¹² It would seem that a witness is not considered convened, until the begin to sign.

Once two of the signed and the third did not manage to sign before his legitimacy was contested, then -

בא ערער ובטל ועד המושב של אותו בית דין –

- ב"ד ועד המושב של of that –

אף על פי שאחרי כן העידו אחרים שהוא כשר כיוון שביטל ההוא מושב בטל –

Even though that afterwards others testified that the third is דין, nevertheless once that was nullified it remains nullified –

וצריך לחזור ולהושיב בית דין על כך –

And it is necessary to reconvene a new ב"ד for this case, and sign the הנפק again.

The gemara continues (according to the פר"ח) and asks:

ערער דמאי אי ערער דגוזנותא תרי ותרי נינהו ולא מיפסיל –

What type of contention was there against this; if it was an that the third was a robber; that should not be a problem (even if two signed already), for it is a case of תרי ותרי, and the third is not דין –

דאoki תרי בהדי תרי ואוקי גברא אחזקתייה¹³ –

For we set the two against the other two who cancel out each other and we place the person on his presumptive status –

וכיוון דאייגלאי מלטה דמעולם לא היה פסול –

And since it subsequently became apparent that this was never דין –

הרי לא היה בטל ועד המושב של אותו בית דין –

It turns out that the of that was never ב"ד. There was always a proper of three דין. Why is it necessary to reconvene a new ב"ד?!

The gemara continues:

אי ערער דגם משפחה שאמרו עליו שהוא עבד ואלו מזויימים אותם –

If it was a contention of a they claimed that the was an and the second group of that are vindicating the are refuting through the original תוספות. עדים הפטלים הזמה interjects to explain why it is necessary to say that the are המזויימים –

דאוי אומרים שאינו עבד אם בן היה נפסק דליך למיימר אוקי גברא אחזקה –

For if the second group would merely claim that he is not an, then the עבד would be we cannot say אוקי גברא דין; נפסק for in this case of תרי ותרי – אחזקה –

¹³ This is what maintained originally that תרי ותרי cannot impinge on a חזקת כשרה.

אדם הוא עבד לא יהיה לו חזקת בשירות מעולם¹⁴ -

חזקת עבד as the first group claims **then he never had a master**. Therefore we must say that the **עדים המצביעים** are **עדים המכשירים**; in which case they are totally believed and the testimony of the first **עד** is discarded -

אם כן גלווי מילטה בעלמא הוא¹⁵ -

If that is so that the **עדים המזויינים** are **עדים המכחירים** then their testimony is merely a **- גילוי מילתא**.

דכינוי דאיגלאי מלטה דבר היה מה איכפת לנו בההוא ערעור ולא בטל וועד המושב -
For since it was revealed that the contested was always why
should the concern us; the ערעור was never בטל וועד המושב ??!

The גمرا concludes:

לעולם ערער דגזרנותא ודקאמרוי הנך שהדי ידעינו ביה דעבד תשובה –

That really it was an גזלנות ערער of עדים and the latter testified we know that the did ל דין, which makes him to be a -

וכיוון דמדו ל�מאי דגוזלו הוא הוה ערער דידחו ערער¹⁶ ובTEL וועד המושב –

And since the latter admit to the former that the was a גזל; therefore the ערער of the former is considered a valid and it nullified the וונצד הטעשׁ -

דָּבָרַיִל וְאֶמֶת הָוֹא שְׁנֵפֶל הָוֵי בְּחִזְקַת פְּסָלוֹת עַד שְׁנוֹדָע לְנוּ כְּשֻׂרְתוֹן¹⁷:

For since it is true that the נפסל דין was for a period, he is in a status of בשותה until we become aware of his פסלות.

SUMMARY

According to the **רש"י** of קשיה, פסול even means that the תרי ותרי of קשיה is even. According to the **הגהות** of קשיה, even means that the **כשר** of קשיה is even.

¹⁴ This perhaps is what the gemara had in mind when it asked אִי עָרָעַ דְּפָגֵם מִשְׁפָחָה; that even if you want to say it is a **חֶזְקָת כְּשָׂרוֹת** where we cannot say that it is **תְּרִי וְתְּרִי** and rely on his **פָגֵם מִשְׁפָחָה**. Nevertheless there is a difficulty with the **חֶזְקָת כְּשָׂרוֹת** since he has no **לְלָכָה מֵהַ נִפְשָׁךְ**. If there are only **עֲדִים המכחישים** then since he has no **עֲדִים המזימים**, so even if the **דִּינִים** did not sign he cannot be **מִצְטָרָף** since he remains a **סְפָול**, and if there were **דִּינִים** that did sign the **בָּטָל**.

¹⁵ The expression גילוי מילתא בעלמא (distinguishing this situation from the previous one of גימרא) uses the expression גילוי מילתא בעלמא to distinguish this situation from the previous one of גימרא because of his lack of knowledge (despite the fact that he is a scholar). Here (by the way) the word גימרא means "without any special knowledge at all".

¹⁶ This is different from who understands the answer to explain why the דין is כשר (even though it is different from the one who says it is not כשר). It explains why the דין is כשר according to the one who says it is not כשר.

¹⁷ Even though the witness stated that he did not know about the case before this testimony, he was nevertheless aware of it, only after he was asked about it, his new status as a witness begins only after this testimony. See *Ritv'an*.

תרי argues that an accused by תרי ותרי is on account of his תוספות תרי because there can be no גילוי מילתא by פגם משפחה ¹⁸. חזקת כשרות כמאה.

However, if the state that the **דין** did **תשובה**, then there is a **עדים** **זומין** if there is no **mosheb**. By **mosheb** and there is no **mosheb** **mosheb** maintains that by **teri** **teri** **mosheb**.

THINKING IT OVER

1. It seems from that by תרי ותרי תוספות that the accused is certainly according to רב הсадא (he has a service), and even according to רב הсадא he is also certainly有能力 (he has a service).¹⁹ However, it seems that the opposite is true; that according to (who maintains that the accused is certainly有能力 without any need for challenging his service!)²⁰
 2. According to the why does the ask ר"ח גمرا and co' (even גזרנותא and co'): ?²¹
 3. The states that we are discussing not witnesses but others; or does it mean that it is not necessarily it can also be witnesses?²³

¹⁸ See Rash"i for a comprehensive defense of meshkenot ha-ro'uyim avotiot tkanah - Tkanah.

¹⁹ See footnote # 9.

²⁰ See (מהרש"ל).

²¹ See ב' מ"ת אות רצג.

²² See footnote # 11

²³ See footnote # 11.

במotaב תלתא כחדא הוינה וחד ליתומי -**We three were in session together, and one is missing****OVERVIEW**

The גמרא states that if one of the three דינים passed away before he had an opportunity to sign the הנפק, it should be noted in the henekh that initially there were three דינים and only two are signing because one is absent. The reason for this is that people should not mistakenly assume that קיום שטרות can be performed in the presence of only two; when in reality three are required. דינים תוספות will discuss that this requirement is only and not לכתלה בדיעבד.

פירוש¹ צריך² לכותב וחד ליתומי -

The explanation of the phrase 'צרכין למכתב' is that it is merely initially necessary to write 'and one is missing'; the reason for this necessity is -

כיוון דכתב בהדי'a במotaב תלתא הוינה ואינו חותמין בו כי אם שניים -

Since it is was explicitly written that 'we three were in session', and only two signed on the henekh; therefore it is necessary to clarify this discrepancy, that there were initially three דינים (which is a requirement for קיום שטרות³) -

אבל ודאי אם לא כתב וחד ליתומי כשר -

However if he did not write 'and one is absent' it is certainly כשר. The requirement to write '��וד ליתומי' is only a requirement; if it was not written in the henekh, the קיום is nevertheless כשר.

תוספות proves this contention:

תדע מדקאמר ואי כתוב ביה בי דינא تو לא צריך ומירוי דלא כתוב וחד ליתומי -

You will know that this is correct; since the גמרא states 'and if he wrote in the henekh that it was done in the presence of a ב"ד, then nothing else is required'. This ruling that nothing else is required is (also⁴) referring (even) to a case where he did not write '��וד ליתומי', and nevertheless it is כשר.

¹ The term פירוש (ורש"י) in 'תוספות' (usually) denotes that the interpretation may be somewhat different from what we may have initially assumed; in our case that this even מעכבר is צריך to write '��וד ליתומי'.

² In fact the text reads: נאה וטוב להם לכותב וחד ליתומי: הרא"ש.

³ Alternately; the Tosfos which states 'כיוון דכתב בהדי'a במotaב תלתא וכו' indicates that if only two sign it is a לשון. See Ch"b מ"ת אות רצץ מוחזי שכרא.

⁴ The simple meaning of 'תו לא צריך' is that it is not necessary to write '��וד ליתומי'. However, Tosfos توسع this to include that it is not necessary to write '��וד ליתומי'.

It is obvious that that the phrase of 'וחד ליתוהי' is only a requirement *לכתחלה*.

'וחד' will prove that the ruling of 'ואי וכו' ב' דין תו לא צריך' is discussing a case where 'וחד' was not written:

מדפריך ודלאם בית דין חזוף הוות:

Since the asks (why is it sufficient to write instead of ב' דין גمرا, to assure us that three were present for the shtr, קיום השטר, תלתא, which sits in session with only two? This question proves that 'וחד ליתוהי' was not written in the הנפק. For if 'וחד' would be written in the הנפק, then how can there be a concern that it was a two people signed and they clearly wrote 'וחד ליתוהי', indicating that there were three originally. This proves that the ruling of 'ב' דין תו לא צריך' is applicable even if 'וחד ליתוהי' was omitted; for it is not necessary that it be in the shtr. The same will apply if they wrote ב' דין תלתא and they did not write 'וחד ליתוהי', that it would also be. *כשר* (בדיעבד).

SUMMARY

The requirement to write 'וחד ליתוהי' (if one of the dies before signing) is only and not *לכתחלה*.

THINKING IT OVER

1. Why did not the begin with 'צריכין למכתב' this of *דבר המתחליל* instead of *במוותב תלתא וכו'*?

2. contends that since by it is *כשר* even without ב' דין, the same applies by ב' דין. Perhaps there is a difference if was written or if was written?!⁵

3. In a case where was written, is it necessary to write 'וחד ליתוהי' (even) *לכתחלה*?⁶

⁵ See מהרש"א הארוך [not the מהרש"א (המברא)].

⁶ מהרש"א הארוך בדו"מ את 'א.

וזלמא רבנן דבר רבashi כשמיואל סבירא להו –

And perhaps the s's of רבנן רבashi's academy agree with שמואל

OVERVIEW

The הנפק stated that even if it was written in the that the was performed in the רבניashi of ב"ד it is still no proof that there were three קיומם present at the time; for it is possible that the three agree with the רבניashi. The implication of the two קיומם seems that with two will be valid. Our chooses to disabuse us of this notion.

פירוש¹ כמו שסביר שמיואל בעלמא כן סבירא להו בקיום שטרות –

The explanation of the phrase is [not (necessarily) that they and agree that can be done with only two; but rather it means] **that just as generally maintains** that a ruling by two is valid, similarly **the same concerning** קיומם two are sufficient.

אבל שמיואל מצי סבר שפיר דבקיומם שטרות בעי ג'² –

However, himself may indeed maintain that for particular, **three are required**. קיומם שטרות is different than other cases where two are sufficient.³

proves his point that we can differentiate between (where three are required), and other cases (where two are sufficient):

זהא רב נחמן סבר לה כשמיואל בפרק קמא סנהדרין (ז"ג. ושות) –

For agrees with ר"ג מסכת סנהדרין פרק first in שמיואל –

דשנים שדנו דין דיניהם –

that if two issued a ruling, their ruling is upheld; nevertheless –

ורב נחמן גופיה סבר דקיומם שטרות בשלשה⁴ –

And himself maintains that קיומם שטרות requires three. This can be found –

¹ The term פירוש indicates that we are not to understand the text in its superficial meaning. In this case it precludes us from interpreting that קיומם שטרות בשני since he maintains two קיומם.

² See ‘Thinking it over # 1.

³ See ‘Thinking it over # 2.

⁴ See ‘Thinking it over # 3.

בפרק חזקת הבתים (כבר בתרוא מ.⁵) גבי ג' ארצאות לחזקה -

in the גمرا on which reads that there are **three** different **countries** in relation **to** the laws of **חזקת הבתים** in relation **to** the laws of **חזקת הבתים**. We see that ר"ג clearly distinguishes between קיומ שטרות (where three are required) and cases in general (where two are sufficient). The same may apply to **শ্মোল**.

SUMMARY

שניהם שדנו דין דיניהם דין nevertheless require three by קיומ שטרות. שמואל may maintain that

THINKING IT OVER

קיומ שטרות is reluctant to assume that שמואל maintains that קיומ שטרות is **בדיעבד** What is the reason?

2. Why indeed can there be a difference between קיומ שטרות (which requires three)⁷ and other cases (where two are sufficient [ב**בדיעבד**]?)⁸

3. How does derive that רב נחמן's statement (in ב"ב) that קיומ שטרות בשלשה⁹ means even **בשלשה**?

⁵ The גمرا mentions there various rulings that רבא said in the name of ר"ג; one of which is that ר"ג קיומ שטרות בשלשה. See there.

⁶ See footnote # 2.

⁷ See footnote # 3.

⁸ See הרא"ש.

⁹ See footnote # 4.

מןין להפה שאסר הוא הפה שהתיר מן התורה שנאמר את בתاي נתתי לאיש וגומר –
How do we derive from the תורה, the rule that ‘the mouth that prohibits is the mouth that permits’; for it says: “I gave my daughter to this man’, etc.

OVERVIEW

נשביתי or אשת איש הייתה וגרושה אני states that if a woman declares משנה she is believed; for we say רב אשי. הפה שאסר הוא הפה שהתיר teaches that we derive this rule of the father is believed to say I married off my daughter to this person. Otherwise, if we would not say why is the father believed that this individual is the groom. When the father originally stated that he married off his daughter, she became אסור to all men (for she is already married); on what basis is the father believed that he married her off to this individual?! The פסוק teaches us the rule of הפה שאסר וכו', therefore he is believed to specify to which individual he married her.

The believability of a claim (תוספות) according to הפה שאסר or מגו is when the claim of היתר was stated immediately and in conjunction with the statement of היתר, without any (significant) interruption between them; otherwise it is not a valid מגו.

ашת איש הייתה וגרושה אני of הפה שאסר, and in the former, the admission of קדשתיה לפולוני טענת היתר is in conflict with the admission of איסור¹, while in the latter the admission of היתר is merely specifying and clarifying the original claim.²

תוספות will question whether a מגו is actually required in the latter case.

משמעות האב נאמנו להתיר את בתו כשהאשרה אלא מחתמת מגו³ –

It seems that the father would not be believed to permit his daughter to remain married to an individual when he initially prohibited her [to be married to anyone (by his declaration that she is betrothed)], only on account of a מגו; however if there is no מגו, once the father stated that his daughter is betrothed, and did not specify to whom, he will not be subsequently believed that he

¹ אשת איש הייתה גירושה אני is not an explanation of the first declaration.

² קדשתיה לפולוני is a necessary detail of the declaration; there must be a פולוני.

³ Tosfos uses the terms of הפה שאסר and מגו interchangeably.

betrothed her to any individual.⁴ This is assuming this, for since the father is believed to state that I married her to this man, (only) on account of a **הפה שאסר**, this indicates that where there is no **הפה שאסר**, the father will not be believed.

ותימה אדם בא אחד ואמיר קדשתי את בתاي ולאחר שעה או למחר אמר לפולוני קדשטייה - finds this concept difficult:

And it is incredible to assume that if one came along and stated ‘I betrothed my daughter’, without specifying to whom, and after a while or on the morrow, the father would state I betrothed her to ‘him’ -

לא יהיה נאמן כיון זה שתא ליכא מגו -

That the father would not be believed since now there is no! It is almost impossible to assume this, for many times people may say that I married off my daughter without being specific, and then if he cannot produce the **עד קדושין**, she will be forbidden to remain with her husband!⁵

ותוספות answers and explains:

ואומר רבינו יצחק דבעניין זה שאינו סותר דבריו הראשונים -

And the says that in this situation where the father is not contradicting his initial statement that he married her off to someone; and when he subsequently says that he married her off to this individual -

ולא בא אלא לפרש דבריו הראשונים מהימן אף על גב דליך מאו -

He is only clarifying his initial statement, then he is believed even though there is no (**מגו** meaning even at a later time); how then do we derive the rule of **הפה שאסר** from this **תוספות**? answers -

והכא דריש מאת בתاي הפה שאסר הוא הפה שהתריר בגין דקאי האיש שקידש לו קמייה -
But here we derive from the rule of פסוק that we implement the rule of the **הפה שאסר for instance in a case where the man to whom she was betrothed is standing in the presence of the father -**

וקאמר את בתاي נתתי לאיש ושתייך דמשמע ודאי שאינו מכיר שזה חתנו -

And the father said I gave my daughter to a man, and was silent as to the identity of his son-in-law, which certainly indicates that he does not recognize this person who is in his presence as his son-in-law -

מדלא אמר את בתاي נתתי ליזה או לאיש הזזה ביחד بلا הפסק מרובה -

⁴ If the father would be believed to specify the individual even without a **מגו** (for instance at a later time), then how can we derive from here the rule of **הפה שאסר וכו'**.

⁵ The reason he is believed is since he is initially believed to claim I married her to this man, then this believability is carried over, even if he specifies the individual at a later time; he is not altering his initial statement. Or he is believed as an **אחד**, for he is not altering her original **חזקקה**. See **משכנות הרועים** **אות תקפא**.

I. For he did not state concurrently, without a lengthy interruption⁶: I gave my daughter to him, or to this man. The fact that he did not do this would indicate that he did not betroth her to this man, and -

הלבך לא יהיה נאמן אחר בכך אלא תוך כדי דבר' דאייכא מגו -

Therefore he should not be believed afterwards to claim that her husband is indeed the person who was standing in his presence, **unless** he made this claim **within** the time of a **דבר' דיבור**, **when the law of applies**. We assume that the father applies (even) to a situation where the husband is present,⁸ and the only reason the father is believed is on account of the (that he said **מגו** within a **דבר' דיבור** following **בדי נחתתי לאיש זהה**;⁹) for if there is no (**מגו** if he did not say **בדי נחתתי לאיש זהה** until after a **דבר' דיבור**), then the father would not be believed¹⁰.

תוספות offers an alternate interpretation:

ועוד אומר רבינו יצחק דאייכא למימר אפילו בכחאי גוונא מהימן בלבד מגו -

And furthermore says the ר"י that we can maintain that even in the above mentioned situation (where the groom was standing in the presence of the father when he made this statement) the father will always **be believed even without a **מגו**** (when he specified the son-in-law at a later time).¹¹ The question remains, how can we derive the rule of **הפה שאסר** from this, when in this instance there is no need for a **הפה שאסר** in order for the father to be believed?

תוספות replies:

וקרא יתרא קדריש¹² ואם איינו עניין כאן דאפיילו לאחר זמן נאמנו -

And we are interpreting an extra פסוק. And if it has no relevance here in

⁶ See 'Thinking it over' # 1.

⁷ The time of **בדי נחתתי** is the time it takes to say the words '**שלום עליך רבי (ומוורי)**'. See ב"ק עג,ב.

⁸ The states פסוק, **לאיש זהה**, indicating that the groom is present.

⁹ We derive the rule of **הפה שאסר** from the fact that the father is believed to say **לאיש זהה**, even though, initially, he hesitated (even though the groom was present) and did not say **לאיש זהה** immediately, but rather only after a brief hesitation of **בדי נחתתי**; he is nevertheless believed on account of **הפה שאסר**. The contradiction caused by the hesitancy (in the presence of the groom) in this case (where he is merely specifying), equates this case with the usual cases of **(אשרת איש וגורשה וכו')** where he renounces the initial claim. In both instances there is a change in his statement. The **הפה שאסר** is only because of **נאמנותה הרוועים** **אות תקפא-ב**. See 'Thinking it over' # 2.

¹⁰ Even though the father is merely specifying to whom he was **מקדש** her, nevertheless since there was an indication (by the slight hesitancy) that he was not **מקדש** her to this individual; therefore the only way he is to be believed, is if there is a **מגו**.

¹¹ A **מגו** is not required even in this instance, since the father is merely specifying, and not contradicting, his initial statement.

¹² The **בדי נחתתי לאיש זהה** of a **פסוק** is extra, for it is not required to teach us that the father is believed to identify the son-in-law in any event.

the case of betrothal (that the father is believed to identify the groom) **for** (in all cases) **even after the time** of a **כדי דבר** (when there is no **מגנו**, the father **is believed** -

דסבירא הוא שיהא נאמן לפרש למי נתנה אף על פי שלא פירש מתחלה -

For it is logical that the father should be believed to whom he gave his daughter to, even though he did not initially specify that individual; and the reason he is believed is because -

שלא היה חשש לפרש -

He felt no concern to specify; he was merely informing people that he married off his daughter (there is no indication when he does not mention the groom [even in his presence], that he is not the groom), so therefore -

תנחו עניין להיפה דעתו נאמנו לאחר זמן¹³ שיהא נאמנו בתוך כדי דבר במגוון:

Apply the lesson of this concerning **הפה שאסר פסוק** **to a situation where** the person **would not be believed at a later time**, that nevertheless **he will be believed** **with a** **מגנו** **תוק כדי דבר**. The **תורה** that the **נאמנות** gives the father in the case of **את ביתי וגו'**, is to be understood, that it teaches us that there is a **הפה שאסר** **נאמנות** of **את ביתי וגו'** when it is needed.

SUMMARY

The rule of **הפה שאסר פסוק** **את ביתי וגו'** is derived from the **פסוק** which is discussing a case where the **חתן** is present and the father is believed to identify him as the **חתן**, even if there was a slight hesitation (less than a **כדי דבר**). Alternately we derive from this in the manner of **פסוק**. **אם אינו עניין וכו'** Otherwise, when the **חתן** is not present (or even when he is present), the father is always believed at any time to specify the **חתן**.

THINKING IT OVER

1. states that if the purported son-in-law was present when the father stated **את ביתי זהה** (and did not say **את ביתי נתתי לאיש**); this is an indication that he is not the groom, since he did not say **'זה'** or **'לאיש זה'**, without a **הפסיק מרובה**.¹⁴ This would indicate that if there was not a **הפסיק מרובה**, but rather a small

¹³ This **פסוק**, **אם אינו עניין וכו'**, is a common **לימוד**. If we find a **פסוק** that does not teach us anything significant in its particular case, apply it to other cases, where we will derive a novel concept from this **פסוק**. Here too, the **תורה** indicates that the father is believed; nevertheless here it is obvious, therefore we assume that the **תורה** wishes to teach us that in other (somewhat similar) cases where a **מגנו** is necessary, they are also believed, with a **מגנו**.

¹⁴ See footnote # 6.

הפסק, then there would be no indication that he is not the groom. In this case no מגו should be necessary. Why does תוספות תוכ"ד conclude that (which is presumably a small הפסק), he is believed (only) on account of a small מגו?! There should be no need for a מגו!¹⁵

2. There is a general rule that תוכ"ד one may retract his testimony entirely. How can we derive the rule of הפה שאסר, from the fact that the father may specify who the חתן is;¹⁶ since it is תוכ"ד, the father can even retract the entire statement of קדשתי את בתך, without relying on מגו, etc.!

¹⁵ See ה"ב אות שלב רע"א and.

¹⁶ See footnote # 9.

[מנין¹ לאב שנאמן לאסור וכולי -]

From where do we derive that a father is believed to prohibit, etc.

OVERVIEW

The Gemara states that we derive from the פסוק of נתי לאיש וגוי that a father is believed to establish his daughter as being married, and effectively preventing her from marrying anyone else.

The קדושין of a נערה or קתנה can be carried out only by the father. The בוגרת of a קתנה is effected by the woman, not by the father.

תוספות asks:

תימה מה צריך לקרוא תיפוק ליה דנאמן הוαιל ובידו לקדשה² -

It is astounding! Why is a necessary פסוק to teach us that a father may place a prohibition on his daughter and declare her married? It can be derived that the father is believed to prohibit her since it is in his power to betroth her. This girl is presently a נערה or קתנה, therefore the father can betroth her now to whomever he wishes; it follows that if he claims that he betrothed her already, that he should be believed since it is in his power, to do so now.

תוספות will prove that when it is in his power, then he is believed:

כדאמר ביש נוחליין (ביב' קלד,ב) בעל שאמר גרשתי את אשתי נאמן הוαιיל ובידו לגורשה³ -

As the Gemara states in פרק יש נוחליין; a husband who claims, ‘I divorced my wife’, he is believed, since it is in his power to divorce her. Here too the father should be believed since it is in his power; no פסוק is needed!

תוספות answers:

ויש לומר דהכא אין בידו כל כך דשמע לא ימצא אדם שיקדשנה (קדאייתא קדושין ס"א) -

And one can say; that here in the case of קדושין it is not that much, for perhaps he will not find a person who is willing to be her. By it is totally גירושין to divorce his wife, therefore it is considered in his power, and he is believed; here however it is not solely dependent on him, it also depends on the prospective husband -

להבי איצטראיך קרא -

Therefore a פסוק is required to teach us that even though it is not in his power, nevertheless the תורה accords him this.

¹ Thisתוספות is bracketed and in a smaller type in our texts, seemingly indicating that it is an addendum (from הוו"). Nevertheless it is cited (partially) in the הרاء".

² See (see) ויצאה החنم אין כף פסוק from the בינו לkadsha of כתיב נתי הרא"ש who states that we know that it is in his power to teach us that he is נאמן לאוסרה [not from גוי]; why do we need the פסוק [not from גוי].

³ See ‘Thinking it over’ # 1.

follows up with a limitation on the father's נאמנות; topos

ומייהו אם אמר על בתו בוגרת קדشتיה כשהיתה נערה או קטנה נראה דאיו נאמן⁴ -

However if he claims concerning his daughter who is currently a, that I was בוגרת her previously when she was either a, נערה or a, קטנה it seems to that the father will not be believed -

דעתה אין בידו כלל -

For now when she is a, **it is not at all** בידו, בוגרת to be מקדש her. The fact that it was once not sufficient that we should presently believe him.

anticipates a contradiction to his current assumption:

דאף על גב דלקמן בפרק נערה שנטפתתה (וז' מו.) פריך ואימא הני מיili קטנה -

For even though that later in פרק נערה שנטפתתה, the גمرا asks; 'and let us say when is this so (that the belongs to the father), when the מקודשת is a קטנה (for she has no right to be קדושין) -

אבל נערהஇיה תיקדש נפשה⁵ -

However when she is a, (כספ' קדושים) she should be herself (accept and keep the קדושים from the בעל, and not the father. This concludes the citation from the גمرا.

לפי זה היה צריך להיות דעתנו לאסור אפיקו בשעה שאין בידו לקדשה דקרה בנערה⁶ כתיב -
According to that, the ruling should be that the father is believed to prohibit her even when it is not in his power to be מקדש her; for the פסוק of נערה (from which we derive the נאמנות of the father) is concerning a בתי נתתי וגוי' -
ובעדי למימר דעתן בידו לקדשה -

And the father wanted to say that it is not בידו of the father to be נערה in גمرا מקדש nevertheless the תורה states that the father is נערה, and nevertheless the father is נערת. Seemingly this is a contradiction; how can the father state that I was my daughter who is presently a נערה, when the גمرا now insists that a נערה is קדושת herself (not through the father). The answer must be -

את בתי נתתי כשהיתה קטנה וזרת הכתוב הוא דעתנו אף על פי שאין בידו -

That the father was מקדש will be interpreted to mean that the father was בתי נתתי of פסוק her when she was a, (ז' מוציא שם רע), נערה [moszia she is a], and it is a that the father is believed to be even though it is not בידו to be her now (but since it was to be her when she was a, נערת) (which is what he claims) therefore he is נערת. The same should apply (according to the

⁴ It may seem that if the notion of the father was based only on (not on a topos), then by (where it is not the father would not be believed. However now that even by a נערה וקטנה (בידו (כ"ב) it is not, and nevertheless there is a that the father is נערת; we might think that even by a topos (where it is (also) איטו בידו (כ"ב), he should also be נערת. This disabuses us from this notion. We cannot compare to איטו בידו כ"ב (כל').

⁵ The גمرا there ultimately refutes this notion.

⁶ The פסוק is in the בב[ט] (דברים [חצא]) of פרשה which is applicable only when she is a נערה.

בוגרת by a claims that he was מקדש her before she became a (when it was מסקנה), he should be בידו, since it was נאמן then, when she was not yet a!

נערה a מקדש תוספות replies; that even though there was a אמינה that a father cannot be and nevertheless he would be believed to be her (on account of a גזירת הכתוב), if he claims that he was מקדש her when she was a - קטנה -

אבל לפיה המסקנה לא נאמר כן:

However according to the conclusion of the גמרא (that a father is the מקדש), **we will not maintain this** (that he can be אוסר by claiming he was her previously). If presently it is not בידו כלל, then he has no נאמנות.

SUMMARY

It is not פסוק of a father to be בידו or a נערה מקדש a קטנה, nevertheless the בתי פסוק teaches us that he is אוסרה when she is not yet. However once she is נאמן לאוסרה, and it is בידו כלל, he is not בוגרת.

THINKING IT OVER

1. states that when it is בידו נאמן ⁷ However, the תוספות of the to claim גרשתי את אשתי is only for the future (for that is בידו), but not for the past; here we are deriving from מוצssh"ר נאמן ⁸ that he the father is (even) for the past.

2. Does the מקדש פסוק of בתי נתתי וגוי teach us that the father can be his daughter and therefore we can surmise that since it is בידו, he is אוסרה; or does the תורה teach us directly that he is נאמן לאוסרה?!

⁷ See footnote # 3.

⁸ See משכנות הרועים אותן תקף.

חזורה¹ ואמרה טהורה אני מהו –

She retracted and stated, I am pure; what is the ruling

OVERVIEW

The **גמרא** discussed that in certain instances even if a person changed their testimony, nevertheless they will be believed if they offer a proper **אמתלא**.² The **גמרא** subsequently asks what is the ruling if a woman initially told her husband **טמאה אני** and then retracted and said **טהורה אני**; is she believed or not. There are two ways to understand this question, and she chooses one.

פירוש מועיל אמתלא או לא –

The explanation of the question is **whether an אמתלא is sufficient or not**; there is a possibility that even with an **אמתלא** she will not be believed (and she will certainly not be believed without an **אמתלא**).

אבל אין לפרש מהו אם צריכה אמתלא או לא³ –

However we cannot interpret the question of **מהו** to mean, **whether an אמתלא is necessary or not**; perhaps she is believed even without an **אמתלא** –

מדובר אף בזו אם נתנה כולי –

Since the answers, ‘even in this case if she gave, etc. an **אמתלא** she is believed’.

The manner in which the answer was given, that *even* in this case an **אמתלא** will be accepted, indicates that the question was whether it will be accepted (not whether it is necessary).⁴

SUMMARY

חזרה ואמרה טהורה אני is sufficient when she is believed.

THINKING IT OVER

According either way of interpreting the question?! Why is **אשת איש אני ופנואה אני** any different from **טמאה אני וטהורה אני** (which requires and accepts an **אמתלא**)⁵?

¹ This refers back to the **גמרא** at the end of 'עמוד א'.

² The word 'אמתלא' means an excuse or explanation why initially the truth was not said. According to רשי, it stems from the word **משל** or **משל**. Others suggest that it is a contraction of the words **אמת לא**.

³ See **איסור אשת איש נדה** who suggests that perhaps since the **איסור נדה** is not as severe as the **Tosfos הרא"ש**, therefore an **אמתלא** may not be required (even though it is required by **אשת איש** and **פנואה אני**).

⁴ See **הרא"ש** who states that if the question was whether an **אמתלא** is required, the answer should have been, **אף היא צריכה אמתלא**.

⁵ See footnote # 3. See **מהר"ם שי"ג** and **מהרש"א האריך**.

ואפילו' הכי לא עבד שמואל עובדא בנפשיה –

And nevertheless, שמואל did not practice this ruling for himself

OVERVIEW

אם נתנה גمرا states that רב learnt from שמואל forty times the ruling that אמתלא was reluctant to follow this leniency for himself. cites an actual example where this issue was relevant to personally.

רביינו חנナル הביא ירושלמי¹ שמואל בעא לאזדקוקי לאתתיה -

The cited which states; **תלמוד ירושלמי** in גمرا ר"ח wanted to have relations with his wife -

אמרה ליה טמאה² אני ולמחר אמרה טהורת אני -

She said to him, 'I am טמאה', and on the morrow she said, 'טהורת' - אמר לה אתמול טמאה יומא דין טהורת³ -

!טהורת said to her, 'yesterday you were טמאה, and this day you are שמואל אמרה ליה אתמול לא הוות כי חילא כי היה' שעתא -

She replied, 'yesterday I had no strength at that time'. – שמואל אמר לרב ליה אם נתנה אמתלא לדבריה נאמנת:⁴

came and asked (if she is permitted to him today). רב answered him, 'if she provided an אמתלא to her statement, she is believed', and therefore she is permitted to.⁵

SUMMARY

אם consulted with רב concerning a personal issue, and ruled that שמואל נתנה אמתלא לדבריה נאמנת.

¹ ואם נתנה אמתלא לדבריה 7.ג,א. In our text on פ"ב ה"ה כתובות cites this story as an example of גمرا's contention that it would seem therefore that intent of citing this is to question our contention that 'לא עבד שמואל עובדא בנפשיה'. See (however) footnote # 5 & 6.

² It would seem that she meant, 'I became a נדה today'. See: 'Thinking it over'.

³ There is a requirement to wait (at least) seven days to become טהורת. Or perhaps when she said נדה she meant that she was never a נדה.

⁴ כי היה in our גירסאות is (not).

⁵ If this is the case where we are to assume that שמואל לא עבד עובדא בנפשיה (see footnote # 1), perhaps the reason he did not accept her אמתלא (even though רב ruled that נאמנת is because assumed that it was an unconvincing אמתלא, since she could have told him outright לא הוות כי חילא, instead of stating טמאה אני).

⁶ See also רב who maintains that thisתוספות is a continuation from the previous to explain how knew that שמואל was asking whether an אמתלא is sufficient (and not if it is necessary). It is now evident from this story, where she gave an אמתלא, and nevertheless inquiry whether it is sufficient. עי"ש עוד.

THINKING IT OVER

What would be the conduct of a woman (who was **শমোল**) if she initially claimed, ‘I am טמאה on account of a (long) past’, and subsequently claimed (with a proper **אمثالא**), ‘I was not a נדה’, in a case where she has a **מגנו** and could have claimed **טבלתי**?⁷

⁷ See מהר"מ ש"י ג.

הבא עליה באשם תלוי קאי –

Whoever comes upon her is liable for an **אשם תלוי**

OVERVIEW

The גمرا is discussing a case of a married woman, where two contradictory sets of עדים came, and one group claims that her husband died (or divorced her) while the other set denies that this took place; the rule is that if she remarries (illegally) she may remain married. The גمرا challenges this ruling; how can she remain married since there are contradictory witnesses (one set of which claims that she is still a married woman), whoever lives with her may be transgressing a תורה prohibition, and is liable to bring a קרבן ספק!¹ The issue in this תוספות is whether this woman is considered a תרי ותרי, on account of the אשת איש, or perhaps she should be considered a אשת איש on account of her דמעיקרא that she was an אשת איש.

תוספות asks:

תימה דבחטאת קאי דהא מסקין בפרק ד' אחיכם (יבמות ד' לא, א ושם) -

It is astounding to maintain that whoever is בועל this woman is obligated (only) for an **אשם תלוי, when in fact he should be **obligated for a קרבן חטאת**, for the **concludes in גمرا** - פרק ד' אהים**

דתרי ותרי ספיקא דרבנן ומדורריה אוקמה אחיזקה² -

For a case of two against two עדים only ספק מדרבנן³; however we place this woman on her original presumptive status that she is married. If she is married, then whoever is her בועל, בחזקת אשת איש, is liable for a chattah, and not for an atonement!

הוספה has an additional question:

ומאי משני נמי כמשמעות לאחד מעדיה הא עד נמי בוחנק קאי דאוקמה אחזקה -

¹ An **אַשְׁם תָּלוּי** (a ‘hung’ [doubtful] guilt offering) is brought when there is an (evenhanded) doubt that a תורה prohibition has been violated. A classical case is when there are two pieces of meat, one of which is not Kashr, and someone ate one of the pieces and is unsure which one. In our case on account of the contradictory testimonies she seems to be a **אִישָׁת סְפָק**. Whoever lives with her is **חַיֵּב**. See following topic.

² If it is a case where the woman is married to another man, then it would be understood that here we follow the opinion of Rashi who says that in such a case the woman is considered a widow.

³ When the חכמים rule that (even though it is מדאוריתא nevertheless) it is מותר לחייב, for the חכמים deem it to be a case of ספיקא דאוריתא להורא מדרבנן.

And in addition, what does the woman answer, that she married one of her witnesses (who testified that her husband died or divorced her); the answer is insufficient, **for that witness too, is liable for the death penalty**⁴ (for there is no **ספק**), **since we place her on her**.

חזקת אשת איש תוספות:

ואומר רבינו تم דחזהה דאשה דייקא ומנסבא מרעה לה להז חזקה -

And the answers that the (opposing) **חזקה**, which is **that a woman is meticulous and marries** only after a scrutinizing investigation,⁵ **diminishes** the strength **of this**.⁶ These two cancel out each other. It is therefore considered as if there is no **תרי ותרי** is ruled as a **ספיקא** **דאוריתא**,⁷ Therefore since it is a **באה עליה באשם תלוי קאי** and if **נשות לאחד** **ספק דאוריתא** there is no problem (for the **עד**), for he maintains that there is no **ספק**; he observed **מיחת הבעל**.

חזקת אשת איש **דייקא ומנסבא חזקה** now proves that the **חזקת אשת איש** of **תוספות** cancels the **חזקת אשת איש**:

DMAI טעמא נמי שרין לה כי ליכא עדים כלל אף על פי שהיא בחזקת אשת איש;
For it is also for this very same reason that we permit her to remarry even if there are no witnesses at all,⁸ **even though she is;**

⁴ See who comments that the **באה עליה** **תוספות** differentiates between that he should be (merely) **אחד מעדיה** and may have thought the she was **בחזקת פנויה**; and who should be **מה שוגג** (for he is aware that there she was **בחזקת א"א** [for he is testifying **מה בעליך**] and seemingly aware that there is a **תוהה** situation, which places her **בחזקת א"א**). See also **אליהו רבה**.

⁵ The **חזקת אשת איש** is (usually) associated with the severity she will encounter if her original husband returns after she remarries on the basis of the testimony of an **עד אחד**; but not if two **עדים** testified that her husband died (as in our case). See **כוב** on **תוס' ד"ה אנן** **תוספות הרاء** [TIE footnote # 27]) who maintains that since here it is **תרי ותרי**, she will suffer the severe consequences if her husband returns, therefore she is **חזקת אשת איש**. See there and in **תו"י** in the margin (brought in footnote # 7) why the **חזקת אשת איש** applies (even) to the case of **שנים אומרים נതגרשו** (where seemingly it can never be disproven that her husband divorced her, since two testify to that on her behalf).

⁶ The commentaries explain that even though at this point in the **גמרא** we have not as yet established that we are discussing a case where she claims **אשה דייקא ומנסבא חזקה**, nevertheless there is the **חזקת אשת איש**; either because the woman even though she is not **ברוי**, nevertheless she ascertains that the **היתר** will not be contradicted; or that the **חזקת אשת איש** affects the **עדים** (**המתירים**), they will not lie, for she may be **דייקא** and prove them wrong. See **משכנות הרועים** **אות תרמז-ה**.

⁷ See in the margin (mentioned in footnote # 5) who writes; **יראה שלא יוזמו עמידה אבל חזקה דין אשה מעיזה ליכא כיון דאייכא עדים דקא מסיעי לה** **ובשנים אומרים נתגרשה נמי דייקא כי**; **ובשנים אומרים נתגרשה נמי דייקא כיון דאייכא עדים דקא מסיעי לה**. And when two say she was divorced, etc., she is also meticulous, for she is afraid that her witnesses may be impeached; she does not, however, have the **חזקת אשת איש** (to claim she is divorced, and therefore believed when she does claim so), since she has witnesses who support her claim of divorce.

⁸ **תוספות** is referring to the **הלכה** that if one **עד** (even a **פסול לעדות**, or even the wife) testifies that the husband died; the woman is permitted to remarry (with precautionary consequences which insures us that **דייקא** **ומנסבא**).

for the abovementioned reason that the **ד"יקא** and **מנסבא** of **חזקת אשת איש** cancels the **חזקת א"א**,⁹ and we permit her to remarry.

SUMMARY

חזקת א"א **דמיעיקרא** is only a **תרי ותרי**; **ספק מדרבן** we follow the **מדאוריתא**; however the **חזקת א"א** and **מנסבא** of **חזקת אשת איש** cancels out the **חזקת א"א** and it remains a **ספק דאוריתא**.

THINKING IT OVER

If a person is aware that there is a **ספק דאוריתא** in the act that he is performing, is he required to bring an **אשם תלוי**?¹⁰

⁹ Even though that the reason we allow her to remarry is because the **רaben** **עיגונא** **אקיים** in her; nevertheless if the **חזקת א"א** would remain (despite the **עיגונא** **ד"יקא** and **מנסבא**), the reason of **עיגונא** would not be sufficient to overrule **חזקת איסור**. Therefore we must say that the **ד"יקא** removes the **חזקת איסור**, and provides that she is not considered **שכנתה הרוועם** (as a **מדרבן**) and any **עד** is sufficient. See **משכנות הרוועם** **אות תרמץ** **תוספות**.

¹⁰ See also following and **תרנוב** **תוספות**.

באים תלוי –**For an Ambiguous Guilt offering****OVERVIEW**

There is a concerning the obligation of bringing an **מחלוקת** for transgressing a **ספק אישור**. One opinion maintains that this obligation exists (even) if there was one ‘piece’ of meat, and the person transgressed this **ספק אישור בשוגג**. The other opinion maintains that there is a **חייב** for an **אשם תלוי** only if there were two mixed ‘pieces’ one **אסור** and one **מותר**, and the person interacted with one of the pieces. [The there cites various reasons for the latter opinion, which will discuss.] Our which states that whoever is on this woman is liable for an **אשם תלוי** seems to be following the view of the ‘one piece’ opinion; the woman is merely one piece of meat. Our will offer two views on this matter.

אפיו למאן דבעי חtica אחת משתי HTICOT¹ הכא לא בעין שתי HTICOT –

Even according to the one who requires that it be ‘one piece from two pieces’, in order to be liable for an **אשם תלוי; nevertheless here there is no requirement of ‘two pieces’.** Seemingly here the woman is comparable to a ‘one piece’ (whether she is or not) and not to a ‘two piece’. Why is there a **חייב** for an **אשם תלוי** according to the **מ"ד** that requires **HTICAH** **אחד משתי HTICOT**?!?

explains:

דמאן דמפרש בפרק ספק אכל (כריות זז: ושמ) טעמא דבעין חtica משתי HTICOT –

For according to the one who explains in the reason why one HTICAH of two pieces is required, is –

משום דאפשר לברר אישורו פירוש אפשר לברר על ידי בקי² –

Because it is possible to verify the meaning that the HTICAH is verifiable through an expert –

шибיר HTICAH הנשארת אם חלב היא אם שומן היא –

¹ According to this **אשם תלוי** is bought only in a case where (for instance) there are two pieces of meat present, one which is **מותר** and the other, and an individual ate (inadvertently) one of the pieces. In this case he is required to bring an **אשם תלוי**; but not if there was only one piece of meat, and we are not sure if it is **מותר** or **אסור**, then there is no **חייב** for an **אשם תלוי** if someone ate that one piece **בשוגג**.

² The reason that it is necessary that the be verifiable is (as **רש"י** explains there) that the purpose of an **איסור** is to temporarily protect the person from **עונשין** until he can verify his sin and bring a **חטא** which will absolve him completely. However if it is not verifiable then the **חטא** will never be brought to absolve him. There is therefore no reason for the ‘holding action’ of the **אשם תלוי**.

Who will recognize the remaining whether it is (forbidden or permissible) fat -

הכא נמי אפשר לברר על ידי הזמה -

Here too it is possible to verify the testimonies of the witnesses **through the process.** Therefore it is understood that **הבא עליה באשם תלוי קאי עדי מיתה** (If the woman is guilty of the offense, she will be considered guilty). **הזמה מזומת מהויב בחטאה אשת איש** (and we will know that she is an adulteress).

תוספות מ"ד will now explain according to the reason of the other.

ולמאן דמפרש מושם דבשתי חתיכות אחת של חלב ואחת של שומן איקבע איסורא – And according to the one who explains that the reason required is because that when there are two types of **חלב and the other of שומן, there is an establishment of איסור;** we are certain that there was a presence of one (as opposed to one where there is no **איסור איסורא**), then –

הכא נמי איקבע איסורא שהיתה בחזקת אשת איש³ –

Here too it is for she was איקבע איסורא. We certainly know that for a specific time this woman was (and we do not know that this has been removed).

תוספות offers a different approach:

אי נמי לאו אשם תלוי ממש קאמר אלא כלומר באיסור אשם תלוי –

Or you may also say that the did not mean an actual **אשם תלוי גمرا** (for since there are no **אשם תלוי**, there can be no **אשם תלוי**),⁴ but rather the meant that it is a type of **transgression;** meaning that there is a **חיזוב ספק איסור** (even though there will be no actual **אשם תלוי**).

SUMMARY

The phrase **הבא עליה באשם תלוי קאי** can be understood literally, even if there is a requirement for those requirements are met. Or it merely means that there is a **ספק איסור.**

³ See ‘Thinking it over’ # 1.

⁴ This may be referring to a third **מ"ד**, who explains that the reason for the requirement is based on the **ואם נפש כי החטא ועשתה אחת מכלמצוות וניגי פוטק** (which states **כלמצוות וניגי**, in the plural), indicating that two are required. According to that **מ"ד**, there will be no **אשם תלוי** in our case since it is not as readily here. See **תוספות הרاء"ש**. Alternately, **tosfos** may be questioning the here; and also that it is not as readily here, as it is by **ספק חלב וספק שומן**.

THINKING IT OVER

1. states that here it is since she was **איקבע איסורה** **בחזקת אשת איש**⁵. In the previous⁶ it was stated that the **חזקת** of **דיקא** and **מנסבא** negates the **תוספות** of **ספק** and it remains a **חזקת א"א**? How can we reconcile these two?⁷
2. The states that the first of **תוספות פשט** (**גمرا**; **הייא גופא באשם תלוי קיימת**) will interpret this?⁸
3. What would the ruling be in a case where two state that this is **איקבע** and two other state that it is **שומן**; should this be considered **עדים** or not?

⁵ See footnote # 3.

⁶ **ד"ה הבא**.

⁷ See 'Thinking it over' in the previous **תוספות ד"ה הבא**.

⁸ See 'Thinking it over' in the previous **תוספות ד"ה הבא**. See 'Thinking it over' in the previous **תוספות ד"ה הבא**.

כגון שנista לאחד מעדייה –

For instance, that she got married to one of her witnesses

OVERVIEW

תוספות states that in the case of תרי ותרי the reason the woman may remain married is because she married one of the עדים who testified that her husband died (and he is certain of it). The issue at hand in thisתוספות is whether we should not be suspicious of a witness who claims that the husband died and then later marries his widow. He may have an ulterior motive for his testimony. He should be prevented from marrying her, in order to preserve the dignity of his testimony.

תוספות asks:

והא דעתן בפרק שני דיבמות (דף א, ושות) הרגנווה לא ישא את אשתו –

And that which we learnt in a משנה in the second of פרק יבמות if a witness said, ‘he died, I killed him, or we killed him’, this witness should not marry his wife’. It seems from that that an עדים who testified (together with other עדים [הרגנווה] we killed him, is not permitted to marry the widow (for it casts an aspersion on his testimony¹), and here the גمرا states that she is permitted to marry the עדים!

תוספות explains:

לא שניים מעידין כי דבשומ מקום אין שניים חשודין² –

The term **does not mean** that two **עדים testified** that they killed him, **for in no place are two suspect**. If two **עדים** testified that they killed him, they would be believed, and one of them would be permitted to marry the widow³ as our גمرا states (rather the term **הרגנווה** means something different, as will shortly explain).

תוספות will now prove that two **עדים** are never suspect:

כדמוכח לקמן⁴ דאפשרו למאן דחייב לgomelinon –

As is evident later that even according to the opinion that maintains we

¹ There is a concern that he is testifying that the husband died in order to marry his purported widow.

² This is referring to a case where (only) one of the **עדים** may be suspect of ulterior motives. It is obvious that if we can ascribe ulterior motives to both witnesses that they are guilty, for they are guilty.

³ There is a rule that one person does not sin unless it benefits him. Only one person can marry this widow. We do not suspect that two **עדים** lied in order that one of them should marry the widow. See ‘Thinking it over’ # 1 & 2.

⁴ כב, א,

are concerned for reciprocity (in a case of one witness), nevertheless -
אם שניהם מעידין על זה ושניהם על זה נאמנים –

If two witnesses testify for one and two witnesses testify on the other, they are believed; even if the first witness testifies on behalf of the second witness, who in turn testifies on behalf of the first witness; as long as there are two witnesses testifying on behalf of those two they are believed.⁵

תוספות offers an additional proof that there is no suspicion of ulterior motives by two witnesses (where we can ascribe the ulterior motive to only one)

וכן מוכח נמי בפרק ב' דיברות (ג"ז שם ע"ב) דתנן התם –

And it is also so evident in the second where we learnt there in a, משנה, if a woman, who is a - קטנה,

מאינה⁶ או שחלצה בפניהם ישנה מפני שהוא בית דין –

'rejected' her husband or (గודלה performed in the presence of a **דין, he may marry her, because he was part of a** - ב"ד

ודין בוגרמא טעמא בית דין הא בתרי לא –

And the there infers from the reason **דין** may marry her is because he is part of a **ב"ד** of three; however if there were only two present he would not be permitted to marry her (for it would seem suspect). The there asks -

מאי שנא מהא דתנן ⁷ –

Why this is different from that which we learnt in a [ברייתא] (משנה) –

עדים החתוםים על שדה מקח או על גט אשה לא חשו חכמים לדבר זה –

Witnesses who signs on a sale of a field or on a gittah, the were not concerned for this matter of suspicion of ulterior motives.⁸ The question is why is different that two are not sufficient, and we require three. The there answers that two are always sufficient to remove concern of suspicion; the reason the there states is because the **משנה** states מפני שהוא ב"ד **משנה** –

היא גופה קמשמע לו לאפוקי ממאן דאמר מיאון בשניהם –

Is teaching us this rule itself that three are required for **מיאון**; to exclude from the opinion that maintains that can be performed in the presence

⁵ שמעון testify the לוי ושמעון and כשר is ראובן testify that has no benefit from this עדות; no one is testifying on his behalf.

⁶ A girl who is a קטנה and has no father may be married off (מדרבנן) by her brothers or mother. However she has the option of rejecting her husband (as long as she is a קטנה). This rejection process is called 'מיאון'!

⁷ גיטין ט,א. The gloss in יבמות notes that it is a ברייתא.

⁸ Perhaps one of the witnesses wants to ultimately buy this field from the purchaser on the שטר, or he wants to marry the divorcee. We reject this concern, and permit an עד to buy the field or to marry the גירושה.

of only **two** זנינים. It is evident from this גمراא as well that there is no concern if there are two עדים. The question remains why it says that by הרגנווהו לא ישא את אשתו.

חוספה answers that the meaning of הרגנווהו is not that עדים are testifying that we killed him - **אלא כלומר שהרגו עם אנשים הרבה**:

But rather it means that one עד is testifying that **he killed him together with many people**; the עד with many others killed her husband. Since there is only one עד who is testifying concerning the death, and no one is supporting him, therefore there is a suspicion of an ulterior motive, and he may not marry the widow.

SUMMARY

There is no עדים on an השם, עד אחד, when two are מעיד.

THINKING IT OVER

1. When two testify that someone died, one of them is permitted to marry the widow.⁹ Is this because that even without the testimony of the marrying עד, there is still one עד who is testifying that the husband died (and by עד עיגונא one is sufficient), or do we say that he may remarry because there are two עדים (including the marrying עד) who testify that the husband is dead?¹⁰

2. How can we even assume that if two עדים testified that the husband is dead, neither of them is permitted to marry the wife;¹¹ since she is permitted to marry based on the testimony of only one עד, the other עד may marry her because she is no longer an אישת איש, based on the testimony of the other עד?¹²

⁹ See footnote # 3.

¹⁰ משכנות הרועים אותן תרנה.

¹¹ See footnote # 3.

¹² רע"א בית יעקב and.

אִי הַכִּי לְכַתָּלָה נֵמֵי - If it is so, it should also be permitted initially

OVERVIEW

The Gemara interprets a statement of ר' יוחנן to mean that if two עדים contradict each other concerning the death of the husband, the woman should not remarry initially, however if she remarried she may remain married. The Gemara explained this, based on the ruling of עולא who maintains that whenever an ע"ז is believed¹ he possesses the status reserved for two עדים, and therefore he cannot be contradicted by one עד. The Gemara asks that based on the ruling of עולא, the woman should be permitted to remarry initially, for the עד המתייר cannot be contradicted. The Gemara answers that we do not allow her to remarry, in order to prevent gossip and slander (since there is a witness who denies the husband's death) as רב אשי declared. This will discuss to what extent is the rule of עולא applicable.

ו מהא דעתן בהאה שلوم (יבמות זז קיזב ושם) – anticipates a question:

- פרך האשה שלום (יבמות זז קיזב ושם)

And from that which we learnt in a משנה in מישנה שLOWM, that if -

עד אחד אומר מת ועד אחד אומר לא מת הרי זו לא תנשא ליכא לאקשוויי לעולא -

One witness claimed the husband died and one claimed he did not die, the rule is **she should not remarry; we cannot challenge עולא** from this משנה.² (Seemingly that does not accord the עד המתייר the believability of two עדים, for it prohibits the woman to remarry)³ –

תוספות answers:

דחתם אירוי בבת אחת⁴ ואפילו אם ניסת יצא⁵ –

For there in that it is discussing a case where the two witnesses

¹ An ע"ז is believed (מדרבנן) to testify that the husband died and the woman is allowed to remarry based on this testimony.

² The contradiction from the משנה עולא to poses a greater difficulty than the (apparent) disagreement between ר' יוחנן and עולא (who are both אמראים). Why did not the מקשן pose this question (also)?!

³ question is based on the assumption of the מקשן, that according to עולא, the widow is permitted to remarry. We cannot therefore answer that the משנה אסור יבמות משונה only לכתלה. See following Tosfosot ד"ה משומ.

⁴ never had the opportunity of accepting the testimony of the עד המתייר and rule accordingly, since the contradicted him (immediately). See footnote # 11.

⁵ ר' יוחנן answers that the מקשן could not have asked from the משנה (in addition to asking from the עולא) because the מקשן knew that the משנה could be discussing a case of בב"א where the rule of does not apply. It follows therefore that even if she married she must leave, since she is a נ. מהר"מ שי"פ ספק א"א. See footnote # 11.

testified **simultaneously**, therefore the **עד המתיר** is not believed ; and in such a case **even if she remarried** after their testimony **she must leave** the second husband -

ועלא איירי בזה אחר זה כשהבא עד אחד ואמר מות התירוה -

And עללא is discussing a case where the witnesses came **one after the other**; when the first **came and testified** that the husband **died**, **ב"ד**, **permitted her to remarry** -

ואחר כך בא אחר ואמר לא מות אם נשאת לא תצא -

And after this permission was granted, another witness came and claimed the husband **did not die**; in such a case **if she remarried she is not required to leave** her second husband. **ב"ד** has already established her widowhood status and she may remain married. In fact she should really be permitted to marry initially, even after the second testified (since **עד** came and **עדים שניים** **עד** - (אין דבריו של אחד במקום שניים בזא"ז

אבל לכתלה לא תנשא משום דבר אסי כדמסיק -

However on account of **ר' אשי's** statement, **she may not initially remarry**, as the will shortly **conclude**. The ruling of **עללא** is only if the two came **עדים שניים**, and not if the two came **בב"א עדים שניים**.

עדים seeks to prove his point that there is a difference whether the two opposing come simultaneously or consecutively:

ומריישא דהתם יש להוכחה שיש חילוק בין בנת אחת לבין בזה אחר זה -

And we can prove from the **רישא** cited previously, **that there is a difference between** the two testifying **עדים**, **עד** **המתיר** (the previous) - **עד** **הנשאה** (**הנשאה**)

דקתי ע"ד אחד אומר מות וניסת ובא אחר ואמר לא מות לא תצא -

For the **משנה** **teaches** there, if **one** **claims** the husband **died**, and the woman **remarried** (based on his testimony), and **another** **came and testified** that the husband **did not die**, the rule is that the widow **is not required to leave** her new husband. This concludes the citing of the **משנה**.

ומפרש בגמרא שלא ניסת ממש אלא התירוה לנשאה אף על פי שלא ניסת -

And the **גמרא** there **explains** that when the **משנה** states that if she remarries she is not required to leave, it **does not mean that she actually remarried**, **but rather** the term **ניסת** means **they permitted her to remarry** (based on the testimony of the first **עד** who claimed the husband died), **even though she did not actually remarry** the rule is still **לא תצא** -

The **גمرا** there explains itself that even though she is not currently married, the meaning of -

ולא תצא הינו מהתירה הראשון -

לא תצא is that she does not leave (or lose) her **initial permissibility** status. She may still remarry even if the **עד האוסר** comes before she remarries.⁶

משמעות דוקא התירה קודם שבא העד ואמר לא מת -

It is apparent from that that she is permitted to remarry **only** if they **permitted her** to remarry **before the second** **עד** **came and claimed** the **husband is not dead** -

הא בא קודם שהתירה לא -

However if the second **came before she was permitted** to remarry, then once the second **עד** **comes**, she will **not** be permitted to remarry.⁷ It is evident from that that there is a difference between **זה אחר זה** where she may remarry (even initially, were it not for **רב אסי** and **רב אשי**) and **בבאת אחת** where she cannot remarry.⁸

Tosfot has a question:

נדריך עיון בפרק מי שקיןא (סוטה ז' לא:) **דמשמע דייריע עלא בכל עניין -**

And there is a need for deliberation in, **פרק מי שקיןא** **where it is indicated that** **עלא** **applies his rule in any manner -**

בין בבת אחת לבין בזיה אחר זה -

Whether the **came simultaneously or consecutively**; in all cases the rule **עלא** applies that there is no concern of **שנה**. All places that the **ר' יוחנן** states **עד אחד אמר נטמאת ועד אחד אמר לא נטמאת היה שותה** explains his question:

דתנו.htm עד אחד אמר נטמאת ועד אחד אמר לא נטמאת היה שותה⁹ -

For the **there teaches**, that if **one** **עד** **claims** that the suspected **משנה** **defiled herself**, and the **other** **עד** **testifies that she did not defile herself**,

⁶ See (however) footnote # 8 (Alternately).

⁷ The second **came after the first**, which we interpret to mean that the **הтирוה** **ליינשא** **עד** **came before the second** **הтирוה** **ליינשא** **עד**.

⁸ It would seem at this point that there is a difference between the ruling of **ר' יוחנן** (according to **עלא**) and the ruling of the **משנה** in the case of **בזיה אחר זה**. According to **ר' יוחנן** she may remain married; but not marry initially on account of **רב אשי**. However according to the **משנה** (there is no concern of **רב אשי** and **רב אסי**) she may remarry initially. The difference (according to **ר' יוחנן**) between **בבאת אחת** and **בזיה אחר זה** would be if she remarried; if it is **בבאת אחת** she may remain remarried, however if it was **בזיה אחר זה** then she must be **תצא**. Alternatively, one may interpret **לא תצא מהתירה הראשון** to mean that if she married (**בדיעבד**) she is not required to be **תצא**. The **ר' יוחנן** and **משנה** would then be in agreement. See following Tosfot **ד"ה משום**.

⁹ If it is known that the **was** **מזונה** (she was while an **אשת איש**), there is no process of drinking the **אסורה לבעל ולבעעל וכו'** **מים המאררים**.

the would drink the סוטה. מים המאררים סוטה.

ודיק בוגמא טעמא דהאי מכחיש אבל לא מכחיש עד אחד נאמן מנא הני מיili قولוי –
And the reason infers from this, the reason drinks is because that this other who claims עד נטמאת is contradicting the who claims (so there is still a ספק); however if there is no contradiction, the one נטמאת who claims would be believed and the woman would not drink the עד who claims [and would become אסורה לבעלה וכו']. The there continues and asks; from where do we derive this, etc. The there explains the source for this.¹⁰ דין.

ופריך כיון דעתאoriaיתא עד אחד נאמנו איזך היכי מצי מכחיש ליה –
And then the there asks, since the one is believed, then how can the other who claims עד נטמאת contradict him –

והאמר עולא כל מקום שהאמינה قولוי –

כשנים, ואין ע"א he is an there answers –
For ruled that wherever the תורה believed, etc. The there answers –

אלא אמר עולא תני לא הייתה שותה ורבו חייא אומר הייתה שותה –
Rather says that the should read 'she does not drink (even) if there is a because the האסור بعد אחד הכחשה. However says that the reads 'she does drink'. The there continues to ask –

לרבו חייא קשיא דעתא לא קשיא כאן בבת אחת כאן בזזה אחר זה –
According to that the reads משנה that the rule of ר"ח this is difficult to reconcile with the rule of (כל מקום שהאמינה וכו') (that עולא). The answers, there is no difficulty; here by the case of both came simultaneously (therefore the was never accepted) and here (where it is in a case where the two came consecutively). This concludes the citing from מסכת סוטה.

משמע דעתא נמי איירוי בבת אחת ולכך צריך להגיה ולא משני כדמשני רבוי חייא –
This indicates that is also discussing a case of simultaneity, and therefore it is necessary to correct the reading of the from משנה to לא היה שותה and he did not answer as ר"ח answered (that there is a difference between זה ובזזה). For if is discussing only a case of גירושא why was it necessary for עולא to change the from גירושא to לא היה שותה? The explanation could be because it is בב"א. This proves that according to even the בב"א עולא two cases is עד נאמן. This contradicts what maintained previously that ([even] according to בזזה) there is a difference between and בב"א.

¹⁰ It is derived from the פרשת סוטה (במדבר [גשא] ה,יג) in פטוק where it is written ועד אין בה והיא לא נתפסה.

offers a possible answer:

ומיהו איכא למיימר דעולה לא מיيري אלא בזה אחר זה –

However it is possible to maintain that עולא is only discussing that; and in a case of ב"א he does not rule that the case is עד –

אלא שנראה לו דוחק להעמיד המשנה בבת אחת –

However it appeared to him difficult to establish the משנה in a situation of ב"א (as ר"ח did) –

משום דמשמע ליה דמיيري בזה אחר זה¹¹ –

For it seemed to that the משנה is discussing a situation of ב"ז (where annanan is ע"א), therefore he had to change the girusa. לא היתה שותה to girusa, נאנן כשנים ע"א.

offers an alternate answer:

ועוד אומר רבינו יצחק דאפיילו אירי לעולה בכל עניין –

in addition, the ר"י answers that even if according to this rule applies in all cases even in ב"א, that will maintain that even in a situation the ע"א has azmanut of שנים –

הני מילוי התרם דמדאוריתא¹² עד אחד מהימן בסוטה כדנפקא ליה התרם מועד אין בה –

This would be applicable only there by a סוטה, for by a ע"א, is believed as the derives it there from מדאוריתא –

אבל הכא גבי אשה דלא מהימן אלא מדרבנן לא חשיב כשנים אלא בזה אחר זה –

However here by where the is not believed to testify that the husband died; he is believed only in this case the is not considered as two, except in cases of ב"ז, where initially his testimony was not as yet challenged, when it was accepted and ruled upon.¹³

anticipates a question:

ואף על גב דיש חילוק בין מדאוריתא לרבען –

And even though there is a difference between a מדאוריתא (where the rule applies even in ב"א) and a לרבען (בב"א) (that [even if there is a rule] it

¹¹ ע"א אומר נטמאת וע"א אומר לא נטמאת משנה there states the case of ע"א together with the case of ב"ז, we must say that the case of עולא is only for if it is עד she would be. We therefore assume that the case of ע"א, which is brought together with the case of ע"א, is also opposed to the case of עולא which assumes (according to ב"ז) that it is, as opposed to the case of עולא which stated previously (footnote # 4) that it is not. See also מה"מ שי"ג ב"ז ב"א that it is not. This differentiates between the סוטה which is brought together with the case of עולא regarding which is stated previously (footnote # 4) that it is not. See also מה"מ שי"ג ב"ז ב"א that it is not.

¹² מדאוריתא is נטמאת where the rule of עולא states that the rule of מדאוריתא is נטמאת.

¹³ See 'Thinking it over'.

applies only (בזא"ז); so how can the here ask that there is the rule of עולא, when the rule of עולא was stated by a נאמנות מדאוריתא –

– גمرا answers that nevertheless, the תוספות

מייתי מדועלא דנראה לו דחשייב כשנים בזה אחר זה בדרבן כמו בבת אחת בדאוריתא:
Cites the ruling of ע"א מקשן that an should be considered as two (even) in a, (at least) if it a עדים if נאמנות מרבען situation, just as the ע"א is considered like two in a נאמנות דאוריתא even in a situation. The is of the opinion that a מקשן נאמנות מדרבנן by a situation should be as strong as a נאמנות מדאוריתא by a situation.

SUMMARY

The rule of all מקום וכו' עד אחד הרי כאן שנים וכו' עולא applies (only) when the place where an is ע"א. Concerning whether this applies even or not, there are two opinions נאמנות even by בב"א or not.

THINKING IT OVER

How do we explain that if it is a נאמנות מדאוריתא then it is effective even נאמנות מדרבנן; however if it is only a נאמנות מדרבנן then it is effective only בב"א?¹⁴

¹⁴ See footnote # 13. See ח"ב אות שלג.

רַב אָסִי הַסֵּר מִמֶּךָ עֲקַשׁוֹת פֶּה – משום דבר אסי הסר ממך עקשות פה
On account of רַב אָסִי who said, ‘remove from you, distortions of the mouth’

OVERVIEW

interpreted according to ר' יוחנן that two **עדים** contradict each other concerning the death of the husband, the woman should not remarry; however if she remarried she may remain married. The latter is on account of that the **המתיר** is believed. However initially she should not remarry, on account of **רַב אָסִי**; to remove any gossip or slander. The issue here is whether this restriction (of not marrying initially) based on **רַב אָסִי**, is agreed upon by all, or is it just the opinion of **ר' יוחנן** (according to **אביי**).

הסר anticipates a question and answers it; the statement ascribed to **רַב אָסִי** to remove any gossip or slander, is actually –

פסוק הוא אלא דבר אסי רגיל להביאו¹ –

A (so why is it said in the name of **רַב אָסִי**?); **however since was accustomed to cite it often, therefore it is credited to him.**

asks:

ואם תאמר והא דעתן בהאשה שלום (יבמות ז' קייז,ב ושם) –

פרק האשה in **משנה** if - **שלום**, if -

עד אחד אומר מות ונישת ובא עד אחד ואמר לא מת לא תצא –

One claims, ‘your husband **died**’ and the widow **remarried**, and subsequently **another** came and claimed he **did not die**; the rule is **she is not required to leave** her second husband. This concludes the citation of the **משנה**.

ופריך בגמרה טעמא דניסיית הא לא ניסית לא תנשא והאמיר עולא כל מקום قولוי –

And the there asks; the reason she is not required to leave is because **she remarried** already before the **האoser** came, **however if she did not remarry** yet, and the **האoser** came, **she will not be permitted to remarry**; how can this be **for עולא** **ruled that wherever, etc.**, an **ע"א** is believed **הרי כאן שניים ואין דבריו של אחד במקומם שניים** so why can she not remarry?! This concludes the quote from the **גמרא** concludes his question:

ומאי פריך והא עולא² לא קאמר אלא בדיעבד –

¹ See **פירוש הרע"ב** משלנה יט, פרקי אבות פ"ד משנה יט.

² It would seem more appropriate to insert **ר' יוחנן** instead of **עולא** for did not state specifically any

And what is the asking; for עולא did not rule that an ע"א is believed when she remarried - only בדייעבד, כשנים

- אבל לכתלה מודה שלא תנשא משום דבר אסי -

However, admits that initially she should not remarry on account of עולא, which would make in agreement with that ר' באesi³ משנה

answers:

- ואומר רבינו יצחק דהתט דיק טעמא דנייסת -

And the says, that there the infers from the reason that the reason of משנה that she already remarried before the came - עד האוסר because she already remarried before the came - לא יצא

- הא אם לא נשאת לא תנשא ואם נשאת יצא -

However, if she did not remarry before the came, she is not permitted to remarry, and if she remarries she should leave -

- דהכי משמע מתניתין דוקא נשאת אחר כך בא העד לא יצא -

For this is the implication of the only if she remarried and afterward the came, she is not required to leave -

- הא בא העד קודם שנשאת אחר כך ניסת יצא משום הכי פריך מדועלא -

However if the came before she remarried and she remarried afterward, the rule would be (even) that is why the challenges this ruling from עד בדייעבד, עולא, who maintains that the is certainly believed and she may remain married.⁴

continues to ask:

- **ואם תאמר והיכי משני התם דהכי קאמר עד אחד אומר מות והתיירוה לינשא**

And if you will say; and how then does the answer there (on the abovementioned question) that this is what the means: 'one said 'he died' and permitted her to remarry (but she did not remarry yet) -

- **ובא אחר ואמר לא מות לא יצא מהתיירוה הראשית משמע ותנשא לכתלה -**

difference between ר' יוחנן and בדייעבד, it is only (according to אביי) who makes this differentiation.

³ It is possible that initially stated that הסר מך גור' is a פסוק in order to bolster his question. If it is merely a statement of ר' באesi (who was an Amora), it is not that likely that the משנה would have to subscribe to this view, that she should be אסור לכתלה. However if it is a פסוק, then it is (more) likely that the משנה would rule in a similar fashion.

⁴ The question (on עולא) is not, why she should not initially remarry (if the came before marriage), but rather why if she remarried (even after the came) she cannot remain married. We will interpret the question to mean לא נשאת לא תנשא ואם נשאת יצא הא לא נשאת לא תנשא לא יצא.

⁵ עד האוסר does not (merely) mean she does not leave her husband (if she remarried before the came) but rather, she does not lose her, (even) if the came before she remarried.

And another ע"ד **came and claimed he did not die;** the rule is **she does not leave behind her initial permissibility** (this concludes the answer of theתוספות⁶; גمرا continues that), **this indicates that she may initially remarry!**⁷ This contradicts what the גمرا maintains here that even when an ע"א is נאמן (if there is an לכתלה), on account of ר' אשי, **she cannot marry** (עד האוסר if there is an לכתלה).

ויש לומר דודאי לכתלה לא תנשא – answers:

And one may say, that certainly she may not remarry (on account of ר' אשי) –

ולא יצא מהתירה הראשון לענייןadam נישאת לא יצא –

And the meaning of מהתירה הראשון is referring to a case, where she did remarry (after the עד האוסר came), then **she is not required to leave.**

SUMMARY

עד יבמות in משנה may follow the opinion of ר' אשי that when there is an האוסר (even if he came after the עד המתייר), she should not marry. However (even if she remarried באיסור), she may remain married ([only] if the עד המתייר came after the עד האוסר).

THINKING IT OVER

In a case where we rule **לא תנשא** (an against an ע"ד), and she remarried, the rule is **לא יצא מהתירה הראשון** and she may remain married; just as she would be allowed to remain married when she married **בביהר**. However when she remarried (when there was only the עד המתייר), the reason for this is because עד האוסר, אשה דיקא ומנסבא, therefore we can say that even if the עד האוסר came later, nevertheless **לא יצא**. However in the case where both came before she remarried, and she remarried **באיסור**, there is seemingly no **חזקת הוצאה** (for she remarried באיסור), then how can we allow her to remain married without this?!⁸

⁶ The התירוה לינשא means that since גمرا answers that since נישת/tosfos states that we cannot be that if she remarried before the עד האוסר came, then she should be **לא יצא**, since נישת/tofos states that if she remarried before the עד האוסר came, then she should be **לא יצא**, meaning that even if the עד האוסר came before she remarried, **לא יצא**.

⁷ When the came (alone), התירוה לינשא was ב"ד, which means they gave her permission to remarry; it follows that the גمرا states the same, that she is still permitted to remarry.

⁸ See **אלילת השחר**.

[תרוייהו באשת איש קמסדי – Both of them testify that she is married]

OVERVIEW

תנו גمرا states that if one עד testifies that a woman was divorced and another contradicted him that she was not divorced, the rule is she may not remarry, and if she remarries, she must leave her second husband. The rule gives the reason for this ruling that since both עדים agree that she was an אשת איש, therefore one עד alone cannot¹ counter the presumption that she was (and therefore is still) married. תוספות has a difficulty in understanding this whether it is a case where her marital status was known (without these עדים) or whether it was not known (without these עדים).

תוספות asks:

תימה דמה לנו לאותו עד שאומר לא נתגרשה –

It is astounding! Why do we need that עד who claims the woman was not divorced?!

בלא Aiho Nemi Tzaa Daion Dror Shevurah Pchot Meshnim -

She will be required to leave the second husband even without the witness who claimed לא נתגרשה. For no issue concerning illicit relationships can be established with less than two witnesses. This woman was ostensibly known to be married. An עד claims that she was divorced. That עד is insufficient to remove her marital status, since אין דבר שבערוה פחות משנים עד אחד (who was not contradicted), she will be required to leave her new husband. She is considered an אשת איש. We do not need this other עד to claim לא נתגרשה in order to require her to be החצא!

תוספות anticipates a possible answer:

דהא ליכא לומר שלא היינו יודעים שהיא אשת איש כי אם על פיהם -

For we cannot answer that indeed we would have not known that she was married, if not for their testimony. The proposed answer is that we assume that the case at hand is where the marital status of this woman was unknown. Therefore she is not בחזקת אשת איש, only through the testimony of these two עדים (who both agree that she was a married woman [prior to the alleged divorce]). If not for the עד who said לא נתגרשה she would be permitted to remarry based on the ע"א who claims לא נתגרשה. This is a regular הפה שאשר הוא הפה. However, now that there is an עד who contradicts the עד המותר, she cannot remarry.

תוספות rejects this answer:

דם כן להימניה להאי דאמר מגורשת במיגו דאי בעי שתק -

For if this were indeed so; that without these עדים the marital status of the woman

¹ An ע"א is believed to testify that the husband died on account of רבן (מדרבנן). However an ע"א is not believed to claim that a woman was divorced (without producing the גט).

is unknown, then **let us believe the עז who claims she is divorced with a מינו, for he could have remained silent** and not testify that this woman was (married and) divorced. We do not know the status of this woman. If the one who claims would testify, the woman would be able to marry, for one עז cannot place upon her an איסור א"א since אין דבר שבערוה פחות משנים. The only reason she cannot remarry is because the המתיר is also testifying that she was an א"א. However he has a מנו; for if he wanted her to remarry, all he had to do was to not testify at all, and the woman would be permitted to remarry. Therefore we must say that the woman's status was known, and therefore the המתיר has no מינו. The question remains why it is necessary to mention the האוסר at all; even without his testimony the woman is אסור to remarry since אין דבר שבערוה פחות משנים!

תוספות answers:

יש לומר דין זה מינו דschema רוצה להעיד כדי לפוסלה מן הכהונה -

And one can say, that indeed we are discussing a case where the woman's status is unknown (otherwise there is no need for the האוסר), and as for the question why is not the מתיר believed with a מינו Dai Bei Shatik; the answer is **that it is not a valid מינו, for perhaps this עד wants to testify that (she was married and afterwards) she was divorced, in order to disqualify her from marrying into the מותרה. Therefore there is no Shatik she would be כהונה.** (even according to the מתיר, if her husband eventually died). The however may want to be her נוגראה therefore he states פולש לכהונה, and he is not believed since there is another who states באשת איש קמסחidi לא נתגרשה תרווייהו.

תוספות ישנים:

This is a **תוספות ישנים.**

SUMMARY

If it is known that a woman was married and an ע"א testifies that she was subsequently divorced (even if no one contradicts him), he is not believed. If the marital status of the woman was unknown and two עדים (testify that she was married, but) contradict each other whether she was divorced or not, she is deemed to be married, and the המתיר has no מינו Dai Bei Shatik, since his intention may be to be her פולש.

THINKING IT OVER

נאמן asked that if her status is unknown then the Tosfos should be with a מינו Dai Bei Shatik. The answer was that there is no מינו, for he wants to be her פולש. What is the woman claiming? If she is claiming I was divorced, then she is anyways; why should not the מתיר have the מינו Dai Bei Shatik? If she claims נוגראה then even if both would state עדים לא נתגרשה she would be

אסורה.² For since she said לא נתקדשתי it is obvious that according to her she was never divorced, and since two עדימ are testifying that she was an א"א, she is tacitly admitting that she was never divorced!³

² There is a similar case in לוה ופרע that claims two עדימ testify that לא לויתי. If a man claims two עדימ testify that לא לויתי and two עדימ say כל האומר לא לויתי is stronger than the two עדימ who say לא פרעתי. For here too, her testimony of העדאת עדימ is stronger than the testimony of לא נתקדשתי.

³ See ב' אות שלה and משכנות הרועים אות תשיח.

מאי שנה רישא ומאי שנה סיפה –

What is the difference between the **רישא** and the **סיפה**??!

OVERVIEW

(לא תנשא) ואם נשאת **din** ספק קדושין of תרי ותרי states that by a ברייתא גمرا. ואם נשאת יצא (even) **din** ספק גירושין **Torah**. The should be the same by **Mishnah Rishonah** and **Mishnah Sippah**. The should be the same by **Sippah** and **Speculation**. Our is puzzled by this comparison; it should seem obvious that by ספק קדושין we should be more lenient (for there is a חזקה פנוייה than by ספק גירושין (where there is a חזקה א"א).

תוספות asks:

ואם תאמר שנה ושנה דרישא איתך לו לאוקמה בחזקת פנוייה וסיפה בחזקת אשת איש -
And if you will ask, it is indeed much different. The and the are very different. **For in the case of the we should determine her** as being **in the presumptive status of a**, **and, פנוייה** **and** in the we should establish her in the presumptive status of **an איש**. In the where the are arguing whether she was or not; if we cancel out the she is. In the where the are disputing whether she was or not; if we cancel out the she is. Therefore by a יצא if ספק קדושין (for she is) בחזקת אשת איש. **Nevertheless** by a דין if ספק קדושין (for she is) בחזקת א"א. What is the question **Mishnah Rishonah** and **Mishnah Sippah**?!¹

תוספות answers:

ויש לומר דבריisha אף על גב דעתך לו לאוקמה בחזקת פנוייה -
And one can say, that in the case of Rishonah, even though that we should establish her should [even] be permitted [to marry, and certainly] to remain with her new husband) -
 מכל מקום תרי ותרי ספיקא דרבנן היא כדמות בפרק ד' אחין יבמות ז' לא, ואושט -
Nevertheless a case of even when there is a תרי ותרי, remains a **פרק ד' אחין in גمرا as is evident from the ספק איסור להומרה, מדרבנן** -
והו לו למיין יצא מדרבנן² -

And therefore we should have ruled in the case of **Speculation**,

¹ See 'Thinking it over' # 3.

² It seems that the question is not that they are (exactly) the same; but rather that the דין should be the same.

that the woman **should be** תצא from her new husband מדרבנן. Why is it that instead we rule תצא, and not in the רישא (at least סיפה). מדרבנן

תוספות offers an alternate explanation:

ויש מפרשין כיו דלא מפליג בין באו עדים עד שלא ניסת לבאו עדים משנהית -

And others explain that since the ברייתא did not differentiate (neither in the ³רישא nor in the סיפה), **whether the האוסרים** **עדים** **came** and testified **before she remarried**, or whether **they came after she remarried**; the rule is always the same -

שמע מינה דלאו רבי מנחם בר יוסי⁴ היא אלא רבנו⁵ -

We derive from this that the author of the ברייתא is not רמב"י, but rather the רבנן who argue with רמב"י -

אם כן סיפה נמי אמא תצא⁶ הא שמעין להו דאמרי לא תצא⁷ -

סיפה If this is so that the rule is according to the רבן ברייתא, then **in the rule as well** (the rule should be **לא תצא**), why is she **תצא**?! We know that the רבן of **maintain** that in a case of **ספק גירושין** the rule is **לא תצא**. Why does this rule **תצא**?!⁸

SUMMARY

אסור מספק מדרבנן חזקת היתר תו"ת ספק. Therefore, nevertheless, is with a of a of תו"ת ספק by קדושין, the should be גמרא asks that by תצא דין by תו"ת ספק, the should be גמרא.

³ See that ראייה is from the root פלייל; however in the סיפה there is no need to be so strict since the language of לשון הרו"ה indicates that it is in a case of משכנתות הרבה. See however בראן ואה"ב נשות מזא.

⁴ Previously עדים האוסרים if (נתגרשה or מת (by תרי ותרי (דך כבב) came after she remarried then לא יצא, but if they came before she remarried then the דין is יצא.

⁵ It appears (at least according to these sources) that this question (that since by itself מפרשים that שנה ושנה therefore follows the view of בריתא) is only if we assume that this follows the view of ר' מנחם בר' יוסי who maintains that if תצא if נשותה cannot follow the view of בריתא. However the Rabbis cannot follow the view of בריתא since they maintain that if תצא (in any event) the rule is י"מ. They say that the rule cannot follow since רמב"ר says that תצא is rightfully גמורה and ach"c באו עדים or באו עדים ואח"כ נשותה. Therefore the Rabbis rightfully ask since the question (בחזקת א"א סיפה לא תצא) since she is מ"ש רישא ומ"ש סיפה disregards this and maintains by תצא and גירושין.

⁶ The first of פירוש מ"ש רישא ומ"ש סיפה גمرا asks which indicates they should be the same. It seems that the first of סיפה (חצא) should be like the רישא; and the second מ"י explains why the סיפה should be like רישא (לא חצא). See ‘Thinking it over’ # 2.

⁷ See ‘Thinking it over’ # 4.

⁸ See who questions this פירוש מהרש"א (הארוך) וכוי; רבנן שיטה can indeed follow the שיטה of the ברייתא. This however, in the previous ברייתא she married לאהוד מעודה and says, therefore in this ברייתא she married לאהוד מן השוק, therefore the תצא is תצא. One of the commentaries explains that if she was נשות לא נשאה and נשאת לא תצא then the expression לאהוד מן השוק is not appropriate. It is obvious that she cannot remarry, and equally obvious that even if she remarried she must leave her husband. ר.ע.י' עוד במפרשים

Alternately since the **רaben** maintained previously that by a **ספק תו"ת** by **גירושין**, the same should apply here.

THINKING IT OVER

1. According to the **ברייתא** if this would follow the opinion of **מפרשים**, would there be an answer to the question **מ"ש רישא ומ"ש סיפא**? Explain!
2. seems to be contradictory.⁹ In the first answer it is assumed that in both cases the **חزا** **דין**. However in the **מ"י** it is assumed that in both case it should be **לא חزا**!
3. asks that by **קידושין** there is a **חזקת פנינה**.¹⁰ However in the following he states that we are discussing a case where there is no **חזקת פנינה**. How can we reconcile these two **תוספות**?¹¹
4. The **י"מ** say that since the **רaben** is according to the **בריתא** why is it in the **גמרא**?¹² Why then does the **סיפא** ask **גמרא**, the **סיפא** should have simply asked why is she **חزا** in the **סיפא**?!¹³

⁹ See footnote # 6.

¹⁰ See footnote # 1.

¹¹ See **Mahar"m** **ש"ג**.

¹² See footnote # 7.

¹³ See **אילת אהבים**.

תרוייהו בפנוייה קמסהדי -

They are both testifying concerning an unmarried woman

OVERVIEW

קדושין אבוי interprets the phrase **ברייתא** concerning contradictory עדים in cases of and עדים גירושין, to being taking place in a situation where two individual are contradicting each other. Therefore, in the case of ע"א אומר נתקdashah וע"א אומר לא נתקdashah the ruling is since they both agree that she was a פנואה before this controversial קדושין, and only one says that it took place. It follows that one cannot contradict the assumption of both עדים that she was initially a פנואה; therefore אם נשאת לא יצא. This questions firstly, the need for an עד to say לא נתקdashah (to permit her to remain married) and secondly, why she cannot (re)marry since she is בחזקת פנואה.

תוספות comments:

לא הוה צריך להא¹ דאפילו ליכא אלא והוא דעתו נתקdashah לא יצא -

It was not necessary to mention this fact that they were both testifying that she was unmarried (before this controversial קדושין), **for even if there were not** two who testified, **but rather only the one who maintains that she was betrothed** previously to someone else (and no one contradicted him); nevertheless **she would not** be required **to leave** her new husband. The reason is –

דאין דבר שבערובה פרחות משלדים -

For a matter concerning illicit relations cannot be established with **less than two** witnesses. There are no two witnesses here who testify that the woman was married (only the ע"א), therefore she remains בחזקת פנואה. **תוספות** does not resolve this difficulty.²

תוספות asks:

אבל תימה³ אמר לא תנשא לכתחלה דהוה לו לאוקמה אחזקה -

¹ It would seem more appropriate that **תוספות** is referring to the phrase 'שניהם' in the sentence 'עד אחד במקום שניהם'. The reason is that the witness who testifies לא נתקdashah is merely stating that she was not at the time when the other witness claims that she was. He is not (necessarily) claiming that she was never נתקdashah.

² See **תרוייהו בא"א** קא מסהדי בפנואה קא מטהדי ש who answers that since in the סיפא it was necessary to state **תוספות הרא"ש**, therefore in the רישא he also mentions **תרוייהו בפנוייה**.

³ Even if we are to ignore the previous difficulty, for it is 'merely' a 'technical' difficulty, not a difficulty in the actual ruling (or answer it somewhat; see previous footnote # 2); nevertheless there is the following difficulty which questions the ruling itself.

However it is astonishing; why can she not initially be permitted to remarry?! For should place her on her presumptive פנויה status,⁴ since the that claims עד is contradicted by the who claims נתקדשה. We should therefore fall back on her חזקת פנויה!⁵

תוספות answers:

ויש לומר כगון שאנו יודעים שזרק לה קדושין ומספקא לו או קרוב לה⁶ -
And one can say, that we are discussing a case where for instance we know that the ‘husband’ threw קדושין money towards her, and we are in doubt whether the money landed closer to him (and she is not מקודשת); or whether it landed closer to her (in which case she is). This was known for a fact (without the two contradictory עדים)⁷ -

והני ב' סחדי חד אמר קרוב לו וחד אמר קרוב לה -

And these two contradictory עדים, one claimed that it landed closer to him, and one claimed it was closer to her. Therefore -

דכיוון דודאי זرك לה הקדושים לית לו למיימר אוקמה אחזקה להתייה לכתילה -
Since it is certain that he threw קדושין money to her, we cannot rule that we should place her on her חזקה to permit her to marry. Her חזקת קדושין (albeit a ספק קדושין פנויה) has been severely flawed by the knowledge that an act of פנויה has been performed. Once there is no וודאי חזקת פנויה, she may not marry⁸ לכתילה.

תוספות offers another possibility:

אי נמי כגון שהיו נרות דולקות ומטוות מוצעות -

Or you may also say, that we are discussing a case where for instance the candles were lit and the beds were spread with linens, which indicates -

⁴ See that the ע"א מהרש"ג is testifying that she was נתקדשה בפני שנים. The חזקת פנויה should resolve the contradictory testimony of the two עדים. See (following footnote # 5 and) ‘Thinking it over # 1.

⁵ This is different than if where the ruling is where the two years are maintained and the wife is נתקדשה. For there, there are two who maintain תרי ותרי (even if there is a החזקה היותר, nevertheless) it remains ספק מדרבן. However here it is a case of ע"א בהכחשה and therefore we should certainly follow the previous (מדרבנן) opinion. See (also) Tosfos D"ah מ"ש (even). [Alternately since here there is only an ע"א, therefore he cannot be believed since אין דבר שבורה פחות.]

⁶ See גיטין עח, where the משנה states that if a man throws a גט to his wife, if it landed closer to him she is not מגרשת, and if it landed closer to her she is מגרשת. There are differing opinions there as to the exact meaning of קרוב לו and קרוב לה. The same rule will apply by קדושין.

⁷ See ‘Thinking it over’ # 2.

⁸ This ספק is different than if ע"א אומר נתקדשה וע"א אומר לא נתקדשה. There we are not sure that any קדושין took place at all, and she retains her חזקת פנויה. We only have the word of an ע"א and ספק קדושין פנויה. However in this case we know that there is a חזקת פנויה, this denies her, the status.

שהיה עומד לקדש כדאמר בסוף המגרש⁹ (גיטין פט,א) -

That the husband was preparing to marry her, as the גمرا states in the end of the mغرש - פרק המגרש

עד אחד אומר נתקדשה ועד אחד אומר לא נתקדשה באותו שעה:

And one claims she married and the other claimed she did not marry at this very time that the first claimed that she married. In this case as well, the חזקת פנואה is seriously flawed by the indications that a wedding was about to take place. Therefore the ruling is **לא תנשא לכתלה**.

SUMMARY

If there are indications that place a serious doubt on her status (such as נרות Dollopot or קרוב לו etc.), this prevents her from marrying **עד ע"א** בבחחה by **לכתלה** (but she may remain married).

THINKING IT OVER

1. What is the דין if an ע"א claims that a woman was **נתקדשה בפני שניהם**; is he believed against her **חזקת פנואה?**¹⁰
2. What would be the דין: a) if there were only two, one said he threw it **קרוב לה** and the other **קרוב לו**? b) If we know that he threw the קדושין to her **קרוב לו**; and there were no עדים at all to testify positively that it was either **קרוב לה** or **קרוב לו?**¹¹
3. In our case of **נרות Dollopot** was there a **קול** (beside the ע"א) that she was **נתקדשה?**¹²
4. Why did choose to give the example of **קרוב לו וכו'** before the example of **נרות Dollopot וכו'**? Seemingly, the case of **חזקת פנואה** (in גיטין) specifically states that she loses her **גمرا!**
5. Is there any value in a flawed חזקה?

⁹ The there explains that there was a **גمرا** there because the **מקדשת הרוי זו מקודשת הרוי** (פ"ח,ב) states that there was a **גمرا** there that she was **נתקדשה** when it was known that she was **נרות Dollopot** and that she was **מצוות**. Otherwise, a **קול** is meaningless.

¹⁰ See footnote # 4.

¹¹ See (footnote # 7 and) (كرוב לסופו وبהערה מ) משכנות הרועים את תרצהו.

¹² See **AILIT HESHAR** (for # 4 as well).

מאן דמתני לה ארישא כל שכן אסיפה –

סיפה, who applies it to the, רישא, certainly applies it to the

OVERVIEW

The statement stated two cases, one by an **אשת איש** and one by a **שׁוֹבֵיה**, that if the woman testified (and there were no **עדים**) that she was married and divorced, or she is believed [but not if there are **עדים** that she was married or **נשכית וטהורה**]. The concludes that if the **עדים** came after she remarried, the rule is **לא יצא**. It is not clear if this rule applies to both cases (of **א"א** and **לא יצא גمرا** or not). The states that whoever maintains that this rule of **שׁוֹבֵיה** applies by **א"א** will certainly maintain that it applies by **שׁוֹבֵיה**, for by a **מדרבן** (where the entire prohibition of a **כהן** to **שׁוֹבֵיה** were **חכמים**) challenges this assumption that the ruling of **תוספות** **רישא** applies to the **סיפה** (of **שׁוֹבֵיה** if it applies to the **עדים** **לא יצא**). Perhaps in the case of **שׁוֹבֵיה** we are even more lenient than by **א"א**.

חוسطה asks:

ואם תאמר מנא ליה –

And if you will ask, how does the assume that **גمرا** **אסיפה** **כ"ש** **אסיפה** **לא יצא** **א"א** **דלא אסיפה לא מצי קאי**¹ **דאפיקו באו עדים ואחר כך נשאת לא יצא**² –

Perhaps the rule of **שׁוֹבֵיה**, **אם משנשאת באו עדים לא יצא** **ההנחה** **עדים** **came first and then she married**, nevertheless **she** is not required **to leave** her husband (the **כהן**), for by **שׁוֹבֵיה הקילו** (the **כהן**).

חוسطה answers:

ולמאי דמפרש בסמוך⁴ **לא ניסת ניסת ממש אתי שפיר –**

And according to what the **will shortly explain** that the term (in the ruling of **ニסת** **does not actually** mean (but rather (even if just permitted her to [re]marry), **then it is properly** understood. There is no difference between **התרווה לנשא** and **గրושה**; in both cases if **she may**

¹ The inference of **שׁוֹבֵיה**, **באו עדים ואח"כ נשאת יצא** is that if **בב"ד** **לא יצא**, and by a **רשות** it is not (necessarily) so.

² They came after she testified **בב"ד** **נשכית וטהורה אני** accepted her testimony (based on the **פ"ה שאסר**).

³ See 'thinking it over' # 2.

⁴ On this **רשות** **אבוה דsharp** **לא נשאת ממש וכו'**; **עמדו** **'Thinking it over'** # 3.

marry (even if before she [re]marries)⁵, and if then the ruling is לא התיrhoה לנישא⁶ in both cases.⁶

SUMMARY

If we assume that in a case of א"א וגרושה אני she is not permitted to remain married if she remarried after the came, we can still maintain that in a case of נשביתו וטהורה אני (כהן even if she married after the came) she may remain married (to the even if she married after the came). However if we maintain that by א"א וגרושה ההתיrhoה להנישא (as long as ani), then she may remarry even after the came. The same rule would apply to נשביתו וטהורה אני.

THINKING IT OVER

1. What did Tosafot assume (in his question) would be the view of the one who is מתני לה אסיפה דין; what would be the רישא in the same rule?⁷
2. In his question, asserts that it is possible that the is מתני ארישא, not even if נשאת לא תצא (because in the even if סיפה). If that is so, then why did the write the ruling of משנה תצא after the רישא, if it pertains only to the רישא?! The should have written it after the רישא!⁹
3. clearly states that there is no question,¹⁰ so what question?!¹¹

⁵ See following Tosafot ד"ה לא תצא.

⁶ It is self-understood that if the came, before ב"ד accepted her testimony to permit her to remarry, that she is אסור to remarry, and if she did so, the rule would be תצא.

⁷ See מהרש"א (האריך).

⁸ See footnote # 3.

⁹ See רשות.

¹⁰ See footnote # 4.

¹¹ See פג"י.

He agrees with **רב המונוא**

אית ליה דבר המונוא –

OVERVIEW

רב המונוא states that if a woman claims, in the presence of her husband, that she was divorced; she is believed, and permitted to remarry.¹ In our גמרא there is a dispute (between ר' אבין and ר' אושעיא) whether a woman may remain (re)married if she came after she remarried (based on the פה עד' אישות שאסר of her testimony that א"א הייתי וגורשה אני). Our suggested initially that this dispute hinges on whether we agree with רב המונוא (that the woman is believed [and therefore תצא]; or not תצא). Our questions (and explains) the relevancy of רב המונוא to our discussion.

תוספות anticipates a difficulty:

אף על גב דבר המונוא איירוי בפניו² -

Even though רב המונוא **is discussing** a case where the wife is **in the presence** of her husband; it is in this situation that רב המונוא maintains that the woman is believed to claim since she is in the presence of her husband. Seemingly this should have no bearing on our discussion here, where the husband is not present. Why does the גמרא associate this dispute with the ruling of רב המונוא?!³

תוספות responds:

מכל מקום לעניין ניסות ואחר כך באו עדים מהני שלא בפניו:

Nevertheless concerning a situation where she remarried and witnesses came afterward (and testified that she was once married) the ruling of רב המונוא **would apply even not in the presence** of the husband. If we maintain as רב המונוא does, that a woman is believed to tell her husband in his presence that she is divorced, and we permit her to remarry (based on her pronouncement [alone]), then we will also maintain that if she already remarried and then came, her original pronouncement should suffice⁴ to permit her to remain married.⁵

¹ She would not have the audacity to declare in his presence that he divorced her, if it were not true.

² See 'Thinking it over'.

³ Even if we agree with רב המונוא, the woman still may not be permitted to remain remarried, for in this case she did not testify *בפני בעלה*.

⁴ It would seem that her נאמנות (in a case where she says *לבעה גרשטני*) is not based solely on the חזקה of טענה גרשטני; but rather that this חזקה strengthens her מעיטה פניה *בפני בעלה* to the extent that she can marry *לבחלה*. However even without the חזקה (as in our case where it is *שלא בפניו*), she retains sufficient נאמנות when she says (based on her original הפה שאסר) גורשה אני to remain married. A lesser נאמנות is required for a *תצא* than for a *לבחלה*. [Alternately, the חזקה of הפה שאסר is required for a *תצא* than for a *לבחלה* (even if it is not sufficient to weaken the חזקה א"א which the *עדים* seek to impose. Her *בפני בעלה* allows *מגן* [dai bei shatik] to allow *תצא*)]

SUMMARY

The ruling of ר' המנונא (that נאמנת לומר גרשתי) can also apply in a case of נשאת ואה"כ באו, to the extent that she may remain married (if **שלא בפנוי** of **עדים**).

THINKING IT OVER

בפנוי maintains in his question, that the ruling of **תוספות** is only **רב המנונא**. However our **גمرا** concludes that one **מ"ד** maintains that **רב המנונא** is also discussing a case of **שלא בפנוי!**⁷

her to remain married since there is no valid **חזקת א"א** (תשלט-). **תשם** **כח**, משכנות הרוועים אותן. See [for a detailed discussion]

⁵ However if we disagree with **רב המנונא**, and a woman is never believed to claim that she is divorced, even in the presence of her husband (except when there is a valid **הופה שאסר**), then even if she is already remarried, but since **עדים** came (and weakened her **הופה שאסר**), she must be **חצצא**. For her pronouncement without the aid of a valid **הופה שאסר**, is meaningless (for we see that even the **חזקת** cannot sustain her claim).

⁶ See footnote # 2.

⁷ See **אה"כ מהרש"**.

לא יצא מהיתרה הראשון –

She does not leave (lose) her initial unrestricted status

OVERVIEW

The Tosefta stated that if עדים testified that she was a (or an א"א)شبואה משנה (or an א"א), the ruling is that she was interpreted by לא יצא משנשאת to mean that permission was granted to her to (re)marry (but not necessarily that she actually married). The Gemara was then required to interpret the phrase תוספות לא יצא, to mean that she may initially remarry (as her first husband allowed), or does it merely mean that if she remarries she may remain married (as it means elsewhere).

פירוש¹ ותנשא [לכתחלה] שלא שיך לזות שפטים כלל² -

The explanation of the phrase לא יצא מהיתרה הראשון is that she may [initially] (re)marry; for ‘crookedness of the lips’ is not at all applicable in this case. There is no one who contests her statement that she is a (or גירושה).³ Tehora

תוספות anticipates that this interpretation may be questioned:

אבל אין לפירוש כי היה יבמות שלא יצא מהיתרה הראשון לענייןadam נשאת לא יצא -
However we cannot interpret the phrase לא יצא מהיתרה הראשון to mean as in the case in⁴, namely that she does not lose her initial permission in regards that if she already remarried, she is not required to leave her new husband. It is only to that extent that her first husband is effective -

אבל לכתחלה לא תינשא -

But she may not initially remarry (perhaps it means the same here as in יבמות).

¹ (usually) uses the term 'פירוש' to indicate that it should not be understood in a different (or more obvious) manner. Here, he is rejecting the 'אין לפירוש', which he will shortly state.

² Previously, concerning the case where an א"ע claimed that her husband died and another א"ע contradicted him, the rule is אם נשאת לא יצא (since האמינה תורה ע"א וכו'); however initially on account of the הדר מוך עקשות פה (and לוזות שפטים פה). This concern is not applicable in our case.

³ The עדים merely testify that she was a (or an א"א) they do not contradict her testimony that she is aشبואה (or that גירושה). However by the case of an א"ע, another א"ע contradicts him.

⁴ See previous Tosfos in ב,ב ד"ה משום גمراה הראשון (in the case of two contradicting עדים), and interprets it to mean that if she remarried she may remain married, however initially she may not remarry. Seemingly here too, where the same expression לא יצא מהיתרה הראשון is used, it should mean the same. See ‘Thinking it over’.

negates this: we cannot maintain this view -

כדמשמע גבי בنتיה דמר שמואל בסמוך שהתרון לכתהילה⁵ -

as is indicated shortly concerning the daughters of (who were מר שמואל [by their own admission]), that permitted them initially to marry (to). He told ר' שמן who was a Cohen to marry one of them. We must therefore conclude that here לא יצא מהיתר הארץ means that she may marry.

SUMMARY

A woman who claims her to marry a Cohen was מתיר if נשבתי ותורה אני testified later that she was a Shvava, she may nevertheless marry a Cohen, שבוייה. (The same would apply to a woman who claims א"א הייתה וגורשה אני, according to ר' אושעיא).

THINKING IT OVER

Why would we think that here, means לא יצא מהיתר הארץ as it does in יבמות⁶; there is contradicted, however here no one contradicts her?!

להידודא – שלא להוציא הניר חלק

בתוס' ד"ה משום (כב,ב) מצטט רק המלים הscr ממק' עקשות פה (בלא 'וגו' אפילו), ובתוס' שלנו מצטט רק 'לוות שפטים'. וטעמא בעי. והנה אם נניח שהפסוק הנ"ל בא בסדר של לא זו אף זו [שצורך לשולל לא רק עקשות פה אלא גם לוות שפטים], ז.א. שעקשות פה הוא יותר גרווע ומילא יותר מושלל מלוזות שפטים (וھטעם לזה הוא אויל משומ שמלת 'ענק' מורה על עקרונות יתרה מלזל'לוות', ועוד (והוא העיקר) שהפה הוא מראה על דבריו יותר מהשפטים בלבד [שהפה כולל גם השפטים וגם שאר מוצאות הפה], יובן. שם כשייש ע"א בהנחה יש (לא רק לוות שפטים, אלא גם) עקשות הפה (שהעד האخر אומר במפורש שלא מה בעל), משא"כ כאן כשהאהשה אינה מוכחשת אין אפילו לוות שפטים (מהעדים שמעדים שהיתה שבואה מאחר שזה לא מורה שננטמא).

⁵ See in the margin who writes: לא יצא עדין מיתסרא ומאי פריך. The offers (an additional) proof that לא יצא from the end of this הגירה (initially) inferred that if עדין שבואה would come (later) she would be אסור. The asks if this contradicts the ruling of the תוי' who states אבל דש mojoal. The claims that if the ruling of בדייעבד אבל דש mojoal is only תוי' offers this additional proof, in order to prove that אבל also agrees that אבל (not only) agrees that אבל.

⁶ See footnote # 4.

באו עדים¹ לא יצא – If witnesses came, she is not required to leave

OVERVIEW

The teaches us that if a woman claimed **ברייתא** נשבתי וטהורה אני and I also have **עדים** that **טהורה אני ב"ד** (and permitted her to marry), then even if the subsequently came and claimed that they are unaware if she is or not, nevertheless **לא יצא**. Again, will explain the meaning of **לא יצא**.

פירוש² לא יצא מהיתריה הראשון -

The explanation of the phrase **לא יצא** (**באו עדים**) is that **she does not lose her initial permission** to remarry **לכתחלה**.³

SUMMARY

The woman is permitted to marry **לכתחלה** even if the **עדים** do not substantiate her claim.

THINKING IT OVER

How indeed does derive this ruling that even if her claim is not completely substantiated, she may still marry?! Conversely if **אבוה** maintains that the **משנה** which states **לא יצא** means **לכתחלה**?! **ושנשנת** **באו עדים** means **לא יצא** (even though it states **לא נשאת** **נשאת** **אלא** **שהתירוה** **ליינשא** **משנשנתה**) so in our **ברייתא** which merely states **לא יצא מהיתריה הראשון**, it certainly means **לא תצא מהתירוה** **ליינשא** **לא תצא מהתיריה** **נשאת** (and it does not say **הтирוה** **ליינשא**). What is being **מה חדש** **תוספות הראשון**?!

¹ In our **גמראות** the text reads **הרוי"ף**. **באו עדים** **שנשנית** is **גירסת הרוי"ף**.

² See previous **תוספות ד"ה לא יצא** (including footnote # 1).

³ In this case the woman is slightly contradicted by the **עדים**. She claimed that knew that she was not **גטמאה**. However the **עדים** are testifying that they do not know. It is possible that in this situation (since she was somewhat contradicted) we will not believe her completely and permit her to marry **לכתחלה**. Rather we would only allow her to remain married **בדיעבד**. Our **תוספות** negates this view. See ‘Thinking it over’.

⁴ See **קדושת ישראל** (**להרב בנימין ליכטנשטיין**).

Who guarded them until now**עד האידנא מאן נטירינהו –****OVERVIEW**

Captive women were brought to אבוח דש mojoal (for ransom), who placed them under guard (to protect them [from their captors]). שמואל asked his father; ‘Who guarded them until now?’ תוספות explains the intent of שמואל’s question.

פירוש דבר נאстро:

The explanation is that told his father, that there is no purpose in guarding them now in order that they should be מותרות לכהונה, since they are already forbidden to marry, כהנים, for we know that they were¹ שבויות. However did not mean that they should not be protected now from their captors.

SUMMARY

argued that even if they are guarded now, it would not affect their אסורות לכהונה, since they are already אסורות.

THINKING IT OVER

1. by saying 'פירוש', is negating a different explanation.² Why would we have thought that the other explanation is preferable (that needs to negate it); and why indeed does תוספות negate the other explanation?

2. According to the interpretation of אבוח דש mojoal; why did respond so harshly to his son שמואל? All that meant was that they are אסורות לכהונה!³

¹ תוספות ד"ה לא is negating (see previous footnote # 1) an alternate interpretation; that was asking why are you guarding them from being נבעל by the captors, it makes no difference whether they will be now (again), since previously no one guarded them and they were then, and thus אסורות לכהן תוספות does not accept this (more callous) interpretation. See ‘Thinking it over’ # 1. See מהרש"א.

² See previous footnote # 1.

³ See מהרש"א

But there are witnesses overseas**ולא איכא עדים במדינת הים –****OVERVIEW**

ר' רב הניניא ruled that the daughters of שמואל are מותרות לכהונה (for they have a daughter). challenged this ruling and asked 'but there are **עדים בר אבא**'. (הפה שאסר **עדים** **'במדה'**) (which the initially assumed to mean that there are **עדים** that they were captured). will discuss the meaning of 'that there are **עדים** **'במדה'**'; is it a known fact, or merely a concern, etc.

- 'ולא איכא עדים במדינת הים' comments that the phrase **תוספות**

אין לפרש דלמא איכא עדים במדינת הים¹adam con tikshi liha nemi amtniyin -

Cannot be interpreted to mean that **perhaps there are witnesses overseas** who know that they were (even though we are not at all aware that there may be); **for if that would be** the interpretation and the concern of ר' שמון בר אבא, **then he should have the same difficulty with our משנה** -

דעתני נשכתי וטהורה אני נאמנת ואמאי דלמא איכא עדים² -

For the states that if she claims **משנה**, she is believed; why should she be believed (and permitted to marry a **perhaps there are** **עדים** **שכוהה**?!)?

offers his interpretation of '**ולא איכא עדים במדה'**:

אלא וכי פירושה הוא יצא קול דaicא עדים במדינת הים שיזועים שנשבית⁴ -

But rather this is the explanation; 'for a rumor has gone out that there are **עדים who know that she was captured'.**

asks a question:

ומיהו קשה לרבי שמון בן אברהם -

The **רשב" however has a difficulty -**

¹ On account of this concern they should not be permitted to marry. For if there are that they were; they no longer have the **הפה שאסר**. It is reasonable to assume that there may be **עדים**; since we know that she is a (according to her own admittance), it is (very) likely that people are aware of it. See 'Thinking it over' # 1.

² According to the **רשב"** this concern has no real basis, and it should apply therefore in all instances.

³ The fact the **תוספות** rejects the **אין לפרש'** indicates that (according to **תוספות**) we are not concerned about all types of possibilities, unless there is a basis.

⁴ **ר' שמון בר אבא** knew of this **קול**, therefore he was concerned. The **משנה** however is discussing a case where there is no such rumor; therefore she is **טהורת לכהן**. See 'Thinking it over' # 5.

דھיכי סלקא דעתיה השتا דעתדים היינו עדי שבוייה -

עדים גمرا **now** to assume that the term refers to (that they are [merely] aware that they were captured, but they are not – **עדי טומאה** –

אדם כן מה הוה צריך למיימר הא איכא עדים במדינת הים -

For if that is so (that the concern is that there may be then **why was it necessary to say; ‘but there are’** ‘**עדים במדה”י**’) (which is merely a maybe, based on a when, **רב שמן בר אבא**, (kol –

הוה ליה למיימר הא איכא עדים קמן דהא איכא שבויינחו:

could have asked, there are before us; for their captors are present!

The captors are telling us that they were definitely ⁵. There is no need to mention a concern that perhaps there are **עדים במדה”י** does not answer this question.⁶

SUMMARY

If there is no reasonable basis, we are not concerned that there may be (to nullify the potential). It is not clear why the potential should negate the any more than the that are present before us.

THINKING IT OVER

1. According to the 'ain l'peresh' how can we generally rule on any issue;⁷ there is always a concern perhaps there are that will support the other view?!

2. Is there any reason why we would have preferred the over explanation?

3. Is there any connection between the **רישב”א** of the, and that which was discussed previously in this **תוספות**?

⁵ See 'Thinking it over # 4.

⁶ See (in the margin) who answers this question stating: **תוספות ישנים** ויש לומר דמחמת השבאים לא איתסרו דהא אין לפרש 'ain l'peresh' that on account of the captors, they will not be prohibited, since the captors came after they were already captured. However the concern here is on account of the **קול** which preceded the **התירוה**, therefore they should be prohibited. And this is how the **גمرا** should be understood; the reason they are permitted is because no **עדים** actually came, however if the **עדים** came (now) they would be prohibited on account that the **קול** that there are, was known before the **התירוה**. See also **ח”ב** אות שלו. **הויתר** also

⁷ See footnote # 1.

4. What does the word רשב"א mean that ‘the captors are present’?⁸ Presumably no one knew that they were captives (otherwise there is no הפה שאסר). It cannot mean that the captors will testify that they were captives, for they are עכו"ם and their testimony is worthless!⁹

5. תוספות explains that there was a קול that there are עדים במדה"י who know that they were captured.¹⁰ Was this known before thehir or not?

⁸ See footnote # 5.

⁹ See ש"ר.

¹⁰ See footnote # 4.

עדי טומאה איתמר –**Witnesses of defilement, were mentioned****OVERVIEW**

ר' חנינא challenged the opinion of ר' שמן בר אבא and argued how can we permit the to marry, for there are, **עדים**, **כהנים** who know what happened. The concluded that these **עדים** presumably could attest to the fact that the daughters of נטמא were **שлюל** by their captors. R' Channina maintained his ruling that nevertheless the woman are permitted to remarry on account of their **הפה שאסר** regardless of the purported that are overseas.

והא אילא עדים במדינת הים דבריך לעיל פירוש -

The explanation of the challenge, 'but there are **עדים overseas**', which Rabban Gamliel previously asked of R' Channina is -

והא יצא קול דאייא התם עדי טומאה כדפירושת¹ -

But there is a rumor that there are **there** in **עדי טומאה** **there** in **explained** previously; that the concern of was based on the that there are **עדים** who know what happened.²

Tosfot asks:

הקשה רבינו תם בפרק קמא דקידושין ז"ב,א) גבי ההוא גברא דקידוש באבנה דכוhalbא -
The asked; the related in the first of Frak concerning a particular person who was a woman with a dark marble stone
ויתיב רב חסדא וקא משער אי אית בה שוה פרוטה אי לא -

And was sitting and evaluating this stone whether it was worth a (whereby the woman would be or not (and the woman would not be). The there continues that it was mentioned to Rabban Gamliel that there are witnesses (who are now elsewhere) who know that on that particular day when he gave the **קידושין**, it was worth a **פרוטה**.

ומסיק לאו היינו דברי חנינא אמר עדים מצד אשון ותאסר -
Rabbi Channina concludes; is this not the same as the case of (of our who said, 'just because there may be witnesses in the north,

¹ See previous ד"ה והא.

² Originally the thought that there [was a that there] are. עדי שבואה במדה"י גمرا thought that there [is a that there] are. The conclusion is that there [is a that there] are. עדי טומאה במדה"י. The contribution of Tosfot is that the concern that there may be עדי טומאה is only if it is based on the קול (even though there are the **שבעים** [as opposed to the case of the **חמשה**], nevertheless the **השש** of the **חמשה** in only if there is a קול [see חמשה]).

רב therefore the **should be prohibited** (from marrying שבויות) (!?)(כהנים)! Therefore ruled that she is not considered to be מוקדשת וודאי חסדא.

ולאמר אבי ורבה לא סבירא להו הא דבר חסדא אם הקילו בשבוייה נקל באשת איש -
And the there states that did not agree with אבי ורבה (who compared the case of קדושיםן to the case of שבוייה [and therefore is not concerned about the possibility that there may be witnesses who will testify that it was a איש and she is an אשת איש]; but rather maintain that we cannot compare the two cases; for if the הרים were lenient concerning a שבוייה (and permit her to marry a [who is only כהן] [מדרבנן]), should we also be lenient concerning an אשת איש (where there is a א"א דבוריתא)! If indeed the woman is an אבנה דכוhalbא, then this woman is an א"א דאוריתא and is forbidden to marry anyone, under the threat of a חיוב מיתה! This concludes the citation from the קדושיםן in גمرا.

תוספות concludes his question:

והשתא למאי דמסיק דעתינו טומאה איתמר מה לי עדי שבוייה מה לי עדי אשת איש -
But now according to the conclusion of our that we are discussing טומאה (which makes the woman מדוריתא), what difference עדי or (נטמאת שבוייה עדימן regarding a שבוייה (that she was א"א איסור דאוריתא in both cases it is an א"א. Why therefore did argue and maintain that an א"א should be different from a א"א שבוייה?!)

תוספות cites רש"י's explanation (and rejects it).

ורש"י פירש שם⁴ אם הקילו בשבוייה איסור לאו -

And explained there that maintain, if they were lenient by a כהן if a (חייב מיתה if she marries a שבוייה where it is merely an איסור לאו (but there is no איסור א"א where there is a שבוייה [זונה] if she marries someone else while she is still an א"א. The distinction between קדושיםן and שבוייה (according to רש"י), is that שבוייה is merely an איסור לאו and קדושיםן is a חיוב מיתה.

תוספות rejects this explanation:

³ **ולמאי דסלקא דעתין מעיקרא דעתך שבוייה ניחא דהוי ספק ספיקא ספק** See (in the margin) who states: **אם נשנית אם לאו ואם תמצא לו מר נשנית ספק לא נשנית ובאשת איש ליכא אלא חדא ספיקא ספק** (free translation): that if it would be merely than it would be different than קדושין, for by קדושין, i.e. שבוייה it is a שבוייה if it is a קדושין, however by there is only one if it is a שבוייה or not. See 'Thinking it over' # 3.

⁴ See marginal note, that this does not appear in our version of רש"י; however mentions it there (ב"ה הא) in the name of יש מפרשין.

وكشة لربינו تم ذبشوיה نמי אייכא איסור סקילה -

And the has a difficulty with this explanation; for by the case of a there can also be an שבואה - איסור סקילה

אם נשאת לכהן שישמש בנה על גבי מזבח שבת -

If she marries a (who may be a כהן and her son from this served on the the) If the son is a he cannot do the . שבת on מזבח in the such as (such as קטרה, שחיטה, etc,) he is .⁵ Therefore both by קידושין and there is a .

suggests an alternate solution:

ומיהו אית ספרים דגרסי התם אם הקילו בשבואה דמנולה נפשה באפי שבואה قولוי - However there are texts there in that read, ‘if they were lenient by a who makes herself revolting in the presence of her captors (to discourage them from having relationships with her), etc. -

פירוש ולא שכיח قولוי האי שנטמאה -

Meaning, that it is not that probable that she was profaned -

נקל באשת איש דשכיח דייעי אם אית בה שוה פרוטה -

should we be lenient by an , where it is common that people can know if it is worth a .

concludes:

ובלאו ה' גירסא אייכא למימר דלא שכיח שיינו עדי טומאה -

And even without this reading of the text (that a we can still maintain that it is not common that there should be עדי טומאה (for is done in privacy)⁶ -

אבל עדים שידעו ששה פרוטה שכיח :

However it is common that there are העדים who know that it is worth a . Therefore there is no need to be concerned by (for either it is unlikely that she was , or it is unlikely that there are), however there is a need to be concerned by (for there is a sufficient likelihood that there are who will testify that it was worth a).

⁵ Only a is permitted to do in the as part of the ביהם"ק not a . See the various who comment that (even though) the rule is that a (however he still may be for the). חילל שבת

⁶ The difference between the one גירסא and the other is that according to the one, there is less likelihood that she was ; according to the other there is a less likelihood that there are . עדים שנטמאה

SUMMARY

The concern that there may be עדי טומאה was based on a קול. There is a difference between a by; ספק קידושין and ספק שבואה, where there is no חיוב מיתה, as opposed to b) חיוב מיתה, where there is a greater chance of it being true. It is unlikely that she was נטמאה, or c) that by it is unlikely that there are עדי טומאה.

THINKING IT OVER

1. What is the connection between the קשייא of the ר"ת, and the preceding statement concerning a קול?
2. The (מנולא נפשה) distinguish between where it is איתת דגרסי (and therefore not ספק שבואה) and א"א (שכיה דידי) (where there is little chance of it being true) and by (שכיה שנבעלה) (where there is a greater chance of it being true). Seemingly the contrast is not appropriate; by there is little chance of it being true and by there is a greater chance of it being true but not a greater chance of it being true. In addition why is not one difference (שכיה דידי or מנוולא נפשא) sufficient to distinguish between the two; why mention both differences?!
3. Why does the ספק ספיקא distinguish between a תועי⁷ and a ספק ספיקא דאוריתא (קדושים) instead of distinguishing between a ספיקא דרבנן (שבואה) and a ספיקא דאוריתא (קדושים)?
4. Previously⁸ distinguished between a ספק חוספות of two contradictory statements [אוקמה אחזקת פנואה, and a ספק קרוב] whether she was [אוקמה אחזקת פנואה], and a ספק קרוב when the החזקת פנואה was. Why do we not make the same distinction between a קול of עדי טומאה [אוקמה אחזקת היתר] and a ספק שווה [אוקמה אחזקת היתר] [where since he was her] her was?⁹

⁷ See footnote # 3.

⁸ עמוד ד"ה תרווייהו on this.

⁹ See Chidushim Maheriyot.

שתי נשים שנשבו –**Two women who were captured****OVERVIEW**

The rule is that if there are witnesses that a woman was captured by gentiles she is forbidden to marry a **כהן** (even if she claims they did not violate her), for we assume that they had relations with her.¹ However if there are no witnesses that she was captured but the woman admitted that she was captured and insists that she was not violated, she is permitted to marry a **כהן** (since we are only aware of her captivity status through her admission and she claims that she is **טהורת**).² Our **משנה** states that regarding two women, each of whom stated **נשכית וטהורה אני** the rule is that they are not believed. **משנה** discusses the correct **תוספות** in our **גירסה**.

אומר רבינו יצחק דלא גרסין זאת אומרת נשכית וטהורה אני قول –

The ר"י says that the text of the does not read; this one says 'I was captured but I am pure', etc. -

אלא זאת אומרת טהורת אני –

But rather the text should read; this one says 'טהורה אני', without saying נשכית –

זה באicia עדים שנשבו אירי,³ –

Because the משנה is discussing a case where there are witnesses that they were captured, so there is no need (for the **משנה**) to mention that they said **נשכית**.⁴

tosfos offers an explanation to retain the **tosfos** of **גירסה**:

ומיהו יש לקיים הגירסה דאיiri דאיינהו לא ידע באicia עדים –

However, it is possible to sustain the **גירסה of 'נשכית', in a case where the women do not know that there are **עדים** who know they were captured, and they came on their own and admitted to their captivity (before the **עדים** testified).⁵ –**

ואশמוועין דאפיקו הפי' לא מהימני:

¹ A woman who has relations with a gentile (or with anyone with whom she is forbidden to live with) is called a **זונה** and forbidden to marry a **כהן** as the **פסוק** states (ויקרא [אמור] כא,ז in) **פכה זונה וחללה לא יקחו**.

² This is referred to as **הפה שאסר הוא הפה שהתייר**.

³ The rules that they are not believed if they say **נשכית וטהורה אני**. That rule is valid only if there are that they were captured; otherwise they would be believed to say **נשכית וטהורה אני** for it is considered **הפה שאסר הוא הפה** (**שהתייר** (see 'Overview' [footnote # 2]).

⁴ There is no need to mention that they said **נשכית**, because it makes no difference whether they said or not, in either case they are not believed to claim **טהורה אני**, since there are that **נשכית**.

⁵ See **הפלאה**.

⁶ These women are obviously honest women for since they did not know that there were, why did they come forward and say that **נשכית**. They could have remained silent (since in their mind they assumed that no one

And the משנה teaches us that (even though they are obviously honest women) nevertheless they are not believed to claim טהורת אני.⁷

SUMMARY

The woman is not believed that even if she did not know there are עדימן nevertheless admitted to being captured.

THINKING IT OVER

In the concept of הפה שאסר הוא הפה שהתייר there seems to be two factors. Firstly that the only reason we suspect that she is not טהורת אני is only because she admitted to נשביתיה, therefore just as you ‘believe’ her that you must also believe her that נשביתיה, since we only know נשביתיה from her admission. [We will refer to this נאמנותה.] Secondly, we see that she is an honest person since she came and admitted (when she did not need to do so; therefore (since she is honest) we should believe her that טהורת אני). [We refer to this נאמנותה]. When the subsequently come and testify that they were captured, we understand that the הפה שאסר נאמנותה no longer exists (since we know נשביתיה without their admission); however the based on (seemingly) still remains, for we know she is an honest person (she admitted even though she did not need to). Why then is she not believed [even] if the came later?!⁸

טהורת אני (נשבו). Since they are presumably honest let us believe them as well that טהורת אני.

⁷ Once the come and testify that they were captured, the women lose their הפה שאסר עדימן. See ‘Thinking it over’.

⁸ See משכנות הרוועם סי' תשס.

אין רישא וסיפה دائכה עדים ומוציאתא דליך עדים –

Yes; the מציאות and עדים is סיפה and רישא where there are no עדים

OVERVIEW

אבי explains the following in ברייתא:

#	ברียתא	היא	חברתה	אבי	ליכא ¹ עדים
1	אני טמאה וחברתי טהורה נאמנת	טמאה	טהורה		ליכא ¹ עדים
2	אני טהורה וחברתי טמאה אינה נאמנת	טמאה	טמאה		איכא עדים ²
3	אני וחברתי טמאה נאמנת על עצמה ולא על חברתה	טמאה	טהורה		ליכא עדים
4	אני וחברתי טהורה נאמנת על חברתה ולא על עצמה	טמאה	טהורה		איכא עדים

interpreted the **עדים** in a case where (there were [in all four cases] that one witness said the exact opposite of what she said. The asked גمرا (according to ר"פ) that we can derive cases #3 and #4 from cases #1 and #2.³ תוספות explains why these questions do not apply to אבי.

תוספות responds to an anticipated difficulty:

השתא לא פריך האתו למה לי כדריך אשנויא דרב פפא⁴ דהשתא אctrיך כלו -

Now (according to the does not ask, 'why is all this necessary', as the asked on the explanation of all the cases are necessary. continues to explain the necessity of mentioning each case. The case of גمرا -

אני טהורה וחברתי טמאה אשמעין כיון دائכה עדים לא מהימנא אנפשה -

'עדים I am and my friend is (#2), teaches us that since there are העדויות, she is not believed regarding herself -

ואני וחברתי טמאה אשמעין -

And the case of, 'I and my friend are (#3) teaches us -

דלא מהימנא אחברתה היכא דליך עדים ומשוריא חברתה אפומא דנפשה⁵ -

עדים That she is not believed regarding her friend in a case where there are no העדויות, and her friend is believed by her own statement that she is טהורה, שנשבית.

¹ איכא עדים will later alter this that it is (also) in a case where חברתה.

² According to the רב פפא טהורה is חברתה.

³ In case #3 we know that she is טמאה (since she admitted that she is as in case #1). We know that חברתה טהורה from case #2. In case #4 we know that she is טמאה since איכא עדים (even though חברתה טהורה (she is testifying that חברתי טהורה) from case #1).

⁴ See 'Overview' (and footnote #3.)

⁵ We cannot derive #3 (that חברתה טמאה) [even though she said טהורה] from either #2 (where חברתה טהורה) or from #1 (since she said טהורה because she said איכא עדים).

ואני וחברתי טהורה אשמעין אף על גב דעתך עדים מהימנא לחברתך -

And the case of 'I and my friend are (#4), teaches us that even though there are עדים שנשנית, nonetheless she is believed regarding her friend [and we cannot derive #4 from #1 as we asked according to ר"פ -]

דרישא דרישא איך לאוקמי בדיליכא עדים⁶ -

עדים(#1) רישא דרישא(#1) Because we can establish the where there are no
שנשנית.

תוספות is not satisfied with this explanation:

וain נראה Dai בדיליכא עדים הינו מציאות⁷ -

לייכא does not agree with this explanation for if #1 is in a case where
עדים שנשנית, it is the same as the middle case (#3).

תוספות offers an alternate explanation:

אלא בדאייכא עדים איירוי -

Rather case #1 is where there are, עדים שנשנית and regarding the question⁸ that seemingly we know #4 from case #1 -

ומכל מקום איצטראיך האי סיפה לאשמעין דנאנות לחברתך -

But nevertheless this (#4) is necessary to teach us that she is believed regarding her friend that she is טהורה -

ואף על גב דלא פסלנה נפשה⁹ והיה לנו לחוש לגומלים¹⁰ אפילו וכי מהימנא:

And even though she did not disqualify herself (as in #1 where she said אני טמאה but rather she said אני וחברתי טהורה, so we should be concerned for her) therefore teaches us that nevertheless she is believed and we are not concerned for גומלים¹¹.

⁶ Therefore, we cannot derive that she is believed in #4 (where there are) from the fact that she is believed for her in #1 (where there are no). Therefore #4 is according to ר' אביה. However, according to ר' ר' that all four cases are where she is believed, איכא עדים שנשנית, the question stands that #4 teaches us nothing new in addition to #1.

⁷ The question is that #1 is superfluous for if she said (#3) she is not believed and חברתי טמאה (בדיליכא עדים) she is believed, then certainly if she says (#1) surely she is believed. [However, this does not mean that #3 is extra, for we cannot derive #3 from #1 (as explained in footnote #5.)] See 'Thinking it over'.

⁸ The same question that was asked on ר' פ (see footnote # 3) that we know from #1 where she says that she is believed, בדאייכא עדים even נאמנת, so what does # 4 teach us?

⁹ In #1 it is understood that she is believed to say חברתי טהורה since she said so there is no ulterior motive; however (in #4) where she says אני וחברתי טהורה we should not believe her regarding חברה since she has the ulterior motive of חישון לגומלים.

¹⁰ גומלים (here) means that they are protecting each other. They each testify that the other is טהורה so that the other will testify that she is also טהורה.

¹¹ The difficulty with this answer (as stated immediately in the ת"י [and in the מהרש"א]) is that if the realized the

[וְהִיינוּ שִׁינֵּיו אֶذְלָקְמָן ذָלָא פְּסַלְתָּה נְפָשָׁה וְהַוָּה מֵצִי לְמַיְרָךְ הַשְׁתָּא וְלְשָׁנוּיִ, תֹּוסְפּוֹת יִשְׁנִים.]
 [And this is the answer which the states later; because she did not invalidate herself, and the could have asked now this question on and answer it as and the both say. ה"י]

SUMMARY

According to אבוי (even the understood that) all four cases of the ברייתא are necessary. The רישא דרישא is in a case where אין עדים.

THINKING IT OVER

asks that if #1 is in a case where ליכא עדים then it is the same as #3.¹² Seemingly there would be the same difficulty if #1 is in a case where איכא עדים אבוי, for then #1 is the same as #4.¹³ We would seemingly resolve this question (on #1) by saying לא זו אף זו; not only is she believed in #1 (where there is no חשש גומלים) but even in #4 (where there is a חשש גומלים). The same answer can apply here (on #1), not only is חברתה טהורה if she said (#1) but also if she said (#3); what is question?!¹⁴ even if she said (#3) חברתי טמאה!

חישין לגומלים of החישון (in #4) according to אבוי, why ask on ר"פ (since the answer is the same)?! One possible explanation may be that even after we know (according to אבוי) that there is concern for גומלים, that is only when there is no one who says the opposite, therefore since there areعدים שנשבו, she sayshoping the will will also say so they will both be טהור. However when there is an ע"א המפיק so who says that you are both טמאים (and her saying חברתה טהורה) is meaningless since she thinks in her mind that they will not be believed since (there areعدים שנשבו and the ע"א testifies that there is no חשש גומלים). Therefore the גمرا explains that even by an ע"א there is also the חשש גומלים of חברתה טהורה (ע"י בחת"ס).

¹² See footnote # 7. חברתי טמאה (#3) then certainly if she says חברתי טהורה even if she says חברתי טהורה (#1).

¹³ She is believed even when there is a חשש גומלים (#4), then she is surely believed to say חברתי טהורה when there is no חשש גומלים (#1).

¹⁴ See מהרש"א (האריך בד"מ אות ט וביקע"י שם אותן ח).

הא تو למה לי הינו רישא –

Why do we also need this; it is the same as the רישא

OVERVIEW

עד אחד עדים שנשבו establishes the that there are בריאות and there is an רב פפא who says exactly the opposite of what she says.

#	היא אומרת	ע"א אומר	היא	חברתה
1	רישא דרישא	אני טמאה וחברתי טהורה	טמאה	טהורה
2	סיפה דרישא	אני טהורה וחברתי טמאה	טמאה	טהורה
3	רישא דסיפה	אני וחברתי טהורה	טמאה	טהורה
4	סיפה דסיפה	אני וחברתי טמאה	טמאה	טהורה

The asks two questions on references (which our גمرا) is that we can derive #3 from #2 (סיפה דרישא). Then the asks that we can derive #4 from #1 (רישא דסיפה). Our explains why the first question (from רישא דרישא) was not asked from as was the second question.

תוספת asks:

ואם תאמר ואמאי לא קאמר הכא מרישא דרישא כדי אמר בסמוך –

רישא דרישא גمرا ask here (on #3) **from the** גمرا asks shortly (on #4).

תוספת explains how #3 can be derived from #1(as well as from #2):

זה שמעין מרישא דרישא דאייה שויתה לנפשה חtica דאיסורה¹ –

For we know from the אסורה is טמאה she is טהורה when she says רישא דרישא since she made herself into a ‘forbidden piece’ -

וחברתה משטריא אפומא דידה –

And we also know from #1 that **חברתה is permitted based on her testimony** (that even though there is an ע"א who testifies that טמאה – חברתה טמאה וחברתי טהורה)

וכל שכן דמשטריא אפומא דעת אחד² –

So certainly (in #3) **טהורה will be based on the testimony of the** ע"א (who

¹ Therefore similarly by #3 where she says טמאה [לחברתי] טמאה since she is also טמאה (even though there is an ע"א who says that she is טהורה) as in #1.

² The testimony of an ע"א is better than the testimony of an אשא. See ‘Thinking it over’. See however who states: ‘**ויל' דס"ד דהיא מהימנא טפי מע"א לפי שנשבית עמה יודעת יותר** [‘**And one can say that we may have thought that she is believed more than an ע"א, for since she was in captivity together with she knows more than the ע"א.**] Therefore we could not derive #3 from # 1 (only from #2).

says גמרא (חברת טמאה) even though she says טהור. The question is that the could (should) have said that #3 is superfluous for we know it already from #1 (רישא דרישא) as the shortly states regarding the question on #4.

תשובות answers:

ויש לומר דהכא ניחא לייה למנקט סתמא דהינו רישא –

And one can say; that here the גمرا is satisfied to state generally that the teaching of #3 is the same as the רישא (without being specific as to which part of the רישא -

משמעותם של מושגים דיברתו משטרית אפומא דעד אחד⁴

Because from (#2) the הַבָּרֶה (ר' פא ד ס' פא) we can also derive that based on the testimony of an ע"א (as we can also derive this from (#1) the הַבָּרֶה (ר' פא ד ס' פא) -

אבל בסמוך לא מצוי פריז אלא⁵ מרישא דרישא:

However shortly the cannot ask on #4 **only from** (#1) the רישא דרישא גمرا, therefore the states specifically גمرا דרישא מרישא.

SUMMARY

Case #3 can be derived from either case #1 or #2; however case #4 can only be derived only from case #1.

THINKING IT OVER

[#1] אַנְיָתָמָא וְחַבְרַתִּי טֹהוֹרָה states that if the woman says אֲשֶׁר (when she says מֵהִימָן) then certainly the woman says עַא and the woman says אַנְיָתָמָא and the woman says עַא נָמָן (when she said אַנְיָתָמָא is contradicted by the woman who says עַא נָמָן [#[3]]).⁶ Seemingly in #1 since the woman initially says she has the two types of testimony (for at the time of her testimony no one is contradicting her), however in #3 once the woman said עַא and the woman says אַנְיָתָמָא he is contradicted by the woman who says עַא מָכוֹחַשׁ from the woman so perhaps he will not be believed.⁷

³ טמאה אני does not address how we derive that she is believed to say (even though an ע"א contradicts her and says טהורה אני since she says שוויא אונפשה חתיכא דאיסורה) (טהורת שוויא אונפשה חתיכא דאיסורה) We cannot derive this from #2 (where she says only from #1 (where she admits that ע"א טמאה is so obvious (and known) that we do not need to derive it from elsewhere (even though previously said that we derive שוויא אונפשה חתיכא דאיסורה תוספות) (תוספות שוויא אונפשה וכו' (in #3) from #1 [see footnote #1])

⁴ Seemingly is answering that when the **הא מרישא שמעין גمرا** asks (generally, without being specific whether it means **סיפה דרישא** or **רישא דרישא**) that is because indeed the question is from either one (but not that it excludes the **רישא דרישא**).

⁵ We cannot derive that (even against an ע"י) except from רישא דרישא (for in the other two cases she is claiming *תמהא*). (חברתי *תמהא*).

⁶ See footnote # 2.

⁷ See Zion.

There is a monetary involvement

דאייכא דררא דממונא –

OVERVIEW

הפה שאסר הוא הפה גمراexplains the necessity for the case to teach us that משנה is effective by the case of שדה של אביך היה ולקחתיה ממנו מהנו שהתיר העדים שאמרו כתוב ידינו הוא זה אבל אנוסים היינו. We would not be able to derive that the עדים are believed to say (הפה שאסר) from the fact that the buyer is believed to say (הפה שאסר) ולקחתיה מהם (on account of the buyer). The reason is that by there is a העדים שאמרו דררא דממונא, however by there is no שדה זו. Our explanation explains this difference.

פירוש¹ רביינו חננאל שהאומר הוא מוחזק בשדה אבל העדים אין בידם כלום:

The explained that in the case of ר"ח שדה זו של אביך היה he is believed because the one who is saying שדה זו כו' ולקחתיה ממנו is in possession of the field, therefore the supports his and is effective; however the witnesses are not in possession of anything (they are not in possession of the money which the may owe the לוה); we may have thought that in this case הפה שאסר is insufficient. Therefore it was necessary for the משנה to teach us that הפה שאסר is effective even if he is not a מוחזק.

SUMMARY

There may be more reason to say הפה שאסר if one is a מוחזק than if he is not a מוחזק.

THINKING IT OVER

The explains that by ר"ח שדה זו וכוי he is the מוחזק, therefore the is effective; seemingly implying that the preserves the status quo where the money is.² However, the same is by העדים (and the אבל אנוסים היינו) when they say (פסול שטר) they also maintain the status quo that the money remains by the בחזקתו לוה. What is the difference between the two?!³

¹ דררא דממונא (ב"מ ב,ב רש"י) means a loss of money, therefore he explains גمرا here to mean that since the buyer will suffer a loss if he says שדה זו של אביך היה so as not to suffer a loss; however the suffer no loss when they say כתוב ידינו הוא זה, therefore it is possible that they did not [necessarily] intend to say אבל אנוסים היינו. However, interprets ibid to mean that דררא דממונא (because each one has a legitimate claim), therefore here too prefers the ר"ח פ' ר' ר' ד mammna that means he has a monetary interest and therefore as a there is more reason to believe him. See 'Thinking it over'.

² See (end of) footnote #1.

³ See איילת השחר ב"ה והנה מדברי הר"ח.

אבל הכא דליךא דררא דמונא¹ לא –**However here, where there is no; דררא דמונא לא****OVERVIEW**

הפה שאסר הוא הפה explained that if the would teach us the rule of דררא regarding the case of שדה זו שלא אביך הי' ולקחתיה הימנו [where there is a case of שדה זו שלא אביך הי' ולקחתיה הימנו], we would not know that in the case of העדים שאמרו כת"י זה אבל אנוסים [since there is no evidence that they would be believed on account of הימנו וכו' משנה דררא דמונא in that case]. asks that there is a better reason why the needs to teach us the rule of הפה שאסר in the case of העדים שאמרו.

תוספתו asks:

קשה לרבי שמואן בן אברהם הא איצטראיך גבי עדים לאשמעין -

The has a difficulty; but it is necessary for the to teach us regarding the case of העדים שאמרו –

דמחיימי בmaggo לפסול השטר -

That the are believed with this to invalidate the שטר and we cannot derive it from the case of שדה זו (even if we disregard the distinction of דררא דמונא –

זהא אף על גב דברי מאיר פלייג אסיפה² מודה ברישא:⁴

For we see that even though משנה ר"מ argues with the ruling in the regarding the העדים שאמרו ר"מ admits regarding the סיפה (of רישא) (that in that case we do say⁵ **הפה שאסר**.

SUMMARY

The העדים שאמרו could have said that it is necessary to mention the case of

¹ See previous תוס' ד"ה דאייכא for an explanation of the meaning of (according to).

² Others amend this to read: מאיר מודה ברישא פלייג אסיפה.

³ The refers to the case of ר"מ (יה,ב) where the there states that ר"מ is of the opinion that the הפה maintains we do not say ר"מ (יה,ב) where the there states that ר"מ is of the opinion that the העדים are not believed to claim הימנו. The reason maintains we do not say ר"מ because there is (see יט,א) that in this case is (see יט,א) because there is (see יט,א) meaning that a is not effective against a. Similarly the of the is not effective against the . See ‘Thinking it over’.

⁴ The refers to the case of ר"מ (יה,ב) where we do not find that ר"מ argues with this ruling.

⁵ question is that we do not need to distinguish between the cases of העדים שאמרו by saying there is no but there is by דררא דמונא (a distinction which is not accepted), but rather that there is a who actually maintains that we say only by and not by ; therefore it is obvious that the needs to inform us that notwithstanding this, the maintain that by we do say even to invalidate a . See ‘Thinking it over’.

negate the view of ר"מ.

THINKING IT OVER

ר"מ asks that the **סיפה** (of **עדים**) is necessary in order to negate the view of ר"מ.⁶ Seemingly this is an answer if we maintain **א"צ** **לקיימו**;⁷ however if we maintain **צרייך** **לקיימו** then (if not for the distinction of **דרורא דממןנא**) there would (seemingly) be no reason why the **עדים** should not be believed with the **הפה שאסר**. Perhaps the **צרייך** wanted to explain the **צרכיותא גمرا** even according to the **מ"ד** that **צרייך** **לקיימו**, so what is question?!⁸

⁶ See footnote #5.

⁷ See footnote #3.

⁸ See **בית יעקב** (**ע"ד**).

נשביתי וטהורה אני למה לי –**נשביתי וטהורה אני מה need to mention the case of Why do I****OVERVIEW**

איסור גمرا asks that once the הפה שאר taught us that משנה is effective even by (אשת איש היהי וגרושה אני) why is it necessary to teach us the rule of הפה שאר in the case of (which is not as strict as א"א). The if נשביתי וטהורה אני wants to teach us that in the case of משנה testify later that she was nevertheless עדים Our clarifies why גمرا did not initially offer an alternate answer.

תוספות asks:

וקשה לרביינו שמesson בן אברהם אמר לא משני –

The has a difficulty; why did not the answer גمرا mentions the case of נשביתי וטהורה אני –

משום דברי למיתני סיפה אם יש עדים שנשבית ואמירה טהורה אני אינה נאמנת² –

Because it wants to teach us the, that if there are that she was captured and she claims טהורה אני, she is not believed.³

תוספות answers:

יש לומר דמשום הא לא אctrיך דסיפה דמתניתין שמעין לה –

And one can say; that on account of this aforementioned teaching by a השוויה, for we derive this from the case of our משנה –

דקתני סיפה⁴ עיר שכבשה כרכום⁵ כל כהנות שנמצאו בתוכה פטולות –

Where the teaches in the, 'a city which was captured by a all כרכום

¹ The גمرا then challenges this answer (and offers an alternate answer).

² This is that even though the עדים do not testify on her (נשביתי), nevertheless she is not to say טהורה אני. The משנה is teaching us the rule that a השוויה לכהונה is (therefore) there is no (see מיגו) 'Thinking it over' #3). This would be even a greater according to Tos' נג, ב"ה שתי that the case of נשביתי. This would be even a greater according to Tos' נג, ב"ה שתי that the she is not aware that there are עדים שנשבית וטהורה אני and nevertheless she is not believed. See 'Thinking it over' #2.

³ The advantage of 'a city which was captured by a all כרכום' answer is that there would not be the challenge which the poses (see footnote #1). [In addition, according to the גمرا's answer that even if came later, the she is a leniency (by); however according to 'a city which was captured by a all כרכום' answer the she is not (even if she was not aware of the עדים) is a strictness. חומרה הידוש השוויה is only אטרורה מדרבנן (and consequently in some cases we are lenient by a השוויה) therefore the of a city which was captured by a all כרכום is greater than the of a city which was captured by a all כרכום.]

⁴ See 'Thinking it over' #1.

⁵ 'a city which was captured by a all כרכום' means a siege (see 'a city which was captured by a all כרכום'). The city was captured after it was besieged by gentiles.

the that are found within the city are unfit for 'כהנים כהנות -'

ואינה נאמנת לומר תורה אני:

And she is not believed to claim ⁶תורה אני.

SUMMARY

We can (also) know the ruling that if there are **עדים שנшибית**, she is not believed to say **תורה אני**, from the **כרcum משנה** of **עיר שכבשה**.

THINKING IT OVER

1. states that we would know the rule that if **עדים** testify that she is not from the **עיר שכבשה** **תוספות**.⁷ Seemingly could have said that we know it from the **סיפה** of **תוספות**, which must be discussing a case of **נאמנה על עצמה** (for that is why she is not believed); why did he find it necessary to cite a later **משנה**, when he could have cited an earlier **משנה**?!⁸

2. According to footnote #2 answer is not understood, since from the **תוספות** we derive a greater than from the **הידוש**. The **תוספות** teaches us that even if she said **ואם יש עדים וכו'** **אינה נאמנת** without knowing that there is **עדים שנшибית** (which seemingly shows that she is honest), nevertheless she is not believed to claim **תורה אני**. We cannot derive this from **הכרcum משנה**. Seemingly how did he answer his question?⁹

3. asks that the **הידוש** should have answered that the **הידוש** is that if there are **עדים** that she is a **גמרא**, she is not **נאמנת**.¹⁰ Seemingly this can be derived from the **רישא** regarding **הפה שאסר עדים א"א** **היה וגורשה אני** that if there are **עדים** she loses her **שבوية**; why is it necessary to state **ואם יש עדים שנшибית וכו'**?!¹¹

⁶ She is not believed to say **תורה אני** since we are all **עדים** that they were captives. We can derive from there that a woman is not believed to say **תורה אני** (**נшибית**) when there are **עדים**.

⁷ See footnote # 4.

⁸ See [האריך.]

⁹ See (ז"ט) (ע"ד).

¹⁰ See footnote # 2.

¹¹ See **איילת האבים**.

שתי נשים שנשבו למא לוי –

Why do I need to mention the case of two women who were captured

OVERVIEW

The Tosafot גمرا asks¹ why is it necessary for the תנא to teach the ruling regarding two women who were captured. [The answers, to teach us that we are not חישין גمرا explains why the Tosafot could not have told us a different reason for the teaching us the rules regarding משנה שנשבו.

תוספות responds to an anticipated difficulty:

דאילא אשמעין² דאית נאמנת על חברתה –

For if the wants **to inform us that one woman is believed to testify regarding her friend** that she is טהורה, it is not necessary to teach us the ruling of ב' נשים שנשבו –

הא בהדייא תנן (לקמן כי, א) **דאיפלו עבד וسفחה נאמנים:**

For the explicitly states later that even a slave and a maid are believed to testify that their mistress is טהורה. Therefore the needs to give the reason that the ב' חידוש גمرا is that their mistress is נשים שנשבו. לא חישין לגומלים.

SUMMARY

We can derive the ruling that a woman can testify regarding the טהרה status of another woman from the משנה נאמנים of ב' נשים שנשבו.

THINKING IT OVER

1. What would be the advantage if the Tosafot גمرا gave explanation³ that the חידוש is that a woman is believed to testify?

2. According to רב פפא who explains that the משנה of ב' נשים שנשבו is where there is an ע"א who testifies the opposite of the woman, then this that the woman is believed to say even against an ע"א cannot be derived from the following (איפלו עבד וכוכ' of) משנה!⁴

¹ This question is part of the answer that it is necessary to state the משנה גשייתי וטהורה אני משנה since the wanted to teach us the rule of ב' נשים שנשבו for some (as of yet) undetermined purpose, which the גمرا is currently questioning.

² See 'Thinking it over' #1.

³ See footnote # 2.

⁴ See footnotes # 2, 3, 4 (עד ז' בספר מים עמוקים בד' נשיית).

**וכן שני אנשים למה לי משומם דברי למיתני פלוגתא דרבי יהודה ורבנן –
Why do I need the case of **תנא** because the wants to teach the dispute between ר"י ורבנן?**

OVERVIEW

וכן שני אנשים וכו' גمرا explains the reason the case of משנה teaches the case of משנה that we are not though we already know from the case of משנה that we are not because the wants to teach us the dispute between ר"י ורבנן whether (לגומלים) Our讨讨论es the implication of this answer.

אבל בשתי נשים משמע שלא פליג רבי יהודה¹ משומם דברוביה הקילו² -

שתי נשים in the case of ר"י does not argue (רבנן since the were lenient regarding a **שבואה**, therefore agrees with the **חכמים** שנשבו; that a single woman is believed to testify that a single woman is believed to testify that Rabban Gamliel).

(עלין להונא שבואה asks (on this assumption that we are more lenient by a than by שבואה): **וקשה דלקמן ז"נ, א) אשכחן איפכא דמסיח לפוי תומו³ נאמנו בתרומה אפילו על פי עצמו -**

And there is a difficulty; for later we find the opposite (that we are stricter with a than with a single woman); **for regarding one is believed for even regarding himself -**

כదאמר גבי יוחנן אוכל חלות⁴ דהעלהו רבי להונא על פיו -

As the relates regarding רבי elevated this גمرا who ate 'חלות' that (this is regarding where we are lenient by a **חומרה\הונא** on his own testimony) (Masich lifi tomo) -

וגבי שבואה תנוי לקמן ז"נ, ב) הכל נאמנים להעידה חז' מבעל⁵ ומוקי לה במסיח לפוי תומו -

¹ If we were to maintain that a shevoh also requires two (like by a Cohen) then the should not mention the case of Cohen altogether, and the between R' Yehuda and Rav should be mentioned (only) regarding shevoh. [This reasoning is logical if we assume that shevoh is more lenient than Cohen.] See 'Thinking it over' # 1.

² Regarding a we do not know that she was violated, therefore even if one (even a woman) testifies that she is it is accepted. However regarding accepting someone (whom we do not know at all) to be a Cohen requires two **עדים**.

³ means one who is speaking innocently in passing; he is merely relating something without having a specific agenda why he is saying it (he is *not testifying* that it is true). In many instances we believe one who is Masich lifi tomo, even though we would not believe him if he is testifying (for instance – a gentile).

⁴ The case there is where related; 'I remember as a child they would take me out of school and immerse me in a **מקרה** in order that I should eat **חלות** in the evening and my friends would call me **'יוחנן אוכל חלות'**.

⁵ The actual there is, **חו"ז מהימנה ובעל**, meaning except for herself and her husband. The husband is considered is if he is the wife. Here (by shevoh) we see that the husband (who is like the wife) is not believed even because it is considered that he is testifying on himself, however by we do believe him even regarding himself

However, regarding a בריתא we learnt in a later; ‘everyone is believed to testify on her behalf (that she is שבואה except for her husband’, and established this in a case of מיסיח לפי תומו. It is evident that is not believed regarding שבואה; however is believed regarding כהונה. This contradicts what initially said that שבואה is more lenient than תרומה.

וחספה offers a partial solution:

ומיהו למי דמוקמיין⁶ פלוגתייהו במעליין מתרומה ליוחסין⁷ ניחא –

However, according to the view that established that the dispute between ר"י and ר' רבנן is dependent whether we elevate from מעלה לכהונה ע"פ ע"א (whether we are dependent on it; it is understood –

דעתמא דמחמיר רבבי יהודה טפי בתרומה מבשבואה משום דמעליין מתרומה ליוחסין⁸ –

That the reason is stricter by תרומה than by שבואה (where even an Asheh is believed) is because we are just as we do not accept by מיסיח לפי תומו as by מעלה לכהונה ע"פ ע"א (this is the view of ר"י, and according to we would not be by just as we do not accept by שבואה –

אבל רבבי דמיקל טפי בתרומה במיסיח לפי תומו –

יוחנן (as by מיסיח לפי תומו in a case of רבי who is more lenient by תרומה – (אוכל חלות –

היינו משום דקסבר דין מעליין מתרומה ליוחסין כדאמר לך מנ⁹ –

That it is because גمرا states אין מעליין מתרומה ליוחסין רבי later (this is the partial resolution if we maintain that the argument between ר"י ורבנן [regarding מילוי מתרומה ליוחסין] is whether מילין לכהונה ע"פ ע"א –

אבל למי דמוקי פלוגתייהו משום גומלים¹⁰ קשה –

מיסיח לפי תומו if he is.

⁶ כד, ב.

⁷ The dispute (between ר"י ורבנן) is whether when we see someone eating תרומה is that sufficiently convincing that he is a Cohen and his children are of a pure genealogy and are permitted to marry Cohenim, or not.

⁸ ר' does not allow for someone to eat תרומה on the basis of an Asheh because we are concerned that if people see him eating they will consider him a Cohen. All agree that two עדים are required to achieve the status of a Cohen. [We find that regarding extra stringencies were implemented, therefore we require two עדים (as opposed to שבואה and by extension) since we require two עדים for תרומה.]

⁹ תרומה maintains that מילין מתרומה ליוחסין (ר' according to this explanation) who is of the opinion that תרומה is more lenient than by שבואה. Similarly, is believed by שבואה and not by תרומה. However, רבנן maintains that we are more lenient by תרומה (who is of the opinion that אין מילין מתרומה ליוחסין) and he argues with רבנן regarding cases like שבואה (who is of the opinion that מילין מתרומה ליוחסין). Regarding שבואה (who is not believed [even by the husband]). Regarding there is no difference between שבואה and תרומה (according to רבנן and an Asheh is believed).

¹⁰ See later on this גומלים means they repay each other; you testify on my behalf (that I am a Cohen) and I will testify on your behalf (that you are a Cohen). maintains Chiyushin גומלים and therefore since they each testify on the other we are concerned that there is collusion here and they are not believed; however the Rabbanim are not concerned for גומלים.

ר"י ורבנן according to those who establish the dispute between (whether we are concerned for cohenah shvahah is dependent on whether we are concerned for cohenah shvahah or not; the difficulty remains (why is more lenient by regarding cohenah shvahah as opposed to cohenah shvahah [that by where we are cohenah shvahah is more strict by cohenah shvahah].).

תוספות answers:

ויש לומר דבתרומה דרבנן דוקא הוא דמתכשר במשיח לפי תומו –

And one can say that it is only regarding that his testimony is acceptable by – משיח לפי תומו

כדמשמע בהגוזל בתרא (בבא קמא קיד,ב) אבל בתרומה דאוריתא לא¹¹:

תרומה by משיח לפי תומו however, regarding פרק הגוזל בתרא in it is not acceptable.

SUMMARY

טהורה agrees that an ע"א can testify for a she is shvahah that she is. If the reason, מעלה מתרומה לייחסן is because אין מעלה לכהונת ע"פ ע"א maintains ר"י that he is a Cohen. If his reason (for cohenah shvahah) will not be believed that he is a Cohen. Then we will be through משיח לפי תומו that we will be through מעלה לכהונת cohenah shvahah is because cohenah shvahah is only for cohenah shvahah.

THINKING IT OVER

1. Assumes that regarding even ר"י agrees that an ע"א is believed.¹² cohenah shvahah asks that it seems that we are more stricter by a than by (regarding cohenah shvahah). Let us therefore assume that indeed cohenah shvahah is stricter and cohenah shvahah certainly requires two by עדים; the reason the teaches it by ר"י cohenah shvahah which is more lenient than cohenah shvahah maintains אין ר"י (cohenah shvahah ע"פ ע"א)! cohenah shvahah (and certainly by a)¹³

2. Concludes that משיח לפי תומו is believed only by תרומה דרבנן TosfosInEnglish.com

¹¹ According to this answer, cohenah shvahah are stricter than cohenah shvahah; therefore an ע"א is only believed by a cohenah shvahah and not by cohenah shvahah (where we are cohenah shvahah); however cohenah shvahah is more lenient than cohenah shvahah regarding cohenah shvahah (since by cohenah shvahah there is a cohenah shvahah which is not applicable by cohenah shvahah). See 'Thinking it over' # 2.

¹² See footnote # 1.

¹³ See פנ"י.

מיסיח שבועה (where *messiah lifi tomo* is believed) is more lenient than תרומה דרבנן (where *messiah lifi tomo* is not believed).¹⁴ However, regarding the testimony of a קטן the the testimony of a קטן teaches us that a קטן is believed by a קטן even if he was not believed.¹⁵ Regarding however a קטן is not believed.¹⁶ How can we resolve this contradiction whether תרומה דרבנן or שבועה דרבנן is more lenient?!¹⁷

3. Assuming that the מחלוקת between ר"י ורבנן (regarding הוי שבועה ע"פ ע"א or not; what would be the ruling regarding תרומה if only one testifies that someone is believed according to ר"י or not? How would that fit in the words of ר"י that אין מעליין לכהונה ע"פ ע"א?

¹⁴ See footnote # 11.

¹⁵ See that נזב.

¹⁶ See which states בוגדלוּ מה שראו בקטן וכוי לאכול בתרומה וכוי משנה כח, א. However he is not believed when he is a קטן even though this is only states there on the גמרא תרומה מדרבנן.

¹⁷ See and ר"א מ"ת אות שכג חידושי בתרא.

אבל אין נאמנו להשiao אשא –

However he is not believed to marry him to a woman

OVERVIEW

The ברייתא states that if there are two people (each of them) claiming that he and his friend are כהנים; the rule is that they are believed to allow each other to eat תרומה; however, they are not believed to the extent that their friend can marry a woman. The testimony of a single witness is insufficient. There is a dispute between חוספות רש"י and as to what is the concern that should prevent him from marrying (if his יהום is based on the testimony of only one). עד

פירש בקונטרס¹ משום חשש ממזרות² ונתינות³ –

explained the reason he cannot marry is **because of the concern** that he may be either a **נתין** or a **מזר** (who are both forbidden from marrying with Jewish people).

תוספות asks:

וקשה דלהכי ליאכ למיחש כדאמרין בהחולץ (יבמות מה, א ושם) –

And this explanation is difficult, for we are not concerned for this; that the person is either a **נתין** or a **מזר** state in רבא as, נתין מזר or a **רביה** and **רביה** in פרק החולץ.

- גבי עובד כוכבים ועובד הבא על בת ישראל⁴ דאמרין לייה⁵ זיל גלי או נסיב בת מינך⁶ –

Regarding a gentile or a slave who had relations with a Jewish woman, that we say to this child (born from this relationship) **either go away or marry a woman similar to you** (who is also born from a **רביה** or a **נתין**) – עכו"ם ועובד הבא על בת ישראל ועובד הבא על בת ישראל.

- משמעadam ילך למקומ שאון מכיריהם אותו ישיאו בת ישראל⁷ –

¹ מיוחסת, מעלה היא ביוחסין רש"י כה, ב ד"ה להשiao. It is not clear what means here where he writes because the **חשש ממזרות** applies to a **ישראלית** as well, or does he mean only a **נשות** (which would seemingly contradict what he writes later on). See פנ"י, הפלאה וכו' כה, ב (פנ"י, הפלאה וכו' כה, ב).

² A **מזר** is one who is born from a relationship where there is an such as a brother and sister or having relations with a married woman (also if one or both of the parents are **מזרים**).

³ A **נתין** is a descendant from the **גבעונים** (who are from the **ז' אומות**) who converted under false pretenses. See beginning of פרק אלו נערות כתא, ותוס' רש"י there for a detailed explanation.

⁴ There is a dispute there as to the status of the offspring of a **עובד הבא על בת ישראל**, whether s/he is a **מזר** or not. (רביה) maintains he is not a **מזר**, and advised him to go to elsewhere where they do not know of his status and he will claim that he is a **ישראל** and will be able to marry a **ישראלית**.

⁵ The people who know his status will not offer their daughters to him (even though he is legally on account of his tainted lineage since his father is an **עובד**).

⁶ That woman will agree to marry him because she is in the same predicament (no one wants to marry them).

⁷ See חוספות פסחים ג, ב ד"ה ואני where he derives from this that if someone (whom we do not know) comes and claims to be Jewish, we believe him (even) without supporting evidence.

It is apparent from that if he will go to a place where they do not recognize him they will allow him to marry a - בַת יִשְׂרָאֵל

אֵל עַל פִּי שָׁאֵן מְכֻרִים וְלֹא יִסְתַּפְּקוּ בָּו⁸ בְּנֵתֵינוּ וּמִמֶּזֶר⁹ -

Even though they do not recognize him; and they will not doubt his status and be concerned that perhaps he is a נזיר or a מזוזר.¹⁰

מזרות נתינות נוספת offers an additional proof that we are not concerned for:

ובן גבי ההוא¹¹ דאתא لكمיה דרבנן יהודה¹² –

And similarly concerning the one who came before ר"י -

ואמר ליה נאמנו אתה לפסל עצמד ואי אתה נאמנו לפסל בגין¹³

And ר' told him you are believed to disqualify yourself (that you are not Jewish, since you did not go through a proper conversion), **however you are not believed to disqualify your children;** they retain their - **חזקת כשרות** -

משמעותו ובניו היו בחזקת כשרים¹⁴ אף על פי שלא היו מכירים בהם –

כשרים, It is apparent that this person and his children were presumed to be even though they were not recognized as to their lineage. The question remains what the **אבל איןנו נאמן להשיבו אשה** means when it states גمراא.

איןנו נאמנים להשiao אשה תוספות offers his explanation of תוספות:

¹⁵ – ונרא לרביינו תם דלהשייאו אשה דקאמר היינו להשיאו בדוקה מד' אמהות

להשייאו ר"ת that when the states he is not believed **גמרא אשא**, it means regarding marrying him to someone whose ‘four mother have been checked’ -

כדיון בעשרה יוחסין (קדושיםין ז' ע"א ושם) **הנושא אשה**¹⁶ **צריך** **шибודק** **אחריה ד'** **אמות** –

⁸ If as ר' states that we do not allow someone to marry unless there are two עדימִם to support his claim that he is כשר; what is accomplished by him going to a place where they do not know him, if they will require proof as to his status before they allow him to marry, they will find out that his father was an עכ"ם.

⁹ This contradicts what ר' states that even if someone testifies that his friend is a כהן, he will not be allowed to marry a מומר out of concern that he may be a נטהן or a נטה.

¹¹ יבמות מז א.

¹² The person confessed to ר' that initially he was a gentile and he converted on his own by himself, without going to a ב' ב"ג as is required.

¹³ See there that ר' הונחה is of the opinion that עכ"ה ברא על בת ישראל בנו לא מזכיר.

¹⁴ The reason he is not נאמן to disqualify his children is because up until now they were presumed to be כשרים. They achieved this חזקה כשרה without any עדימ to support it (since indeed they may not be כשרים according to the father). This proves that we do not suspect anyone who claims to be a יישראלי that he is unfit to marry.

¹⁵ See following footnote #17.

¹⁶ The text in our manuscript reads **אשר כהנת משנה** (see footnote # 31).

As we learnt in a [כהנת] woman is required to check four mothers' in her lineage¹⁷ -

ואין נאמן אם ישא אשה בדוקה להכשיר בתו לכון שלא בדיקה¹⁸ אלא יצטרך לבדוק אחריו -
And if this (whose friend testifies that he is a would marry an כהן) the one who testified that he is a כהן, is not believed to the extent that his daughter should be to marry a כהן without, but rather it will be necessary to check the mothers of this alleged – כהן

offers an alternate restriction on this alleged כהן:

והוא הדין דעתו למימר ואין נאמן להכשירו לעבודה¹⁹ -

And indeed the could have said that the גمرا ע"א is not believed to permit him to do the עבודה, without two testifying that he is a כהן – כהן

continues with the explanation of the גمرا:

ואותה בדיקה²⁰ היא משומן חללות²¹ דין²² מכירין ישראל חללים שביניהם -

And the purpose of this is on account of, since the Jews are not so aware of the that are amongst them -

ולא משומן ספק ממזרות ונתינות דלהא לא חיישנו צפירותישת²³ -

However the for as I explained we are not concerned for this type of a פסול.

proves that the is because of חללות but not because of מזרות ונתינות:

וכן משמע התם דקאמר דהיא אינה בודקת בדיקת דלא הוזהרו בשרות לינשא לפטולים -

¹⁷ A who marries a כהן and want to be sure that his child is also considered a כהן must check out the יוזס of his intended wife. He is required to ascertain that none of her forbearers are (on account of being a חיללה). The ones to be checked out are; her mother, her mother's mother, the mother of her maternal grandfather (her mother's father's mother) and that mother's mother. Similarly on her father's side he must check out her father's mother and her mother, the mother of her paternal grandfather and her mother; four on each side for a total of eight.

¹⁸ Once a marries an כהן then his offspring are כהנים מיהוסם בדיקה and require no further בדיקה; however the daughter of this who is supported only by an ע"ג would require בדיקה on her father's side (but not on her mother's side for they were already).

¹⁹ The advantage of saying as opposed to is twofold; firstly we are discussing the כהן (not his offspring) and secondly the expression is misleading, for he can marry anyone he chooses, it is just that his children are not בדוקין. See footnote # 35 for an additional advantage..

²⁰ גمرا is referring to the בדיקות in our that the daughter of this alleged will have to go through to be considered a (see footnote # 18).

²¹ A or חיללה is one who is born from a כהנה marries a child (male or female [and the wife]) is a חיללה. It is forbidden for a male to marry a חיללה as it is written (ז, ז) זונה וחללה לא יקחו.

²² ל.עיל. י"ב, ב.

²³ See footnote # 10.

And indeed it appears so from the there²⁴ which states that the woman is not required to check the lineage of the husband since are not prohibited from marrying²⁵, כהנים פסולים this is correct if the concern is regarding the - חללים of פסול

ואין משום מمزירות ונtinyות הא ודאי הוזהר דהשוה הכתובacha לאיש לכל עונשין שבתורה -
However if the purpose of the there; ממזירות ונtinyות is the concern of there certainly the woman are prohibited, for the תורה equates a woman to a man regarding all punishment of the. תורה.²⁶

challenges his view that the בדיקה is only because of:

ואם תאמר אי משום חללות בודקין לא יבדקו אלא יהוס אביה בלבד -²⁷

And if you will say; if we check only because of, they should only check the father's genealogy, but not the mothers' -

דאפילו היה אם חלהה כשרה היא על ידי אביה -²⁸

For even if her mother was a הלהה the daughter will be through her father who is a - כשר

דלאכלי עלמא²⁹ בני ישראל מקוה טהרה לחללות³⁰ -

For according to everyone חללות מקוה טהרה for בני ישראל are a So why is there a need to check her mother's genealogy [if that mother's husband is a].ישראל כשר

challenges his view that the answers:

ויש לומר מאחר שהצריכו לבדוק את יהוס האב משום חללות³¹ -

And one can say; that since they required checking out the of the father because of the concern of, therefore -

²⁴ קדושים ע,ג.

²⁵ A כהנה of איסורי חיתון (and טומאה) may marry a כהן חיל. The prohibition regarding כהננת כשרה apply only to the male בנות אהרן, but not to the כהנים בני וירא [אמור] כא,א).

²⁶ A woman is different from a man only regarding מצוח עשה שהזמן גרמא; however women are obligated to keep all מצוחות including ה' חיל. Regarding a כשרה she may marry a just as a כשרה may marry a כשרה.

²⁷ We should check only the mothers on her father side (her father's mother and grandmother, etc. (see footnote # 17), but not the mothers on her mother's side.

²⁸ See 'Thinking it over'.

²⁹ Regarding the reverse case if a כהן marries a ישראל there is a dispute between the חכמים who maintain the child is a ר' דוסטהי who maintains the child is a כשר; however regarding a כשרה who marries a everyone agrees the child is a כשר for the hallos כשרה.

³⁰ A child is a חיל, if his parents had a relationship that was אסור (a כהן married a גירושה, or if his father is a כהן (even if he married a כשרה). However if his father is a כהן and married a כשרה, the child is כשר לכהננת.

³¹ The כתובות of משנה regarding a כהנת (see footnote # 16), meaning that her father is a (and his father, etc. are all כהנים). It is possible therefore that her father's mother was a חיל, then her father is a (because his father who is a כהן married a illegally and their offspring, the כהנת father, is a חיל) and so is she.

אגב חללות הוצרכו לבדוק כל פסול שבה גם של ממזרות ונתינות -

Since there are already checking for the **חללות** **הottenham** required to check out any possible she may have, including **מمزירות ונתינות**.

ומולה ה' שמעתין דמצרכי בדיקה להשיא בתו לכהן³² אתיא כרבי מאיר - qualifies the aforementioned:

וכולה ה' שמעתין דמצרכי בדיקה להשיא בתו לכהן³² אתיא כרבי מאיר -

And this entire which requires in order to marry his daughter to a **ソギヤ** **בדיקה** who requires this when marrying a **ר"מ** is according to **כהן** - כהנת a בדיקה when marrying a **ר"מ** who requires this.

דרבנן פליגי עלייה התם³³ ולא מצרכי בדיקה ואמרי כל משפחות בחזקת כשרות הון עומדות -

For the argue there with and do not require, for they maintain all families have a **חזקת כשרות** -

ואין צריך אפילו עד אחד כדי להכשיר בתו לכהונה³⁴ -

- **כהן** And we do not require even one to permit his daughter to marry a

ומיהו להכשיר בנו או עצמו לעבודה צריך דלאו בחזקת כהונה עומד³⁵ -

However in order to allow his son or oneself to do the it is necessary to bring that he is a **כהן** for there is not presumption that one is a **כהן** as there is a presumption that she is (at least as a **ישראלית**) -

ומולה הוצרכו לבדוק כל פסול שבה גם של ממזרות ונתינות - offers an alternate opinion:

אי נמי אפילו כרבנן וביביצה עלייו ערער -

Or we can also say that our **רבנן** (who [generally] do not require this) but here it is a case where his was contested; people claimed he was not a **כהן**, in that case is required even according to the **חכמים** -

צדקה אמר התם³⁶ במלתיהם דרבנן במה דברים אמרוים שלא יצא עליו ערער قولין:

As the states there in the view of the 'when is this so (that is not required) only if his was not contested, etc.' however if his is contested בדיקה is required.

SUMMARY

The meaning of is that his daughter will not be considered a **אינו נאמן להשiaoasha** and will require בדיקה (according to **ר"מ**, or even according to the **רבנן**) if

³² interpreted the statement of ר"י to mean that his daughter will have to go through a process to allow her to marry a **כהן** (and we do not accept the testimony of an ע"א).

³³ קדושין עו, ב.

³⁴ We are not concerned even for פסול חללות and certainly not for פסול ממזירות.

³⁵ אינו נאמן להשiaoasha referencing what he said previously (see footnote # 19) that could have said (instead of ר"י) **ר"מ** This would be true even according to the **רבנן**.

³⁶ קדושין עו, ב.

his status is contested). Generally we are not concerned that a person may be a מזר or a נתין (even according to ר"מ); however we are concerned that they may be a חיללה.

THINKING IT OVER

תוספות asks if the concern is only of חיללות why is it necessary to check the ייחוס of the mother's side, since even if someone was a חיללה, nevertheless the rule is that מקווה טהורה לחוללות are a בני. ³⁷ However this is only if a ישראלי marries a חיללה, so however is forbidden to marry a חיללה and if he does the children are חיללים כהן, so therefore this whole concept does not apply here, since we are discussing a כהנת whose mother's husband is a כהן!³⁸ How can ask that we should not check out the mother's side?!³⁹

³⁷ See footnote # 23.

³⁸ See footnote # 16 & 31.

³⁹ See פרדס יצחק.

Mine is new and my friend's is old

שלוי חדש ושל חבריו יישן –

OVERVIEW

The mishnah cites a gemara which states, two donkey drivers come into a city and one of them said, ‘my produce is ‘new’ and my friend’s produce is ‘old’; my produce is not properly tithed and my friend’s is’; there is a dispute between the ר' רבנן and ר' יהודה whether or not he is believed. תוספות discusses what is the meaning and relevance of 新 and 老.

בפרק אף על פי¹ פירש בקונטרס דיש מפרשין משום עומר² –

states that there are those who explain in regards to the contradiction – עומר ר' –

there negates this interpretation:

ולאו מילתא היאadam כו מאי מתרץ בדמייא הקילו התינח דמאי חדש יישן מאיא איכא למימר –
And there is no substance to this explanation, for if indeed חדש means forbidden grain because of the time, what does answer³ that the חכמים are lenient by דמאי; this explains the contradiction regarding what can we say regarding the contradiction regarding and יישן!⁵

there continues to ask on this interpretation:

ועוד שלא מצינו בשום מקום שנחצדו עמי הארץ על החדש⁶ –

And in addition we do not fine anywhere (in the that are suspect regarding החדש). There is no need to testify that it is יישן and certainly no reason for the חכמים to say he is not believed that it is יישן.

¹ לקמן נוב ד"ה של'.

² The רבנן עומר (a barley meal) was brought on the second day of פסח. Until the עומר was brought it was forbidden to eat any grain that grew from the time last year's was brought. That grain is called החדש. Grain which grew before the עומר was offered may be eaten after the עומר. This grain is called יישן. It is old because it already grew before the עומר. Grain that took root before the עומר (of year 100) was offered is permitted to be eaten anytime (after the עומר of year 100 was offered) and is called יישן. Grain which took root after the עומר (of year 100) was brought cannot be eaten until the עומר (of year 101) is brought (and is called החדש until the עומר of year 101).

³ The רבנן posed a contradiction from the ברייתא of ר' יי' (where it appears that אני כהן בפרי) and the חכמים (where it appears that ר' יי' is not to the רבנן are). The רבנן answered that ר' יי' is not אבוי regarding but not regarding תרומה לזר (which is only a דין). However (if we assume that we are also discussing the איסור החדש by חישל לגומלים did not explain why ר' יי' did not explain why ר' יי' is not אבוי (which is a דין)).

⁴ דמאי is produce which is purchased from an הארץ. עם הארץ were חמייר מעשרים even though דמאי. Therefore if it is a ספק (like in our case) we are lenient.

⁵ תרומה לזר why is it different than the case of החדש.

⁶ We may buy produce from an ע"ה and need not worry that it may be החדש; it is surely יישן.

offers an alternate explanation:

ורבנו שמואל בן אברהם⁷ פירש זקאי אשביית -

– year שביעית is referring to; it was the new year and is permitted. **וקאמר שלי חדש וגדל בשבעית ואסור להשהותו אחר הביעור⁸ –**

And when he said my produce is new, he meant. It grew on and therefore it is prohibited to keep it after the time of – ביעור

ושל חבריו ישן וגדל בשנה שעברה –

And my friend's produce is and it grew in the past (sixth) year and is permitted. supports the view that new can be referencing **שביעית** –

ואשכחן ذكري לשבעית חדש דעתן במסכת שבעית (פרק ז' משנה ז') –

For we find that is called שבעית and pre is referred to as, for we learnt in a – מסכת שבעית in משנה ז'

ורד חדש שכבשו בשמן ישן ילקט את הורד –

A ‘new’ rose (that grew in which was preserved in ‘old’ oil (oil which was harvested before the new; he should gather and remove the from the and eat the before the and the can remain. In any event we see that we can refer to new and old respectively.

תוספות responds to an anticipated question:⁹

וכי משני בדמי הקילו בשבעית לא חש לתרץ –

And when answered, ‘they were lenient by’, he was not concerned to answer the contradiction from – שביעית

דפשיטה ליה להש"ס דרבנן יהודא מיקל בשבעית –

חיש **שביעית** and is not **גמרא ר"י** is lenient regarding – is **שביעית** by **ר"י** is not **לגומلين**. The reason by **לגומלין** –

משום דברתורה דרבנן יהודא חמירא להו שבעית כזאת בהניזקון¹⁰ (גיטין ז' א)

Since in the place where lived גמרא was very strict as the states in – חבריו ישן, therefore we can assume indeed that he is telling the truth that פרק הנזקון.

תוספות disagrees with this, as well:

⁷ The רשב"ם (רבינו שמואל בן מאיר) read this to be רשב"ש.

⁸ The term **ביעור** is used to indicate the time when **פירות שביעית** may not be kept (at home). This is when this type of food is no longer found out in the field for the animals to eat. The expression is **כליה להיה מן השדה כליה לבהמך מן הבית**.

⁹ Only answered the contradiction from **ר"י** (where is not **בדמי**, but not from **ר"י**).

¹⁰ The there cites a **ברייתא גמרא** that if one plants **שבת בשוגג**, he must uproot it (after **ר"י**) maintains that if one plants **שבת בשוגג**, he must uproot it (after **ר"י**). However if one plants **שבת בשוגג**, it can remain and we are not **גוזר**. The reason we are not **גוזר** according to **ר"י** is because in his area they were very strict regarding **שבת בשוגג**, therefore a **גוזרה** is not necessary. Similarly here too since they are strict regarding we believe him that **חיש לגומלין** is **ישן** and we are not **גוזר**.

וain נראה לרביינו תם דסתם עמי הארץ לא נחשדו אשכיעית -

And the ר"ת disagrees with this "פ", because generally ע"ה are not suspect regarding שביעית, so it is not even necessary that one חמר should testify on the other that his produce is not (and the חכמים cannot say שביעית - אינו נאמן).

דתן בפרק עד כמה (בכורות ל, א, ושם) החשוד על המעשר אינו חשוד על השביעית -

מעשר (שני) – one who is suspect regarding **פרק עד כמה** in **משנה** is not suspect regarding - **שביעית**

החשוד על השביעית אינו חשוד על המעשר -

- 'מעשר (שני) - One who is suspect regarding שביעית is not suspect regarding

אלמא דסתמא אינו חשודין בשביעית¹¹ -

It is evident that generally people (even ה"ע) are not suspect regarding – שביעית

תוספות responds to an anticipated question:¹²

ומישר דקתי הינו מעשר שני דאמשר ראשון חסודיו הס' -¹³

מעשר ראשון on **חשודים** are **ע"ה** for the **מעשר** which the **משנה** mentions (אינו חזוד על המעשר) is referring to only (which is bought to ירושלים),¹⁴ (which is given away to the **לויים** or **[כהנים]**) –

תוספות anticipates a difficulty:

ולא דתנו במסכת דמאי (פרק ג' משנה ד') ומינותי לה בהניזקין (גיטין סא,א) -

And regarding this which the משנה teaches in מס' דמאי and is brought down in פרק הבזקין

המוליך חיטין לטוחן כותי או לטוחן עם הארץ -

‘One who brings wheat to a miller or to a miller who is an - ע”ה כותי

- אין חושש לא משום מעשר ולא משום שביעית¹⁵

He need not be concerned neither for 'שבעית' מעשר nor for 'שביעית' שבעה -
דמשמע דחשודים על השבעית -

This seemingly indicates that **שביעית** are for **חשודים** ע"ה; otherwise why even

¹¹ If we would assume that ע"ה should have said that השוד על השביעית is סתם ע"ה are not the المعשר states that even one who is not responsible for the damage (see following footnote # 14) is (certainly) not liable.

¹³ They are suspect of not tithing [מעשר שני and also רשות] (see [see]).

¹⁴ Seemingly this means that if an "ה" sells you food outside ירושלים there is no concern that perhaps this is מעשר שני which must be eaten in ירושלים, rather one may eat it anywhere. See 'Thinking it over' # 1.

¹⁵ There is no need to be concerned that perhaps the קותי ע"ה substituted his own flour or wheat that was שבעית or טבל from which (was not tithed), in place of the wheat the יישראלי brought him to grind.

mention it; there can be no concern at all if they are not – חשוד על השביעית

תוספות replies:

אייכא למימר דמשום כותי נקט שבעית –

We can say that he mentions the concern of שבעית on account of the who is even less observant than the one who is not only like the but even on שבעית (which the one who is not – חשוד ע"ה is not – חשוד ע"ה)

תוספות offers an alternate answer:

אי נמי בודאי חשוד איירוי –

Or you may also say that the one who is discussing there is certainly suspect (we know in the past that he violated the prohibitions), but nevertheless we are still not concerned that he substituted his chittin for the other – חיטין שבעית חיטין

תוספות brings another case which we also have to interpret that it is discussing a case: **וכו ההייא דמייתיב פרק קמא דחולין ז"ז ואושט הנוטן לשכנתו עיטה לאפות וקידירה לבשל –**

And similarly that case which is mentioned in the first of פרק one; מסקנת חולין one who gives to his neighbor dough to bake or a pot of food to cook –

איינו חשש לשאור ותבלין שבה לא משומש מעשר ולא משומש שבעית –

He need not be concerned for the sourdough or spices, which the neighbor may add to the dough or the pot, neither that it is not that it is, for we assume that the neighbor will not exchange it with his own. This indicates that if the neighbor would use his own there is a concern for שבעית, however claims that are not ע"ה. We will therefore have to answer here as well that we are discussing a neighbor who is a friend.

תוספות rejected the claim that **חידש ויישן פ"י רשב"א** is referring to since **חשוד על השביעית** are not ع"ה.

תוספות continues to disprove the claim that **רשב"א י"מ** and the **רשב"א**:

ועוד קשה לרביינו שם דאי באיסור חדש או שבעית מיירוי –

איסור ר"ת has an additional difficulty, for if יישן חדש is relating to the of חידש (as the "maintain" maintains), the one who is testifying – **הזה ליה למימר של חבריו אינו חדש כדקאמר אינו מתוקן**¹⁶ –

Should have said mine is (and therefore prohibited [either because of **חידש** or **חידש ויישן**]) and **my friend's produce is not חדש** (but he need not say **חידש**), **just as he said – אינו מתוקן**

¹⁶ In the statement regarding the **פרשת תרו"מ** he says and the negative **מתוקן** or **חידש**, similarly here too by or **חידש** he should say the positive **חידש** and the negative (but not **יישן**). **שבעית**

has an additional question:

ועוד הקשה רビינו תם דלעיל דההיא משנה דחמריון תנו במסכת דמאי (פרק ג'¹⁷) -

גמרא asks the that prior to that (which the cites here) there is a **משנה in משנה** -

הנכנס לעיר ואינו מכיר אדם שם ואמר מי כאן נאמנו מי מעשר -

One who enters into a city and does not know anyone there and he asked; 'who here is trustworthy, who here tithes'?

ו אמר לו אחד אני אין¹⁸ נאמן איש פלוני נאמן הילך ולקח הימנו -

And someone said to him, 'I am not', however that person is, and he went and bought from him produce -

אמר ליה מי כאן מוכר ישן אמר ליה מי ששלחך אצלך -

The buyer said to this (the seller), 'who here sells', the seller answered him, 'the one who sent you to me' (the one who initially said, 'I am not') concludes -

אף על פי שהן כgomelin זה את זה¹⁹ הרי אלו נאמנים -

Even though it appears that they are in collusion, nevertheless they are believed. This concludes the citation from the there. asks -

ואין ישן היינו דעתך ביה איסור חדש או שביעית הילך קונה ממי ששלחו אצלך -

And if means that it does not contain or, how can he buy it from the sender -

והלא הוא בעצמו אומר שאינו נאמן²⁰ -

When the sender said on himself that he is not²¹ - נאמן

asks an additional question.

ועוד מדקא שאל להילך מי מוכר ישן מכלל שמה שקנה ממנו כבר היה חדש או שביעית²² -

And furthermore since he asked this seller, 'who sells' this indicates that what he already purchased from him was **חדש or שביעית** (for after this purchase he

¹⁷ It is actually in פ"ד מ"ו.

¹⁸ In the the first one said the he is not is; meaning if he said 'I am not' the rule is that he is not. See footnote # 20.

¹⁹ The first one said the he is not on but the second one is. The second one said he does not sell but the first one sells. Obviously these two are in collusion they refer to each other regarding and respectively.

²⁰ See footnote # 18. According to the in the there is no difficulty, for he never said, on the contrary he said 'I am not'.

²¹ However if merely means a better quality (as will soon say), then it is understood; since it has nothing to do with him. The second person told him that he can buy from the first person (and he will have to verify whether it is or and act accordingly [to be or to eat]).

²² The buyer bought from the second one; however this was not sufficient for he is looking for (not and not); however he only went to the second one because he is so obviously he sold him and not , what else does he want?! See 'Thinking it over' # 2.

asks now where can I get (ישן), but this cannot be that he bought - חדש או שביעית
והלא לא הlk אצלו אלא לפי שהוא נאמן -

For he only went to this seller because he was, נאמן but if he sold him he
 is not a **גאנן**.

תוספה offers an acceptable explanation:

ופירש הקונטרס²³ נראה לרביינו גם עיקר דלהשבich קאמר -

And it is the view of the that R"t that explanation is the correct one, that his intention of saying חדש וחברי ישן was to praise the produce of his friend that it is of a good quality (but it has nothing to do with איסור והיתר) –

תוספה responds to an anticipated difficulty:²⁴

ולרבותא דברי יהודה נקטיה דאך על פי שmagru את שלו ומשבich את של חבריו -

And was mentioned to show the novelty of position, that even though he is degrading his own produce and praising his friend's produce -

ומיחזי טפי בגומליין²⁵ אפילו הכל נאמני -

And it appears even more as if they are in collusion, nevertheless they are believed regarding לא חישין לגומליין for מותקן even in such a case –

תוספה asks:

ואם תאמר אם כן מי קשה ליה דרבנן אדרבן -

And if you will say; if indeed this is so (that there is a greater of חדש than what is the contradiction from the case of רבען (of רבען) where they are not (חיש לגומלים where they are not (חיש לגומליין to the רבען)) –

דלאה הכא הואichiisinon לגומליין דזומה שהן גומליין כדף רישית²⁶ -

Perhaps it is only here (by חדש as רבען where the because it is very likely that they are as I just explained!

תוספה answers:

²³ DSTHM ישן טוב מן החדש that R"t ד"ה של' See.

²⁴ If merely referring to the quality of the produce why does the mention it; it seemingly has no relevance להלכה.

²⁵ It is extremely unusual for a person to degrade the quality (שלוי חדש) of his own produce and praise his competitors (ושל חבריו ישן); the only plausible explanation is that they both have an ulterior motive; they each deprecate their own produce (both regarding its quality [שלוי חדש] as well as its permissiveness [איינט מותקן] in alternate cities in order that in one city one of them will be able to sell his wares and the other will sell them in the following city).

²⁶ See footnote # 25. In the case of אני כהן וחברי כהן, neither is defaming himself therefore the is small. However here where one is deprecating himself, it causes one to wonder, why he is doing it, and the obvious answer is on account of גומלים. Therefore by חייש לגומליין they are not but by כהן the are.

ויש לומר دائ לאו דחייבין לגומלים בעלמא משום הכל לא הו חיישין²⁷ טפי:

אני And one can say; that if the **חייבין** generally (in a case of **רבען** are not **గומלים** (because of this additional concern of by the **רבען** would not be more concerned for **גומלים**).

SUMMARY

The terms **חדש** ו**ישן** refer to the physical quality of the produce (but not regarding the **שביעית** or **חדש** or **איסורים**).

THINKING IT OVER

1. מעשר שני writes that **מעשר ראשון** for **חשודין** but not for **ע"ה** but not for **מע"ש** evident from elsewhere²⁹ that the **ע"ה** were not separating **מע"ש** as well. The explanation of here is that the **ע"ה** are not careful to tithe; however they will not eat or sell (מע"ש ניטלה תרומתו or **מע"ר** **חולין** as). Therefore instead of saying **מעשר ראשון** **חשודין** the **ם** implying also that they are not **מע"ר** **מע"ש** should have said that **ע"ה** are to sell from which **חשודין** (**מע"ר** **מע"ש**) was not separated but they are not to be **מאכילים** to others actual³⁰!

2. asks if **חדש** refers to **שביעית** or **איסור חדש** how can we understand the **תוספות** where the buyer asks again who sells **ישן**, for seemingly the buyer trusted the second man, so certainly he is not selling him **חדש** or **שביעית**.³¹ Seemingly we can say he trusted the second person only regarding **מעשר** and he was not concerned either regarding **חדש** because he would eat it later after the **עומר**, or regarding **שביעית** because he would eat it before the **זמן הביעור**. And now he wants to buy (and be it) in order to eat it either immediately (before the **עומר**) or after the **זמן הביעור**. What is question?!³²

²⁷ Indeed there is a difference in the level of suspicion whether they say **שליח חדש** or **אני כהן**; however the difference is not that great that there should be a difference in law, that in one case **חייבין** we are not and in the other **חייבין** we are (shli **חדש**). However regarding **ר"י** where we are not changing the **הלכה** we just are informing that **s"i** **ר"י** position that **לא חייבין** is true even in the case of **חוושש**, where there is seemingly more reason to be **חוושש**. However we are not distinguishing **הלכה** between the two cases.

²⁸ See footnotes # 14 & 15.

²⁹ See **סוטה מה א**.

³⁰ See **פרדים יצחק אותן מב**.

³¹ See footnote # 22.

³² See **כסא שלמה**.

אבי אמר לעולם לא תיפוך בדמאי כולי –

אבי said: ‘really you should not reverse; regarding **דמאי, etc.’**

OVERVIEW

ר"י ורבנן cited a ברייתא and a משנה in which it appears that גמרא contradict themselves whether we are or not. answered (that it is not necessary to reverse their respective views in the so that it should not contradict the but rather) in the which discusses which is stricter, maintains which discusses which is more lenient, since, however the which discusses which is more lenient, therefore is sufficient reason to be more lenient. It is apparent that maintains that the concept of is sufficient reason to be more lenient. will cite and explain why in other situations does not use the concept of to explain the leniency.

חוטפה anticipates a difficulty:

והא דאמר אבי בפרק במה מדליקין¹ (שבת זז כג,א) ספק² דבריהם לא בעי ברכה -

And that which explains in (דמאי regarding that a **מדליקין) (regarding **ברכה** of the does not require a **רבנן**)**

רבא אמר רוב עמי הארץ מעשרין הן³ -

– ברכה disagrees and says that since **רובה ע"ה מעשרין הן** there is no need for a –

mentions an additional difficulty:

וכו בפרק אף על פי (יקמן יוו,ב) משני אבי וודאי דבריהם עשו חיזוק ספק דבריהם לא עשו חיזוק -

And similarly in the strengthened their ruling if it was an unequivocal enactment;⁴ however regarding a ‘doubtful’ enactment (such as they did not strengthen their ruling -

רבא אמר בדמאי הקילו -

¹ The there is discussing why one does not make a when he is from when he is (as one makes a when he is ‘regular’).

² requires only because it is a whether the was or not. Therefore it does not require a. However such as as requires a. But requires a.

³ The question is why did not answer as did that a is not required, since did that a is not required, since maintains here. It seems from that that does not agree that is sufficient reason to be lenient, contrary to what he says here!

⁴ The there stated (in reference to which is that the strengthened their rulings (even) more than rulings. The challenged this from this where is not by (even though it is a like).

⁵ The obligation of מדרבנן is but it is a כתובה, not based on a ספק.

רבא answered that the **חכמים were lenient by דמאי** (and were not **לגומلين**) since ⁶ (חושש לgomlin) **רובה ע"ה מעשרין** ⁷ הון.

תוספota clarifies; the reason there did not use the same answer as **רבא** - **לא משום דלית ליה לאבוי דרבא דהאanca אית ליה**

רוב ע"ה that **רבא** disagrees with **אבוי** **רבא**, for here **אבוי** agrees with that **רוב ע"ה** **מעשרין** הון -

ועוד דברי לה ה מביא (ביצה לה,ב) **דייק ממנתניתין**⁸ **דרוב עמי הארץ מעשרין** הון -

רוב ברייתא infers from a **that** **גمرا** **פרק המביא** **so obviously** agrees to it - **אלא דאית ליה לאבוי דכל ספק דבריהם אף על גב דיליכא רוב לא בעי ברכה וגם לא עשו חיזוק** -

רוב no **even though** there is **But rather maintains that any** **אבוי** **עששו חיזוק** (unlike **דמאי**), nevertheless, **it does not require a ברכה and the idea of does not apply to these cases.**⁹

תוספota anticipates an additional difficulty:

ומיהו בפרק קמא דשבת (דף יג,א ושם) **אההייא דלא יאכל זב**¹⁰ **פרוש**¹¹ **עם זב עם הארץ**

זב **However in the first** **regarding that** **ברייתא** **מסכת שבת** **פרק** **should not eat together with a פרוש** - **זב ע"ה**

מפרש אבוי שמא יאכלנו דברים שאינם מתוקנים -

אבוי explained the reason for this caution is because we are concerned perhaps the **will give the to eat foods that are not tithed** -

ולא סמיך ארוב עמי הארץ מעשרין בדקה אמר רבא¹² -

⁶ The same difficulty applies here; why did not answer like that **רבא** since **בדמאי הקילו** **אבוי** as **רובה ע"ה מעשרין** הון since **בדמאי** **הキלו** **אבוי** is not **לגומליין**! This second question is somewhat stronger since in this same case states here why **ר"י** is not **לגומליין** since **בדמאי** **הキלו** **ר"י** is not **לגומליין** since he should have repeated this answer there as well.

⁷ See there **רשות**.

⁸ The states, one who buys figs from an **ה** (even) in a place where they are trodden upon to dry them, the rule is that he may eat them as a snack (**אכילת עראי**) and eventually has to be **מפריש מעשר** as if it is **דמאי**, for since it is possible that the **ה** was **ע"ה** right away (before the trodding process began). This proves that **רובה ע"ה מעשרין**.

⁹ Had **אבוי** answered as **רבא** did (which he could have), we may have had the mistaken impression that it is only by **חיזוק לדבריהם** (where there is a **רב** **מעשרין**) that a **חכמים** is not required and the **רבא** did not make a **ברכה**; however by an equal **ספק מדבריהם** (where there is no **רבא**), one may assume (as presumably maintains) that a **רבא** is required and **עשו חיזוק**, therefore **אבוי** clarifies that in all **ספק השkol** (even if it is a **רב** without a **ברכה**) there is no **ברכה** and **עשו חיזוק** **לדבריהם**.

¹⁰ A **זב** is one of the **טמאים** on account of a **טומאה** which exudes from his body in the form of a fluid discharge.

¹¹ **פרושים** (plural) refers to the people who were very careful not to become **טמא**, and were meticulous in their observance of **טו"מ**. This particular happened to be **זב** as a **טמא**, but nevertheless he should still refrain from eating with a **זב**, even though there is no issue of **טומאה** since the **פרוש** is already **טמא**.

¹² **רבא** said there that the reason they should not eat together is because the **פרוש** may become so friendly with the **ה** that he will continue to eat by the **ה** even when he becomes **טהור** and the **ה** will feed him then. **דברים טמאים**.

And אבִי did not depend on what רְبָא said there that this is of no concern since – מתוקנים ¹³, רוב ע"ה מעשרין so probably whatever food the ה will give him will be –

תוספות replies:

הTEM סבירא ליה דלההיא מלטה מחמיירין¹⁴ ולא סמכלין ארובה -

There, אבוי maintained that regarding a פרוש זב, we are stricter and do not depend on – רוב

רובי זה מושג שאנו לא תמיד מושגים על ידי המשרין אףough המשרין מושג על ידי רובי.

וכו רבא בסוף הגזירות איטינו שא-א (ושפ) גבי משאלת אשה נפה כולי¹⁵ -

And similarly, in the end of ר' בא, פרק הנזיקין, regarding the mishnah which states that a woman may lend her sifter, etc. -

¹⁶ ולא בעי למיסמד ארוב עמי הארץ דמשחריו לעגנו לסייע ידי עובי רעה -

[And רוב ע"ה מעשרין היתר did not want to depend on the prohibition of assisting the hands of the transgressors (as did אבוי) -]

דנראה לו לעניין זה¹⁷ להחמיר:

For deemed it necessary to be strict regarding this issue of עבירה עבירה, similarly אבוי thought it necessary to be strict regarding the eating מותוקנים פרוש זב.

SUMMARY

דמאי All agree that רוב ע"ה מעשرين הן allows for a special leniency regarding; however this leniency is not applicable in all cases.

THINKING IT OVER

רְבָא זֶב פַּרְוֹשׁ אֲבִי רֹב ע"ה מַעֲשֵׂרִין (only) did not apply regarding the (only) did not apply it only regarding **מִשְׁאָלַת אָשָׁה וּכְו' ;** why did they not both agree not to apply it to both cases?

¹³ The question again is that why does not אבִי agree with רבא, that there is no concern of feeding the poor דברים since רב ע"ה מעשראין שאינם מתחננים!

¹⁴ This פָרָשׁ accepted upon himself to be extremely careful, therefore it is appropriate to be stringent even when there is a רַבָּה.

¹⁵ רשי' (see there) מושאלת אשה לחייבת החשודה על השביעית נפה וכברה ורוחם ומתור אבל לא תבור ולא מתן עמה משנה אשת חבר משאלת לאשת עם הארץ נפה וכברה; (לא תבור ולא מתן עמה. לשיעיה מפני שאסור לסייע בזדים זדי עופרי עבירה בשעת העבירה החשודה there asks why concerning she may not grind the flour together with the gemara. ובורתה ותוונת ומתקדמת עמה and regarding she may grind together with the ה' אבי ע' answered that concerning we are more lenient than מעשר who is not ר' רובע'ה the المعשרין since שביעית.

¹⁶ Others amend this to לא (instead of ולו).

¹⁷ Therefore assisting them in preparing a dish is considered even though it is an unusual meal.

בשכלי אומנותו בידו –**When the tools of his trade are in his hand****OVERVIEW**

לא reconciled the view of the view of the Rabbanim in the Bruriah in the Rabbanim (where they maintain Chiyushin and the Rabbanim in the Chamerin) and the Rabbanim (where they maintain Chiyushin for the Rabbanim; that one of these is in a case where the Rabbanim is where the one who deprecated his wares was nevertheless holding on to his tools of the trade; indicating that in the next city the two will reverse their claims. תוספות offers an alternate explanation.

פירוש רבינו חננאל זה שאומר עליו שהוא כהן יש בידו כלים שימושין בהן בטהרה¹ –

The explains that this person, on whom he is testifying that he is a, כהן, has in his possession the types of utensils that are used when one desires to conduct himself - בטהרה

כגון כלים גליליים כלי אבניים כלי אדמה שאין מקבלין טומאה –

For instance from dung, stone, or earthenware, which are not received – טומאה

שכל הרואה כלים הללו בידו מתרחק ממנו מלטמאותו ודומה שהוא כהן ולכך האמיןוהו חכמים: So that whoever sees these in his possession distances himself from him in order not to be him,² and it is likely that he is a, כהן, therefore the believed him (to say כהן). (וחברי כהן).

SUMMARY

The case of when אני כהן וכוי נאמן is when **שכלי אומנותו בידו**.

THINKING IT OVER

Are the concerned for or not?³ גומלים רבען

¹ According to the Rabbanim the answer of the Bruriah in the Rabbanim is referring to the Rabbanim and explains why there he is believed (not like the Rabbanim explains that the Chamerin is referring to the Chamerin and explains why they are not believed). See 'Thinking it over'.

² The Rabbanim would especially use these types of that are not utensils (so that the chance of being received טומאה is lessened and also) so that when people notice that they are using these utensils, the people will realize that these people are conducting themselves and they will avoid coming in contact with them, lest they make them טמא.

³ See footnote # 1. See footnotes פרדס יצחק אות כא.

ואיבעית אימא רבי יהודה ורבנן מעליין מתרומה ליוחסין¹ קמייפלגי –

מעלה And if you wish, I can say; are arguing whether we are ר"י ורבנן מתרומה ליוחסין

OVERVIEW

The cited a גمرا in which are seemingly giving self-contradictory rulings. The now is offering a new answer to resolve this contradiction. discusses this answer and its ramifications.

תוספות qualifies the scope of this answer:

ולא אתה לשוני אלא קשיא דעתך רבי יהודהADRBI יהודה –

ר"י And the is offering this answer only to resolve the contradiction from גمرا on (that regarding he is not believed, and regarding he is believed) –

אבל דעתך לעולם צריך לתרץ² בשכלי אומנותו בידו³ –

However regarding the contradiction from the on רבנן we still require the answer of ר"י בשהלי אומנותו בידו.

תוספות asks:

הקשה הרבה שモואל מווארדיין⁴ ומעיקרא היכי בעי למימר דעתמא דעתך רבי יהודה משום גומליין –

גمرا asked; and how did the initially want to say that the reason does not believe the to say כהן is because of collusion –

והא בלי גומליין על כרחך סבר רבי יהודה בשילתי פרקיין וקמו זו כח, ב דמעליין מתרומה ליוחסין –

For even without the concern of כהן, גומליין the will not be believed since performance ר"י maintains in the end of our that פרק ?! מעליין מתרומה ליוחסין⁵

תוספות answers:

ותירץ רבינו יצחק דמעיקרא סלקא דעתך דאי לאו טעמא משום גומליין –

¹ ר"י maintains that if a person receives תרומה (from the farmer/grower) we assume that he is a valid and he and his children will be considered כהנים מיוחסים and be allowed to marry other members of the community. The testimony of an א"ע (while it should be valid to allow him to eat תרומה) is not sufficient to confer upon him the status of מזוהה; for this we require two עדדים. Therefore ר"י prohibits him from receiving תרומה (based on the testimony of only an א"ע) lest we consider him a כהן. The maintain we are not concerned about תרומה ליוחסין therefore there is no concern if we allow this to receive based on the testimony of (even) an א"ע. See [however] footnote # 9.

² The ruling of כהן אין מעליין מתרומה ליוחסין will not explain why by the he is not believed and by the he is.

³ See previous (see there TIE ‘Overview’ and footnote # 1) as to the interpretation of this answer of כהן. לשכלי אומנותו בידו.

⁴ This is (seemingly) the city of Verdun (in northeastern France).

⁵ Once we know that כהן מעליין וכוי ר"י maintains it is understood why he maintains that an א"ע by a is not believed (even if ר"י maintains לא חישין לגומליין). There is no question from ר"י maintains לא חישין לגומליין.

And the ר"י answered that initially the assumed that if not for the reason of גומלים -

לא היינו מפסידים את הכהן מון התרומה כדי לומר מעליין⁶ -

We would not have caused the כהן to lose the in order to rule מעלין מתרומה - ליהסין

כיוון דמן הדין ראוי לחלק על פי חבירו ואדרבה קודם היינו אומרים אין מעליין⁷ -

Since according to the law it is proper for this testimony of his friend; and on the contrary we would prefer to say אין מעליין מתרומה ליהסין to protect his rights –

הוספה anticipates a difficulty:

אף על גב דגבי עבד אמר לקמן לרבי יהודה דין חולקין לו תרומה משום דמעליין -

Even though that עבד states later regarding an ר"י disburse to him because of the concern of why do we not say there as well that we do not want to cause the a loss of (and we should enact that אין מעליין מתרומה ליהסין –

הוספה replies:

התם אין כל כך חשש באפסיד של עבד זה אם אין חולקין לו תרומה בלבד –

There by there is not such a concern for the loss of the if we do not disburse to this without his master, since he will receive through his master. However, regarding the if his friend is not believed he will lose the entirely.

הוספה asks:

ואם תאמר ובאייזו סברא פלייגי⁸ -

And if you will say; but what is the logic of their dispute -

ליימרו תרוייהו דמעליין ונctrך שני עדים בתרומה

Let either both עדים two and agree that ר"י ורבנן should be

⁶ According to this we would rather enact that in כהן in order to receive this we would rather enact that אין מעליין מתרומה ליהסין based on an ע"א (if not for גומלים). However since (presumably) we are חיישן לgomlim, therefore an ע"א is not believed. Once an ע"א is not believed we can be מעלה מתרומה ליהסין since he is eating on the basis of the testimony of two, which is sufficient for ע"א as well. See following footnote # 8. See 'Thinking it over' # 1.

⁷ The therefore assumed that the only reason the כהן is not believed to testify for his friend is because of גומלים (and therefore maintains ר"י, מתרומה ליהסין), the contradiction is from where we are not חמראן. The answer of the ע"א is that we are even if we are not גומלים, therefore an ע"א is not believed. נאמן ע"א, חייש לgomlim, therefore an ע"א.

⁸ The dispute between ר"י ורבנן whether we are to maintain מתרומה ליהסין, based on. However, what is the argument, whether or not we should be maintaining מתרומה ליהסין. In this question (as well as in the previous answer [see footnote # 6]) means מתרומה ליהסין that will be if they know someone is receiving מתרומה ליהסין (and the maintain will not be). The question is why yes be or why not be; what is the argument. See following footnote # 9.

required to allow him to receive - תרומה

או לימרו תרוייהו דלא מעליין ולא יצטרך אלא עד אחד בתרומה -

Or let them both agree that אין מעליין וכו' and we will require only one for עד תרומה -

תוספות answers:

יש לומר דברא פליגי דמר סבר חיישין שמא יעלו מתרומה ליוחסין לפיכך החריכו שני עדים -
And one can say;⁹ that their argument is, that maintains that we are concerned that perhaps the people will mistakenly be, מעלה מתרומה ליוחסין therefore there is a requirement for two עדים to testify that he is a Cohen and be allowed to receive - תרומה -

ומר סבר דלא חיישין:

And the maintain that we are not concerned that the people will mistakenly be תרומה everyone knows that יוחסין is special and even though he is receiving they will not consider him a Cohen, מיוחס so therefore there is no concern (even) if we allow him to receive תרומה ע"פ ע"א.

SUMMARY

The dispute whether מעלה מתרומה ליוחסין is not regarding a law or enactment but rather whether there is a concern that mistakenly we may be מעלה מתרומה ליוחסין.

THINKING IT OVER

It appears from החשש גומלין that according to ר' יהודה since there is a Tosfot therefore מעלה מתרומה ליוחסין (and therefore implying however when there is no מעלה ע"פ ע"א then we would be ע"פ ע"א). How can ר' יונה maintain that מעלה לכהונה ע"פ ע"א since there is the possibility to be מעלה מתרומה ליוחסין where there is no מעלה גומלין for instance if he claims אני ישראלי וחברי כהן?¹¹

2. What is the connection between the beginning of Tosfot with the subsequent question of ר'ש מווארדין ווא"ת and with the final¹²

⁹ answer is that there is no rule that we are (in fact everyone agrees that will not be מעלה מתרומה ליוחסין without consulting ב''). See previous footnote # 8.

¹⁰ See footnote # 6.

¹¹ See פרדס יצחק אותן כה and ר'ש מווארדין.

¹² See פרדס יצחק אותן כה.

אמנה שבשטר קמסהדי –**Are they testifying on the money in the note****OVERVIEW**

The queried whether we are or not, in a case where the **עדים** signed on a **שטר** in which one of the parties was referred to as a **כהן**. The question is whether the **עדים** when they sign on the **שטר** are only testifying that the loan took place and they pay no attention to the details whether the **לוֹהַ** or the **מִלּוֹה** is a **ישראל** or a **כהן** (and therefore **אין מעליין משטרות ליוחסין**) or do we say that the **עדים** also verify these details (and therefore **מעליין משטרות ליוחסין**). Our discusses the view of **אמנה שבשטר קא מסהדי**.

תוספות asks:

אם תאמר ואי לאו אכלה מילתא קמסהדי –

And if you will say; and if the **עדים do not testify on all the details** of the **שטר**, but rather they are only testifying - **אמנה שבשטר**

אם כן עדים חתמי אף על גב דלא ידעי אי כהן הוא אי לאו¹ –

If that is indeed so, the **sign even if they do not know if he is a **כהן** or not** - **אם כן הא דתנו בגט פשוט** (**בב"א בתורה ד"ז קעבא, שנוי יוסף בן שמעון הדרין בעיר אחת**)

If indeed this is so; that which the **teaches in משנה** If there are **two** **פרק גט פשוט**, if **who live in one city** we must write a third generation (their grandfathers' names) in order to distinguish between them -

אם היו שלשים² יכתבו כהן –

If they had identical names even up to **the third** generation, **they should write 'כהן'** if only one of them was a **כהן**, and that will distinguish between them. This concludes the **משנה** continues with his question -

ומה מועיל כיון שעדים חותמים אף על פי שאין מכיריהם בו אם הוא כהן –

But what would it help writing 'כהן', since the **sign regardless whether they know if he is a **כהן or not** –**

והרי הוא יכול להערים ולכתוב שטר אחר³ בשם חבריו כהן וווציא ממון מחבירו כהן⁴ –

מלואה כהן חבר in the name of his the and the

¹ The states that the **שטר** is a **כהן**. The however, when they sign they do not verify whether indeed he is a **כהן** or not; they merely testify that the **לוֹהַ** borrowed from the **מִלּוֹה**.

² They were both called **יוסף בן שמעון**.

³ The **ש"** **שאנץ** or **תוס' הרא"ש** deletes the word **אחר** (it does not appear either in the **ש"** or **תוס' הרא"ש**).

⁴ Let us assume that one is a **כהן** and the other is not. The one who is not a **כהן** will borrow money from someone and see to write in the **שטר** that the **לוֹהַ** is a **כהן** (since the **עדים** do not pay attention whether he is a **כהן** or not). When the time comes to collect this note, the **לוֹהַ** will be able to collect only from **יוסף בן שמעון הכהן** who is really not the **לוֹהַ**! See 'Thinking it over'.

will take away the money from his friend the !כהן

תוספות answers:

ויש לומר דהיכא דהוא חזקוני שני יוסף בן שמעון ודאי אוכלא מילתא קא מסהדי –

יוסף בן one can say that in a place where it is established that there are two **עדים**, **שמעון**, the certainly testify on all the details –

כפי זה הן צריכין לידע אם בן כהן הוא –

Because in that situation they are required to know if he is the son of a or כהן or not, to assure that it is the correct – לוה

והתם ודאי מעליין משטרות ליוחסין והכא מיבעיין לו הייכא דלא הוחזקו:

And in that situation we are certainly since the are required to verify in this case that he is a **כהן**; however here we are asking what is the ruling in a situation where it was not established that there are two **יוסף בן שמעון**.

SUMMARY

Even if we assume that **יוסף בן שמעון** nevertheless if we say **מעלה** משטרות ליוחסין and we are **אוכלא מילתא קמסהדי**.

THINKING IT OVER

הכהן asked that if so the can write (even though he is not a **כהן** for the will not notice and the will lose money ⁵). However, granted that the will not notice, but the will notice that he wrote (when indeed he is not a **כהן**) and will protest because he knows that if he will go to the **כהן**, the will (rightfully) deny the loan and the will have difficulties collecting it. How can there be a **הערכה**?⁶

⁵ See footnote # 4.

⁶ See פרדרס יצחק אות ל.

One said, we elevate**חד אמר מעליין –****OVERVIEW**

The cites a dispute whether we are (and similarly whether we are or etc.). explains why (according to the in these respective these cases are not mentioned in the which discusses the various approved proofs for .
כהונה

תוספות asks:

ואם תאמר ואמאי לא חשיב ליה בהדי הנז דעתן בעשרה יהשין (קדושים זר ע. ושם) –

And if you will say; why does he not mention the case of **among those which the taught in** that - **פרק עשרה יהשין** **משנה**

אין בודקין מן המזבח ולמעלה¹ ולא מדורן² כולי³ –

'We do not investigate beyond the and not beyond the etc.'

תוספות answers:

יש לומר דהך דעתך מלתא דעתיתא היא –

And one can say; that in this case of, it is an obvious ruling that he is considered a - **כהן**

דכיון דאכולא מלתא קמסהדי אם כן הויעדות גמור –

For since (according to the reason we are **מ"ד מעליין** דעתך לשׂרף יהשין because) the testify on the entire statement of the (including the **עדים** **כהן**), therefore it is a valid testimony, and obviously he is a - **כהן**

ולכך לא קא חשיב עדים⁴ –

And therefore the in **does not mention** either (that if testify that someone is a **מיוחס**, there is no further need of **בדיקה**), for it is obvious.

תוספות asks:

¹ The there states, one who marries a must investigate her genealogy to assure there is no **משנה** (see פסול רש"י). However if we know that her grandfather served on the there is no need to check further since he is certainly a **שׂרף**.

² The was a platform in the where the performed the **לויים** **ערלה**. If her grandfather was on that **דוכן**, we know that he is a **מיוחס** and not further **בדיקות** are necessary.

³ The there mentions other qualifications which require no further **בדיקה**. The question is why the did not mention our case of **בדיקות**; if testify on a **שרט** where it was written 'אני פלוני כהן', that person is certainly a **מיוחס** and no further **בדיקות** are required (according to the that **מ"ד מעליין** דעתך לשׂרף יהשין).

⁴ The there teaches us the exemptions from **בדיקה** (only) in cases where there is indirect evidence that he is a **מיוחס** like **מזבח**, **דוכן**, etc. However it has no need to teach us exemptions from **בדיקה** where there is direct evidence from **עדים**. According to the **מ"ד מעליין** דעתך לשׂרף יהשין, the case of **בדיקות** is considered direct evidence.

ואם תאמר ואמאי לא חשיב תרומה ונשיאות כפיהם למאן דאמר מעליון⁵ –

And if you will say; why does not the exemption from קדושין in משנה mention the exemption from בדיוקות where he receives תרומה or he performs נשיאות כפיהם, according the one who maintains that we are מעלה from either תרומה or כפיהם? יוחסינו to נשיאות כפיהם?

תוספות answers:

ואומר רבינו תם דתרומה בכלל מזבח⁶ ונשיאות כפים בכלל דוכן⁷ –

נשיאות **مزבח** **ר"ת** **תרומה** **is included in the exemption of** **and** **כפיהם** **– דוכן** **is included in the exemption of**

הוספה anticipates a difficulty:

– אָפַל גַּם דְּהֹוֹא דְּכוֹן הַיּוֹנוֹ שִׁיר בְּדִמְשֻׁאֵץ הַתֶּבֶן בְּגַמְרָא⁸

Even though that **דוכן** which is mentioned in the **משנה קדושין** means the platform that was used by the **לויים** **for song, as indicated there in the גמרא**; so how can we say that they are completely different from each other?

תוספות responds:

מְאוֹ דָאַמֵּר מַצְלִינוּ הוּא מַזְכִּיר לְהָגִיד בְּדָבָר כְּהָנִים שְׁבָגְבָּלִים⁹ –

The one who maintains מעלה מנשיאות כפיהם ליווחסין **will establish** that which the **א"י** in all of כהנים נשיאות כפיהם to also include the **דוכן** (this too writes משנה) exemptions from any further (בדיקות דוכן), and not only to the which was in the **ביהמ"ק** (שיר הלויים for the).

תוספות asks;

ומיהו קשה אמר לא חשיב ספר תורה שקרא בחזקת בהן בדליך מון¹⁰

However there is a difficulty; why does not the משנה mention ס"ת, where one read from the תורה first that he is גمرا בחזקת כהן, which the states later?!

תוספות answers:

ויש לומר דאייכא למימר דתנא ושיר בולחו¹¹ –

⁵ In these two cases (חרומה ונש"כ) there is no direct evidence (as by שטרות), only indirect evidence like מזבח ודוכן. The מנה should have mentioned (either of) these two cases as well.

⁶ Eating (or receiving) is similar to eating from (or serving on) the **מזבחה** (on the bottom) that is referred to as **אכילת קרומה** (R"b).

⁷ When the states go to for נשיית כפים we say they are going to דוכן. Therefore when the states refers to it is referring also to נישאת כפים.

בדורינו עוזר

⁹ That which is inferred from the term נורא that it refers to the בירור in the בירור is according to the מהר"ן.

¹⁰ That which is inferred from the Rabbis that it refers to the בָּנִים in the פְּנֵי תְּהִלָּה is according to the בְּנֵי אֶחָד מִשְׁנֵי בְּנֵי אֶחָד.

¹¹ This would seem to include שׁוֹרְבָּה as well (even though it is שׁוֹרֵב).

And one can say; that the משנה taught some exemptions and left out mentioning all the other cases which are mentioned here (שטרות, תרומה נש"כ, ס"ת).

חותפה offers an alternate answer:

ובספר היישר פירש רבינו שם דלאו בעבודת מזבח ממש איירי –

And the it is not explained that when the משנה mentions referring to actually doing service for the מזבח (for that is too obvious that he requires no additional בדיקה) –

אלא כוון הפשט וניתוח דברים הכהנים בזרים –

But rather the משנה is referring other types of service, for instance skinning off the hide or cutting up the קרבן, which are permissible for a זר to perform, but nevertheless by doing them they are exempted from further בדיקה –

דלא היו מניחין לעשות אותם אלא למיוחסין מן המשיאין לכהונה –

Since they would only allow those whose ancestry allows them to marry into כהונת בדיקות to perform those duties, therefore it is sufficient to exempt them from further בדיקות –

אבל מיili דכהונת¹² כוון תרומה ונשיאות כפים וספר תורה לא איצטראיך למתיוני :

However regarding items which belong to כהונת exclusively such as כהונת, it was not necessary to mention them in the משנה, for it is obvious that in these cases there is no need for additional בדיקות.

SUMMARY

תנא מעליין in משנה did not include the various cases of מעליין (either because תרומה ונש"כ or because it is obvious (שטרות) or already included (ושיר)). Alternately it only mentions things which are not exclusively for כהנים.

THINKING IT OVER

1. According to the משנה we are ס"ת maintains that by reading first in the תוספות¹³. However merely states later that רב אמי העלה לכהונת גمراו יוחסין!¹⁴ and not for אכילת תרומה

2. According to the משנה anything which is exclusively for the כהנים did not mention.¹⁵ Why therefore did the משנה mention which (seemingly) was exclusively for the use of the לויים?¹⁶

¹² See 'Thinking it over' # 2.

¹³ See footnote # 10.

¹⁴ See רע"א (and כה, ב ד"ה כי ההיא הפלאה)

¹⁵ See footnote # 12.

¹⁶ See בית יעקב.

שאני הכא דרייע חזקיהו – It is different here, for their **חזקת** was flawed –

OVERVIEW

פירוש בקונטראס¹ שהכל רואים שאר כהנים אוכליין שאר קדשי מזבח ואלו אין אוכליין -
כהנים explained that it is since everyone sees all the other eating all sorts of קדשי מזבח and this family are not eating קדשי מזבח (בני ברזיל).

רשות' disagrees with תוספות:

وكانت هناك صعوبة في مكان ذكره تعالى على أنه ينافي إقامة الأشكناز لآدعي مذهب وليهستان -
Replying to this difficulty, the *Parshas Yitzchak* says, **despite the fact that**, according to the *Parshas Yitzchak*, **why indeed were they** **not** **Yehusim** **and** **Kadushim** **to** **Nashim**?²

תוספות offers his interpretation:

ונראה לרביינו תם דרייע חזקיהו היינו מיחסים אותם אחר בני ברזילי שהיה יישראלי³ -
And it is the view of the that they attributed the genealogy of that family to the
- יישראלי a who was a
ועוד⁴ שלא מצאו כתבים והיכא דאיתרעו חזקה אין מעלין לכולי עולם⁵

And in addition they did not find their provenance, so wherever there is a flaw

ל"ה שאני¹

² This maintains that we are even though we do not know whether they are or not; as long as they were נ"כ for בריולי they are מוחזק in the גולה, therefore should have been them to a full status, including כהונה and קדשי מזבח.

³ Their lineage was traced to a גולֶה in נושאַי כְּפִים in the land of Israel, therefore even though they were of being כהנים חזקה, their documentation was flawed [and especially since they could not find the documentation].

⁴ לא מצאו מן הכהנה בבגשו כהנום המתייחסים ולא מצאו תוס' הושפה. It would seem that this is not another [separate] reason (for as it may be inferred from previously that מיחסים אותם אחר ישראל) but rather since we have two reasons (זהקה) is insufficient [on its own] to invalidate the two reasons (לא מצאו כהנום therefore even though they were נושאים כפיהם מעלה them to כהונה). It follows therefore that the reason of הושפה by itself is also insufficient to ruin the reason of אחר ישראל must maintain this, since ניגלו מן הכהנה as the (conclusive) reason why פסוק states why.

⁵ The flow of the gamara will then be as follows; initially based on the pesukim we assumed that they lost their status because ר' עזרא asked the gamara what happened since they were מועלין מנש' כליהו, the gamara answered that it was because they were מזאו כתובם כתובם אמרות מיחסים אחר ישראל, therefore coupled with the fact that they did not have Cohen status.

מעלה (מנש"כ ליוחסין) **חזקת**, all agree that we are not.

תוספות asks:

אבל קשה דבריך מעיקרא ATI לאסוקיניה⁶ הוה ליה למיפרך AMAI ניגאלו כלל מון הכהונה -
However there is another difficulty; for instead of the asking initially, ‘but
 (according to בני ברזילי) it will come that the would be elevated to complete the question should have asked, ‘why were they invalidated from the **כהונה at all**’ in the first place –

תוספות answers:

יש לומר דשפир הוה ידע דרייך זקייהו⁷ ומשום הכל לא אסקיניהו -

And one can say; that indeed the knew even in the question that גمرا⁸ (since מצאו כתובם - לא אסקיניהו and therefore -

אלא זהה שלקא דעתין דאף על גב דרייך זקייהו אייכא למיחש -

However, it may have entered our minds, that even though (and therefore voided them from the **כהונה**), nevertheless **there is the concern** -

דלא מא ATI לאסוקיניה לבסוף שלא ידעו שלא מצאו כתובם:⁸

That perhaps eventually in **later** generations **they will be elevated, for then no one will know that** ריע זקייהו and לא מצאו כתובם. People may assume that since they are valid so should have taken away from them all their rights of **בגולה** even those which they had.

SUMMARY

קידשים according to רשי because they did not eat, and according to ריע זקייהו it is because they were מתייחס to a **ישראל** and they could not find **כתובם**.

THINKING IT OVER

תוספות answers that even in the **ho"א** the גمرا knew that ריע זקייהו⁹ What then was the s' answer that **מקשן** גمرا's since the was already aware of it?¹⁰

⁶ Presumably (before the **ריעותא** answered זקייה we assumed initially that there is no גمرا in their, and since they are asked what was accomplished by גمرا the question is asking is that the גمرا should have asked, why were they זקייה since **מעלן מנש"כ ליוחסין**?

⁷ See ‘Thinking it over’.

⁸ The גمرا answered that even though they might forget that לא מצאו כתובם nevertheless it is still since they were מתייחס אחר **ישראל** (and that continues and is not forgotten, as opposed to לא מצאו כתובם).

⁹ See footnote # 7.

¹⁰ See מהרש"א הארוך (and footnote # 8).

So what then does גדולה חזקה mean

ואלא מי גדולה חזקה –

OVERVIEW

The beginning of בריתא (regarding the great חזקה) began by saying (בנ"ר ברזילי) that from this point forward one may maintain that one may maintain (על מושגך). From this point forward one may maintain that one may maintain (על מושגך). At this point the Gemara challenges the difficulty (because of the question 'why'). At this point the Gemara asks (because of the question 'why'). At this point the Gemara concludes that one may maintain that one may maintain (על מושגך). This explains why this is indeed so.

בשלמה אי אין מעליין נicha הא דגדולה חזקה –

If we maintain, it will be properly understood that this which the taught is significant, in the sense that -

אף על גב דאייא למיחש לבית דין טועין² שיעלו מן נשיאות כפים לקדשי קדשים –

Even though there is a concern for a erring who will elevate this family from to eat קדחה³ נשב⁴ ב nevertheless the teaches that notwithstanding this concern we do allow them and dismiss the concern of a since they had a for a; this is the greatness of –

[anticipates a difficulty:

וואר על גב דבלא חזקה מעליין לתרומה על פי עד אחד –

And even though that we are based on the testimony of one, עד מעלה לתרומה without the benefit of – חזקה –

ולא חיישין לבית דין טועין שמא יعلו ליוחסין⁵ –

And we are not concerned for a who may perhaps elevate him from – ליוחסין to תרומה –

תוספות responds:

השתא סבר המקשן דיווחסין חמירה ולא אותו למיטעי כמו לקדשי קדשים⁶ –

¹ It is great in the sense that (even though we did not allow them to eat, but) we allow them to be (even though that they had a), since they had a to do so in the case of.

² אין מעליין מושגך וכוי ב"ד will not be (according to this) the rule is.

³ It is apparent from this case of that a is not necessary to allay the fears of a so, ב"ד טועין מושגך that a is not necessary to allay the fears of a so, ב"ד טועין מושגך so, ב"ד טועין מושגך why do we need the ב"ד ברזילי?

⁴ We are very careful before awarding someone the status of a (we usually require two עדים), therefore there is no concern to allow someone to eat [even without a], since it is highly unlikely that he will be elevated on account of his eating to become a. However (if not for the case of the great חזקה) we may have not permitted the ב"ד טועין מושגך, out of concern that a may erroneously allow them to eat

At this point the questioner (who asked גדולה חזקה) assumed that elevating one to the status of Cohen Miyos is more stringent, and they will not err (to elevate from Tzoraah to Yihusin), as they may err to elevate from eating to קדחה.)

This explains why גדולה חזקה is understood according to the:

אבל השתא דאמרת טעמא דרייע חזקיהו ולא חיישין דלמא ATI לאסוקי -

However now that you presented the reasoning of ריע חזקיהו (according to the), on account of which we are not concerned that perhaps they will elevate them; so -

כיוון דלא ATI למטעי Mai גדולה חזקה:

Since there will be no error, why do we need the קדשי גדולה חזקה to allow them to eat קדשי, since no harm can come out of it.⁵

SUMMARY

Since we maintain גדולה חזקה is more readily understandable if we assume גדולה חזקה for then the possibility of a טעון. If however we assume ריע חזקיהו (according to the), there is no need for קדחה חזקה, since there cannot be a טעון.

THINKING IT OVER

1. states that the reason we are not concerned by קדשי מזבח that we will be because יוחסין is more (and therefore no concern) than קדשי קדשים (where there is a concern that we will be קדשי מזבח). However why are we still concerned that we may be him to קדשי מזבח (as we are concerned by קדשי מזבח)?⁶

2. Why cannot we simply say that קדחה חזקה accomplishes⁸ that even though it is nevertheless the original חזקה (albeit with a קדחה חזקיהו) is sufficient to allow them to eat קדשי הגבול and be נושא כפיהם?

⁵ Since we are not that strict in limiting Cohenim from eating קדשי מזבח (since we are not that strict in limiting Cohenim from eating קדשי מזבח). See ‘Thinking it over’ # 1.

⁶ See ‘Thinking it over’ # 2.

⁷ See footnote # 4.

⁸ See footnote # 5.

תרומה מ"ד אין מעליין; ^{לעיל} או דלמא אפילו למאן דאמר אין מעליין הני מיili תרומה דמתאכלא ב齊ינהה יכול – Or perhaps even according to the ^{rule}; that is only by, which is eaten discreetly, etc.

OVERVIEW

meal offerings because they were not valid even if we maintain the reason we are not valid. This query is valid even if we maintain the reason we are not valid, for the reason we are not valid is because the offering was not a meal offering; however, it is likely that he would not be accepted if he is not a priest. Our discussion discusses the concept of the offering because it is because the offering was not a meal offering.

תוספות asks:

תימה מה תולה באכילה והוא פשיטה דכלויל עלמא אין מעליון מאכילת תרומה ליוחסין² -

It is astounding! How can the relate the idea of גמורה ליהסין to the fact that is eaten בצנעה?! For it is obvious according to everyone that we cannot be יהסין to מעלה תרומה based on the fact that he is eating; the reason is -

זהו איבא למייחש דלמא עבד כהו הוא -

For there is the concern that perhaps this person who is eating **תרומה is the slave of a כהן** who is permitted to eat **תרומה**. Obviously we cannot be **מעלה יוחסין** anyone to based on the fact that he is eating **תרומה!**

אלא בחלוקת תרומה בגין הוא צפליги אם מעלים ליוחסין אם לא³ -

Rather the dispute whether we are מעלת מתroma ליהושע or not, is where they distributed to this individual in the threshing place (as will shortly explain). Why therefore does the גמרא mention that תרומה is eaten since it is irrelevant to our discussion here?!

חלוקת תרומה מעלה מטרומה ליהסין or not, is dependent on הוספה (אכילת תרומה but not with בيت הגRNAה):

ובמעלין מתרומה ליוחסין לא איפליגו בה תנאי ברדייא -

- מעליין מתרומה ליוחסין תנאים regarding there is no explicit argument of

אלא דתליה⁴ היא פלוגתא אם חולקין תרומה לעבד ולא רבו אם לאו -

Rather the dispute whether מעלין מתרומה ליהחסין depends on the dispute whether we distribute תרומה to a slave without his master present or not -

¹ This references the גמרא previously on the topic.

² See ‘Thinking it over’ # 1.

³ See ‘Thinking it over’ # 2.

⁴ See later ב,ח.

למאן דאמר חולקין אין מעleinן דדלמא עבד הוּא -

אין מעleinן מ"ד חולקין תרומה לעבד بلا רבו עבד because perhaps this person who received תרומה is an יוהסין.

In conclusion it is evident (according to **תוספות**) that all agree that we are not based on the fact that he eats, for he can be an **עבד**. The question whether we are **תרומה** refers to one who receives **תרומה**, and issue is whether we distribute **תרומה** **בבית הגרכנות** or not.

מעleinן מנשיאות continues to explain how the **גمرا** should have worded the query regarding **כפיהם ליהוסין**:

והכי איבעי ליה למימר הכא אפילו למאן דאמר אין מעleinן -

מעleinן And this is how the should have stated its question; here regarding גمرا even the one who maintains מ"ד, it is possible that **מנש"כ ליהוסין**

הני מיili תרומה דחולקין לעבד بلا רבו ואיכא למייחש דלמא עבד הוּא -

That is only regarding where we distribute to an without his master, so there is the concern that perhaps the person who received the truma is an עבד -

אבל נשיאות כפים לעולם אימא לך דמעleinן דאיין עבד נושא כפיו :

מעleinן However regarding everyone agrees that I will tell you that **נשיאות כפים** **since an עבד is not** **מנש"כ ליהוסין**⁵

נראה לי דשפיר נקט דמתאכלא בצינעה -

It seems to me that the correctly mentions regarding the distinction between נש"כ and תרומה (despite reservations) -

دلמאן דאמר מעleinן מאכילת תרומה נמי מעleinן -

מעleinן ליהוסין מאכילת maintains that מעleinן מתרומה ליהוסין also, and not only תרומה -

ובענין דליך למייחש שהוא עבד שיצא מבית הספר⁷ -

And this is so when it is in a manner that there is no concern that the person eating truma is an עבד, for instance if he was seen leaving a Jewish school -

وطעמא כיון דעתו מיתה הוא חיישנן שמא יעלווה ליהוסין⁸ -

And the reason we are since it is a capital crime for a to eat, therefore we are concerned that perhaps (a mistaken will be מ"ד תרומה (ב"י someone who is eating ליהוסין -

⁵ **תוספות** does not answer his question. See the following (in the brackets) who answers this question.

⁶ This is an addendum of the **תוספות** as indicated at the very end.

⁷ An **עבד** does not receive Jewish education for he is not obligated in **לימוד התורה** (just like a woman).

⁸ Eating for a **ער** is punishable by **מיתה** (בידי שמים), therefore it is possible that a **ער** may mistakenly assume that this person who is eating **תרומה** was substantiated to be a **כהן** and therefore he can be elevated **ליוהסין**.

ולכ"א איצטראיך שני עדים להאכילו בתרומה⁹ ולכ"א נמי¹⁰ אין חולקין לעבד אלא אם כן רבו עמו -
עדים therefore in order to circumvent this mistaken to, ב"ד they required two to testify that he is a **כהן** to allow him to eat, **תרומה**, and therefore for the same reason we also do not distribute unless his master is with him.

ומאן דאמר אין מעlein אף על גב דעתן מיתה הוא לא חייב להכין שמא יעלוה -
 And the one who maintains (because one may eat) **אין מעlein מתרומה ליוחסין** not concerned that a mistaken **may be him to even though it is a capital crime** -

כיוון דברינו הוא אכילת תרומה וכן חלוכה -

Since the eating of **תרומה** and similarly the distribution is done discreetly, therefore there is no concern that some may mistakenly be him **עליה מעתה יוחסין** even according to that

אבל נשיאות כפים דאיירסת איבעיא ליה אי חיישין שמא יעלוה -

However regarding being which is publicized, the query in this case there is the concern that they may elevate him (even according to the that) מ"ד אין מעlein מתרומה ליוחסין -

משום דאי לאו דכחן הוא לא הו חציף כולי האי -

Because if he were not a **כהן** he would not be so brazen to be in public.

The ת"י explained why the can and does use the case of גمرا that will reject that which suggested that the should have said:

ולא הו מצי למנקט כמו שכתבו התוספות אפילו למאן דאמר אין מעlein -

And the could not have said as suggested that the query if גمرا even according to the is - מ"ד אין מעlein מתרומה ליוחסין, and that is -

משום דאייכא למיחש דלמא עבד הוא -

Because regarding being there is the concern that perhaps he is an (since the maintains that is what suggested that the should have said. However the rejects this -

דא לתיא בהכני דאפיקו היכא דליך למיחש דלמא עבד הוא אין מעlein -

For whether we are or not, does not depend on whether there exists the concern that he may be an, for even when there is no concern that perhaps he is an, we are not **מעלה מתרומה ליוחסין עבד, עבד** according to that מ"ד; the case where there is no concern that he may be an is -

כמו ביוצא מבית הספר או שמעידין עליו שאינו עבד -

⁹ Once we maintain that two are required for we are concerned (if we would only require one that (since there is an for a to eat) they will mistakenly be him from **מעלה** based on the one); similarly we did not allow to be someone (or should not mistakenly be him **מעלה** so that someone (or should not mistakenly be him **מעלה** Now however that we require two and we are not concerned with any concern. See Tos' CD, D"ה ואב"א (footnote # 8 & 9).

¹⁰ Just as we require two for we are concerned (if we would only require one that (since there is an for a to eat) they will mistakenly be him from **מעלה** based on the one); similarly we did not allow to be someone (or should not mistakenly be him **מעלה** so that someone (or should not mistakenly be him **מעלה** Now however that we require two and we are not concerned with any concern. See Tos' CD, D"ה ואב"א (footnote # 8 & 9).

Like, for instance, **when we see him leaving a ב"ה or people testify that he is not an עבד** (however the **עדים** do not know whether he is a כהן or not), nevertheless this maintains אין מעליין מ"ד - מתרומה ליוחסין -

ואדרבה הא חולקין לו بلا רבו הינו משום דין מעליין -

And on the contrary, the reason that מ"ד maintains is because he maintains אין מעליין מתרומה ליוחסין¹¹ -

ועיקר טעמא דפלוגתייהו משום מעליין ואין מעליין -

And the main cause of their dispute (whether we require one or two עדים for **אכילת** or **מעליין** מתרומה ליוחסין) (and therefore we require two **עדים** or there is **no** concern that we will be **מעלה** מתרומה ליוחסין (and therefore one is sufficient for **אכילת** תרומה -

דאי לאו הב כי קשה באיזה סברא פליגי¹² כמו שהקשו לעיל¹³ [תוספות ישנים]:

For if it is not so (but rather as maintains that the dispute depends on whether we are concerned for **חולק לעבד** תרומה **בלא רבו**) **what is the logic of their respective opinions, as asked previously!**] The bracketed section is from the **תו"י**.

SUMMARY

מ"ד maintains that we are only **מעלה** מחלוקת תרומה ליוחסין (according to the **תוספות** since he may be an **עבד**). The reason why we are **מעליין** מחלוקת תרומה **בלא רבו**. However the **תו"י** maintains that the dispute whether **מעליין** מתרומה ליוחסין **בלא רבו** is a result of whether or not

THINKING IT OVER

1. asks that it is obvious that the concept of **מעליין** מתרומה ליוחסין **תוספות** refer to **חלוקת** תרומה (but rather to **אכילת** תרומה).¹⁴ How can we state this when

¹¹ This is the opposite what **חולקין לעבד** said earlier that depending on whether or not will decide (respectively) whether we are concerned for **מעליין** מתרומה ליוחסין or **אין מעליין**. Rather (according to the **תו"י**) the dispute whether **חולקין לעבד** or not, will depend (respectively) whether **מעליין** מתרומה ליוחסין or **אין מעליין**.

¹² However according to the **תו"י** they argue whether we are concerned for a **טועם** that will be **ב"ה** (if only one is required for **חלוקת**). The one who maintains there is no concern, for no one will be **מעלה** מחלוקת תרומה **בלא רבו** and we may be **מעליין** מחלוקת תרומה **בלא רבו**. However the one who maintains there is a concern for a **טועם** which will be **ב"ה** (**עפ"א** ליוחסין), he requires that there be two **עדים** for **אכילת** תרומה and also maintains that (as a result of we rule **מעליין**)

¹³ **עדים** will be **מעליין** מתרומה ליוחסין (and two **עדים** will be **ב"ה** and **עב"א**) asks let the **הכמים** decide whether this is a viable (so therefore we require two **עדים** and **אכילת** תרומה **בלא רבו** or whether one is sufficient for **מעליין** מתרומה ליוחסין) (or whether **חולקין לעבד** **בלא רבו**). The answer is that there is a concern for a **טועם** (or people who see someone eating **מעלה** will mistakenly be him to **כוהנה**). The question is whether this is a viable (so therefore we require two **עדים** to circumvent this **טועם** or whether it is not a viable **טועם** (so therefore **עב"א** is sufficient for **מעליין** מתרומה ליוחסין and **חולקין לעבד** **בלא רבו** and **אכילת** תרומה).

¹⁴ See footnote # 2.

תרומה previously said that (we cannot compare to תרומה since by גمرا) there is a מיתה עון מיתה, and that is obviously discussing תרומה for there is no חלוקת תרומה לזר!¹⁵

2. writes that the dependent on the of ליהסין of מחלוקת is dependent on the תוספות whether we are Cholak תרומה לעבד ולא רבו.¹⁶ How will this responds to תוספות question previously?¹⁷ ו'א"ת ובאיזה סברא פליגי¹⁸

¹⁵ See פג"י and אילת אהבים.

¹⁶ See footnote # 3.

¹⁷ כד ב ד"ה ואבע"א. See also (here) footnote # 13.

¹⁸ See האריך"א [הארוך].

וכי מסקין מתרומה ליוחסין הני מילוי בדאוריתא قولוי – תרומה דאוריתא מתרומה only by etc.

OVERVIEW

ועלין מנשיאות כפים ליוחסין what is the halacha asked ר' נחמן בר יצחק cited which indicates that ר' נב"י rejected this proof since there it was offered two responses, the second (ו Abuse"א), which is the subject of this, includes the idea that we are only by תרומה דרבנן (but not from תרומה ליה).

רביינו יצחק בן רבינו מאיר לא גריס לה¹

תרומה only by מעלין מתרומה ליוחסין ו Abuse"א in this גורס ריב"מ
תרומה דרבנן and not by דאוריתא -

זהא איבעית אימא רב נחמן² קאמר לה

For it is who offers this ר' נב"י

ואי גרסין לה אם כן היה סותר בעצמו ראייה שהביא

And if we would be this would himself contradict the proof which he previously brought to substantiate his view that by the case of the (נשיאות כפים מעלין ליוחסין it was built on), ר' חזקיהו (and therefore there is no concern of building it was – ר' נב"י), namely the proof of –

דאילא תימא הכי למאן דאמר מעlein מתרומה ליוחסין הא ATI לאסוקי

For if you will not agree to this (that by the building it was built on), ר' חזקיהו (since they were continuing to eat, therefore

אלא טעמא משום דריש חזקיהו

We must rather say the reason they were not concerned that the building it was built on account of the (ונש"כ אכילה תרומה עליה לכבודה) is because ר' חזקיהו (this is what said initially). However according to this he is saying that we are not from the case that ר' חזקיהו prevents the building (since there is no concern on account of the building they were only eating).

ואין זו סוגיות הש"ס אם לא יאמר ולא מילתא היא דאמרי

¹ According to the shita Nami and co' לא אוכל, ואלא מי גדולה חזקה וכו' should be; omitting the phrase וכו' מסקין וכור לא מסקין.

² This refers to ר' נב"י. See 'Overview'. See previous (עמוד ד"ה ואלא) where he states (on this) referring (seemingly) to ר' נב"י.

And this is not the pattern of the גمرا for someone to make contradictory statements, unless he prefaces the contradictory statement by saying, ‘what I said previously is pointless’.³

תוספות explains how indeed this was mentioned here, since it is contradicted:

ובפרק עשרה יוחסין⁴ (קדושים טט,ב) גרשין לה ואגב שיטפה דהתם שיבשו לכחותבה כאן :

And we are this contradictory phrase in the פרך עשרה יוחסין in ואבע"א גורס, and because the flow of the there (which brings the entire גمرا ואבע"א גורס), they erred in copying the entire here, where it does not belong.

SUMMARY

The that we are not מ"ד מעלין מתרומה דברנן ליוחסין contradicts the initial proof of ר"ג for his contention that by ריע חזקיה there is no concern of מעלין. Therefore we cannot be גורס it here (only in קידושין).

THINKING IT OVER

1. According to the can we be מ"ד מעלין מתרומה ליוחסין or only מתרומה דאוריתא?
2. The changes the of our גمرا. Why did he not change the ריב"מ differently; by omitting the and inserting instead ולבו מילתא היא דאמרי as indicates, which would be just as appropriate?⁵

³ did not make such a disclaimer, therefore we cannot be גורס, וכי מסקין וכו' since it contradicts that which stated previously.

⁴ The גمرا there is similar to our here citing the בנו ברזילי of the בריתא and asking on the רנבי' and trying to explain רנבי' by giving the same two answers given here, with the exception that name is not mentioned. Therefore over there where there is no single אמרה who contradicts himself we can mention the וכו' אמורא in the רנבי' מסקין וכו'; however not here where it would contradict original proof.

⁵ See מגני שלמה.

לא במידי דאיקרי קדש –**קדש not in something which is called****OVERVIEW**

תרומה stated that the were only able to eat **בני ברזילי**, but not **גمرا**. The asked, but the preventing the from eating stated **דאורייתא**. indicating that they were only forbidden from eating **קדש**, but not from eating [דאורייתא]. The responded that the word refers to **בני ברזילי**, so the **קדשים** refers to **התרומה** and the word **קדשים** refers to **התרומה** both and. Our explains why it was necessary for the to say both and **קדשים**.

תוספות asks:

ואם תאמר תרומה נמי איקרי קדשים דכתיב¹ ובא השם וטהר ואחר יאכל מן הקדשים -
And if you will say; but is also called, as it is written, ‘and the sun will set and he will become טהור and afterwards he may eat from the קדשים -
וההוא קרא איירי בתרומה² דהעריב שימושו אוכל בתרומה³ -

And that, which permits the to eat **טמא** after sunset is referring to **טמא שנטהר** only, and not to **קדשים** as the states **that after sunset the may eat** (but not); so why do we need two to teach us that the **בני ברזילי** cannot eat, if it would just have said **לא יאכל מן הקדשים**, we would know that if refers to both **קדשים** and **תרומה**, since **תרומה** is also referred to as **קדשים**??!

תוספות answers:

ויש לומר דודאי גבי טמא תרומה מיקרי קדשים -

And one can say; that certainly regarding a we find that **כהן טמא** **է קדשים** (in the just mentioned) -

אבל הכא אכילת זר **קדם** **דא אשבחן קדשים** **גבי אכילת זר**:⁴

However here by the we are discussing the prohibition of **בני ברזילי** in **אכילת זר** regarding the prohibition of **תרומה** and we do not find the term **קדשים** used for **קדש**. However, we do find the term **זר** used for **תרומה** as the cites **גمرا**.

¹ ד איש איש מונע אקון והוא צרווע או זב בעקבשים לא יאכל עד אַשְׁר יטָהֵר וְהַגְּעֵג בְּכָל טָמָא. The there read; יוקרא (אמור) כב, ז גַּפְשׁ או איש אַשְׁר פִּצְאָא מְלֹאנו שְׁכֶבֶת זָרָעַ. הַ או איש אַשְׁר יגַּע בְּכָל שְׁרֵץ אַשְׁר יטָמֵא לוֹ או בְּאַקְמָם אַשְׁר יטָמֵא לוֹ לְכָל טָמְאתוֹ. וְגַפְשׁ אַשְׁר תַּגְעֵג טָמְאָה עד הערב ולא יאכל מן בעקבשים כי אם רְחֵץ בְּשָׂרו בְּמַיִם. ז. ובא השם וטהר ואחר יאכל מן בעקבשים כי לחמו הוּא.

² See previous footnote # 1. It cannot be referring to because the cannot eat **קדשים** alone, they must first bring on the next day to be able to eat **קדשים**. However they are permitted to eat **הערב** **שמש** and **טובל** after they are **תרומה**.

³ **בבמות עד, ב**.

⁴ See ‘Thinking it over’.

קדש. Therefore it was necessary for the פסוק to write that the (who were suspected of being זרים) cannot eat (referring to תרומה) and (referring to קדשים) (קדשי מזבח).

SUMMARY

קדשים is referred as קדשים only regarding a טמא; regarding a זר it is referred to (only) as קדש.

THINKING IT OVER

כהן a קדשים regarding a תרומה is referred to as קדשים regarding a טמא, it is not referred to as קדשים זר?!⁵ Seemingly the name קדשים is referring to the תרומה (which is the same in all cases) and not to the purported eater (the זר or the כהן טמא).⁶

⁵ See footnote # 4.

⁶ See אוור החמה ואמרי יצחק.

Raising of the hands (Duchenening) בבל in**נשיאות כפים בבל –****OVERVIEW**

בחזקת סוריא in חלה or eats in נושא כפיו is teaches that one who ברייתא is. Our qualifications the rules in reverse توוספות. כהונת

דוקא נשיאות כפים ולא אכילת חלה¹ –

– אכילת חלה but not בבל in חזקה לכהונה a נש"כ

anticipates a difficulty:

ואף על גב דבסוריא נמי הוי מדרבן²

אכילת חלה why therefore is; מדרבן is also סוריא in חיוב חלה; since they are both מדרבן?

respects anticipates:

אין מדקין בבל כמו בסוריא דעתו הא תנא כיוב יחיד שמייה כיובש³ –

In they were not as particular as to who eats in חלה as they were, for this maintains ‘a conquest of an individual is considered a conquest’.

ואכילת חלה בסוריא הוא הדין נשיאות כפים כדמותם לקמן:⁴

And when the same, חזקת כהונת presumes a אכילת חלה בסוריא states that it too confers a נש"כ בסוריא as is evident later in גمرا.

SUMMARY

אכילת חלה ונש"כ it is סוריא everywhere, and by נש"כ is only (but not אכילת חלה).

THINKING IT OVER

Since now in סוריא everywhere, why are they more careful in than בבל, as to who the חלה is distributed to?⁵

¹ דין כהונת דאוריתא יוהסן מעלה from a however, מדרבן only in חיוב חלה. We are considered כפים, מדרבן (חו"ל) in חיוב חלה (only), but not from a דין כהונת דרבנן.

² See the later that מדרבן is (חרבן בית ראשון) חלה בכל (everywhere).

³ Tos' Gitin ח,א ד"ה א"י see is considered a since conquered it before he conquered all of proper (see סוריא). According to the (initially) מ"ד כיוב יחיש שמייה כיובש (כיובש). Therefore (since it was originally they were always scrupulous as to who would eat (even after the חלה where there never was a מדרבן חיוב). However in בבל where there never was a מדרבן חיוב was only).

⁴ See following which states, חזקה לכהונה נשיאות כפים וכו' בא"י ובסוריא.

⁵ See מהרש"א ר"ש.

לא חילוק גרכנות גופה להילה וקסבר תרומה כולי –

No; distribution by the threshing floor itself is a **for הולך חזקה** only, for he maintains that **תרומה**, etc.

OVERVIEW

ונדריך לומר¹ דפלייגי הנך ברייתות² בפלוגתא דרב הונא בריה דרב יהושע ורבנן³ -

And it is necessary to say that these two argue in the same that is between ר'גנץ and ר'ה בדר"י.

דאי לאו המי בחוד מהן בריאות מה נפשך אייכא למידך דמעליין מנשיאות כביס ליווחסין⁴ -
For if you will not agree to this (but rather maintain that both can agree
with either one, (רבנן or the ר"ה בדר"י), then in any case you choose we can infer from
one of these that בריאות מנש"כ ליווחסין.

וליגי נמי דלברייתא קמייתא⁵ אכילת חלה בסוריא חזקה לתרומה -

And there is an additional dispute between the two; for according to the first - חזקה לתרומה in סוריה is a חלה, בריתא

וְכָל שֶׁבּוֹ דָאַכְיָלַת תְּרוּמָה דָאוּרִיָּתָא דְהֹיוֹא חֹזֶקָה לְאַכְיָלַת חֵלָה דְרַבּוֹ⁶ -

אכילת חלה חזקה (דוארייתא) will be a for that certainly And.

¹ See ‘Thinking it over’ # 1.

² See ‘Overview’.

³ The first maintains (like בדרכו) that דרבנן is חלה בזוה"ז, so when that states ברייתא it is referring to תרומה דאוריתא [מדרבנן בזוה"ז] (that we are from which is, but not to). The second maintains (like בדרכו) that דאוריתא is חלה בזוה"ז (רבנן בזוה"ז), so when that states ברייתא it means (that we are מעלת מחילוק גראנות [which is, but not to]). יוסהין.

⁵ The first maintains that **אכילת חלה** (מדרבנן) is even **חזקקה** (see footnote # 3) and nevertheless **בריהתא** for **תרומה דאוריתא**.

⁶ See ‘Thinking it over’ # 2.

which is only - מדרבן

ובבריתא שנייה⁷ קתני חילוק גנות דהינו תרומה בסוריא לא הויא חזקה לחלה:⁸

However the second states that, חילוק גנות בריתא which is not a תרומה for חזקה. חלה.

SUMMARY

The first agrees with (חלה בזזה ר' רבנן) that בריתא we are from and up (עליה). The second agrees with (חלה בזזה ר' רבנן) that בריתא up (עליה) to תרומה, and the second agrees with the first (that בריתא up (עליה) to תרומה) that סוריא up (עליה) to תרומה and we are not from up (עליה) (דאורייתא).

THINKING IT OVER

מחולקת states that it is necessary to say that the two argue in the two between ⁹ R' Rav and R' Rav. Seemingly this is obvious from the what is teaching us?¹⁰

suria up (בריתא) we are since (according to the first) mentions that from to תרומה d'auria up (בריתא) so 'certainly we are from up (עליה) to acilat halah'. It seems that the intention of the first is to tell us that according to the first we are up (עליה) from a תרומה (חלה) (R' Rav). However according to the second up (עליה) to a תרומה (חלה) (R' Rav). Why was it necessary for to mention the acilat halah up (עליה) (בריתא) and up (עליה) to acilat halah up (עליה) (בריתא) d'auria? !¹²

⁷ The second maintains that תרומה up (עליה) is halah (see footnote # 3), and can be maintained that בריתא up (עליה) is halah.

⁸ This maintains that up (עליה) to תרומה d'auria but not in up (עליה) to תרומה d'auria, as opposed to the first up (עליה) to תרומה d'auria, which maintains we are always up (עליה) to תרומה d'auria. The reason is because this second maintains up (עליה) to תרומה d'auria (see R' D'ah Avbel).

⁹ See footnote # 1.

¹⁰ See Batra (מ"ק אות שמג) and אוור החמה.

¹¹ See footnote # 6.

¹² See פרדס יצחק אות נט.

עדות הבאה מכח חזקה –

Testimony which come from the strength of a presumption

OVERVIEW

The example explained that when the ברייתא stated that **חזקת הכהונה** it meant **עדות הבאה מכח חזקה**. The example offered was the case of one who was called up first to the תורה and a לוי was called after him, so רב אמי was called to him. Our תוספות explains how this incident is considered **עדות הבאה מכח חזקה**.

פירוש¹ שאנו יודעין שהוא כהן מחתמת הקורא אחורי שモחזק לו שהוא לוי:

The explanation (that this incident is called **עדות הבאה מכח חזקה**) is that we know that the first person called up to the תורה is a **כהן**, (only) on account of the one who read after him; for we were **מוחזק** that he was a **לוי**.²

SUMMARY

עדות הבאה מכח חזקה means that we know he is a **כהן** since the one who read after him was to be a **לוי**. **מוחזק**

THINKING IT OVER

What is the (even) according to **תוספות**?³ it seems obvious if the **לווי** was, then the **קורא ראשון** must be a **כהן**?!⁴

¹ חזקה (by saying תוספות) is seemingly negating (פירוש) that we accept the testimony as if we saw the חזקה to which the עד testified. פירוש rejects this because there is no חזקה, it is obvious; why should we not accept the testimony. See מהרש"י for an alternate difficulty in פירוש.

² It is an on the **כהן** (that he was **קורא ראשון**), which is substantiated by the חזקה of the **לווי** (who read after him). See ‘Thinking it over’.

³ See footnote # 2.

⁴ See **אלית השחר**.

That a Levi read after him

– שקרא אחריו לוי –

OVERVIEW

לוי someone who read first in the תורה was followed by a ר' אמי (מווחזק) qualifies this ruling.

תוספות anticipates a difficulty:

לפירוש רבינו יצחק הלוי¹ שפירש בגיטין (יט,ב ושם) אם אין שם כהן נתרדה חבילה - According to the explanation of the ר' הלוי who explained that which ruled in ‘if there is no Cohen, the ‘bundle’ is separated’, to mean - **שיקרא ישראל גדול לפני לוי²** -

That a prominent **ישראל** should read before a **לוי** (who is not that as prominent) –

תוספות responds:

יש לפרש הכא שקרא אחריו לוי קטן מישראל שקרא אחריו³:

We can explain that here in the case of ר' הלוי, that the people read after the first, was of a lesser stature than the **ישראל** who read after the **לוי**.

SUMMARY

According to the rule, ר' הלוי, when there is no Cohen, the people are in order of the prominence of the **עלים**.

THINKING IT OVER

1. Why did not answer (as he does in גיטין) that the **לוי** was greater than the first (proving that the first is a **עליה**!)⁴

2. According to the **גמרא** the should have said that the third was more prominent than the second; why mention the **לוי** at all?⁵

¹ This seems to be ר' יצחק ברבי יהודה who is cited there.

² According to the rule, if there is no Cohen, the people are called up to the תורה in the order of their prominence; the more prominent first. There is therefore seemingly no proof that the first one was a **לוי** (since a **לוי** read after him); it is possible there was no Cohen, and the one who was called on first was the most prominent (**לוי** or **ישראל**), and the **לוי** was less prominent and the third one was the least prominent.

³ Therefore it must be that the first one was a Cohen, for otherwise the third one should have been called up before the **לוי** since he was more **גדול** than the **לוי**.

⁴ See מהרש"א and מהרש"ל.

⁵ See [Tosfot Horai'a] and כסא שלמה.

That a *kohain* read before him

– **שקרא לפניו כהן** –

OVERVIEW

רבי יהושע בן לוי was a person to **לויה** based on the testimony that he read in the **תוספות** after a **כהן**. Our **תוספות** qualifies this ruling.

פירוש¹ פעם אחד:

The explanation why this proof is valid is because the **כהן** read **only one time**; he had only one **עליה**. If there would be no **לווי**, the **כהן** would have read twice (received two **עליות**).

SUMMARY

If a receives one **עליה** we can be certain that the following was given to a **לווי**.

THINKING IT OVER

Why was it necessary for **כהן** to tell us that read one time (only) and not twice, when the **גמרא** clearly states that the **עד** said **שקרא שני בבייחנ"ס**; indicating that he received the second **עליה**; obviously the **כהן** read only once?!

¹ **פירוש** (בד"ה שקרא לפניו) is seemingly negating (by saying, פירושי) that if he was not a **לווי** they would have called up two **כהנים** (for the first two **תוספות**). **עליות** disagrees for we do not call up two, but rather the same receives the first two **עליות**. Therefore writes 'פעם אחד' **כהן**, preceding this, read only once (he only received the second **עליה**), indicating that the second was for a **לווי**. See מהרש"א.

הר' שאמר בני זה וכחן הוא – He said, this is my son and he is a Kohain**OVERVIEW**

תרומה cites a person in which was a person only, but not for the testimony of his father. explained that the father is believed since it is (but not to marry him to a).¹ Our מיווחסת clarifies this case.

מדנקט בני זה וכחן הוא משמע שאינו ידוע לנו אם הוא בנו –

Since the mentions that the father said, ‘this is my son and he is a’, this **indicates that it is not known to us whether this is his son**, without the testimony of the father -

והוא בא להעיד שהוא בנו ושהוא כהן² שאינו בן גירושה –

And the father comes to testify that this is his son, and also that he is a, meaning **that the son is not the son of a divorcee** which would disqualify him from marriage. Now proves his point -

ዳאי ידוע לנו שהוא בנו³ הוה ליה לMINAKT בני זה כהן بلا ו'וי' –

For if we are discussing a case where it is known to us that this is his son, the should have stated that the father said, ‘my son here, is a Kohan’, without the ‘and’ (without the ‘and’ which makes it into two testimonies).

תוספות asks:

ותימה אם כן יהא נאמן לכולי עלמא⁴ לתרומה⁵ וליויחסין במגו דאי בעי אמר אינו בנו –

And it is astounding! If indeed it is so (that we do not know [on our own] that this is his son), the father **should be believed according to everyone** (even for both **ר' חייא** and **יוחסין**, for he has a, **מגו**, that he could have said he is not his son, but nevertheless he is a; in which case since he is not related he would be believed (together with another) even for **יוחסין**). On account of this we should also believe him now (together

¹ This means that if we require two for יוחסין and there is an ע"א who is testifying that the son is a Kohan, the father cannot be the second (see following Tos' ד"ה נאמן הא').

² Seemingly it is obvious that if the father is a (known) Kohan then if we believe him that this is his son, the son is also a Kohan, why the need to add בנו; therefore explains that the testimony is that he is not a Kohan, which would make him a חילן who is not a Kohan.

³ If it is known that he is a Kohan, (obviously) he would be believed, but may not be believed if there is a Kohol that the son is a Kohan. The dual of this case where we do not know that he is his son is that **נאמן** ליהא Kohol that he is a Kohan, and even if there is no Kohol that he is a Kohan.

⁴ See ‘Thinking it over’.

⁵ **ר' חייא** need not have said that he is נאמן להאכלתו תרומה because it is בידו, but rather because he has a **מגו**.

with another even for (עד יוחסין).

תוספות answers:

ויש לומר אכן על גב דעתך מגו לא מהימן לדבריו קרוב הוא⁶ -

And one can say; that even though the father has a, he is not believed, because according to his testimony he is a relative and therefore פסול לעדות

בדאמירין בהחולץ⁷ (יבמות זז מז ואושט) לדבריך כותוי אתה ואין עדות לךותיך⁸ -

As, according to your words you are a, said in פרק החולץ 'according to your words you are a relative and a cannot testify' -

ואין אדם נאמן לפסול את בנו -

And a person (this purported is not believed to disqualify his son.

(מגו no anticipates a difficulty (with his view that since there can be there):

ואף על גב דברי קאמר בסמוך אני מאמין להאכilio בתרומה שhei בידיו¹⁰ להאכilio בתרומה -

And even though shortly states, 'I believe the father since it is in his power -

להאכilio בתרומה¹¹ - אלמא אף על גב דקרווב הוא לדבריו נאמן במגו¹¹

It is evident from this reasoning of that even though that according to the father's words he is a relative, nevertheless he is believed with a מגו להאכilio בתרומה; why therefore is he also not believed with a מגו to be תרומה?

תוספות responds:

התם ודאי מהימניין ליה משום דעתך ליה מגו אפילו ידעינו שהוא בנו -

⁶ In a case of a regular פרעתי, for instance מיגו, his claim of is a valid claim; however it is considerably weakened by the שטר which the father is holding that indicates (but not conclusively) that he did not pay. The מזוייף of מיגו is effective in supporting the valid claim of פרעתי to the extent that the father cannot collect unless he is required to pay (להאכilio תרומה or even להעלו ליווחסין) we require (either one for or two for) so once he admits that this is his son; this is an invalid since he is a relative and cannot testify for his son. Therefore, even though he has a, but since there is no evidence (that he is a son), his claim is not accepted (see ח"ב מוז"ק אה"ז אות שמ"ב).

⁷ The case there is where someone approached ר' יהודה and told him that he was by himself (which is an invalid גירוש). This ג' told ר' יהודה that he has children (who were מוחזקים as ישראלים). told him you are believed to disqualify yourself (since תחיכא דיסורא), however (from the perspective of your children) you are not believed (even in regards to yourself) to disqualify your children, because (as רבנן explains there) according to your testimony you are a relative and a כותוי.

⁸ In this case of the ג' we really consider him a Israel (see footnote # 7), so let us believe him that his son is a relative and a that he did not have to say that this is his son. He merely could have said, 'he is a'. This proves that once he said he is a relative and is not believed (even with a).

⁹ See ר' יהודה who writes that נאמן אתה לפסול את עצמך ואי אתה נאמן לפסל בניך. See ר' יהודה.

¹⁰ See ר' יהודה that the father is a and has תרומה and need not ask anyone permission to give it to his son.

¹¹ In both cases the father admits to being a relative, yet he is believed (תרומה ויווחסין) but not believed (בגמו דבידו להאכilio תרומה) however he is not believed (בגמו דאיינו בנו); why the difference??!

בידו מגו (of תרומה), the father is **certainly believed since the is valid even if we know that he is his son**¹² - **להאכילו**

אבל האי מגו¹³ אי הוה ידעין שהוא בנו ליפה מגו:

However this, בנו, once we know that he is, there is no, מגו, therefore since מגו, there is no, **להאכילו קרוב הוא**, therefore since **איןנו בנו**.

SUMMARY

AGO is not effective (by עדים) if they admit they are relatives. However the of AGO is effective.

THINKING IT OVER

AGO asks that he should be (even according to ר"ח נאמן לכ"ע because of the תוספות that he is considered as if he has ownership on to whom to give the תרומה). Seemingly we see that ר"ח argues with ר"ב אינו בנו¹⁴. Even regarding תרומה there is the concept of AGO¹⁵, which proves that ר"ח rejects the concept of AGO here, so why would he agree to the concept of AGO¹⁶!

¹² The reason of AGO is a much stronger reason to believe him, for he need not come to BIYD at all. The father is empowered regardless (the father is considered as if he has ownership on to whom to give the תרומה), there is no need for עדות, and therefore even though he is a קרוב, the father is NAMEN להאכילו תרומה.

¹³ The AGO is a 'regular' AGO; it is not on account of AGO, therefore in order to be effective we still require a קרוב הגdotot עדות (both for ייחסין and תרומה). There cannot be a הגdotot עדות since he is a קרוב.

¹⁴ See footnote # 4.

¹⁵ See the end of תוספות (footnotes 12 & 13) that he refers to AGO as a מיגו, and considers it a valid AGO even if AGO is not a valid AGO. If ר"ח rejects the AGO of AGO he should certainly reject the AGO of AGO.

¹⁶ See footnote # 6.

He is believed to feed him Terumah**נאמן להאכילו בתרומה -****OVERVIEW**

The cites a person in which was **רבי** explained that the father is believed to marry him to a (based on the testimony of his father). Our clarifies this case.

פירוש¹ אף על גב דיליכא אלא הוא שהוא קרוב דקסביר רבי אין מעLIN מתרומה ליוחסין² -

The explanation of is that the father is believed **even though that the father, who is a relative, is the only one testifying regarding the son. He is believed because maintains that we do not elevate from, יוחסין to תרומה רבי**, therefore even though he is eating without valid there is no concern that we will be him to a (which requires valid).

ואין נאמן להשיאו אשה פירוש³ להצற עם אחר להשיאו אשה⁴ כיון שהוא קרוב -

And the explanation of is that the father is not believed (even) **to be combined with another**, who testifies that the son is a proper, **כהן, קרוב, אשה מיווחסת, אשה**, since the father is a **קרוב**.

והשתאathi שפיר⁵ הא דאמר רבי חייא -

And now it is properly understood this which said to **ר"ח** - **רבי**

אם אתה מאמינו ייחידי להאכילו בתרומה אף על פי שהוא קרוב -

If you believe the father **alone even though he is a relative;** indicating that he is a proper witness (even though he is related) -

האמינהו עם אחר להשיאו אשה -

You should also believe him together with another witness (for there will be two credible witnesses).

In summation: **אין נאמן להשיאו אשה** is by the father alone; **נאמן להאכילו בתרומה** is even together with another witness. will now clarify why it is necessary⁶ to explain **רבי** in this fashion:

¹ This is negating with the word **פירוש**, the explanation rejects shortly (see footnote # 11).

² See at the end that if one maintains then two are required for **תרומה**, and if one maintains **עדין** then one is sufficient for **תרומה**. [See (also) **כ.א, תוס' ד"ה או ובתו"י שם** (which requires only an **ע"א**), to **להשיאו אשה** (which requires two **עדדים**)?! See 'Thinking it over' # 1.]

³ See footnote # 1 & # 10.

⁴ Two witnesses are required to allow one to marry an **אשה מיווחסת**. The father cannot be one of these witnesses.

⁵ Seemingly, how can **ר"ח** compare **אכילת תרומה** (which requires only an **ע"א**), to **להשיאו אשה** (which requires two **עדדים**)?! See 'Thinking it over' # 1.

⁶ The difficulty with explanation is that the two cases of **נאמן** and **נאמן** are in two different situations; **נאמן** **תוס' ד"ה נאמן** and **נאמן** **להשיאו אשה** by himself, and **עדין** even with another. Nonetheless maintains this explanation, for the other options are not viable as **תוס' ד"ה** continues to explain.

אבל אין לפреш⁷ דאי נאמנו ייחידי להשיאו אשה -

However we cannot explain **אין נאמן להשיאו אשה** to mean that the father alone is not נאמן להשיאו אשה not

דפשיטה דאיינו נאמן ובהא לא הוה אמר רב כייא האמיןתו לישא⁸ -

For that is obvious that the father is not ר"ח, and נאמן would never have asked that the father should be believed to marry [him off] in such a situation -

דלא מישתמייט שום תנא למימר⁹ עד אחד כשר ליוחסין¹⁰ -

For we can find no who maintains the one is sufficient for **עד** Therefore we must say that אין נאמן להשיאו אשה is even together with another.

ובהא נמי אין לפреш¹¹ דנאמן עם אחר להאכilio בתרומה¹² -

And we can (even) also not explain that means that the father is believed only together with another - **עד**

דאיה הוה צרייך שני עדים בתרומה אם כן הוה סבר דמעליין מתרומה ליוחסין¹³ -

For if maintains that two are required so then we would need to conclude that maintains Rabbi that

ואם כן היכי מכשיר קרוב כיון דאיינו נאמן להשיאו אשה -

And if indeed maintains how can the father who is not since maintains that as a father is קרוב for since maintains that we will be him, since we are now assuming that maintains Rabbi that it is necessary to maintain that נאמן himself, and even with another. ע"א

תוספות asks:

ואם תאמר כיון דסבירא ליה דאיין מעליין מתרומה ליוחסין¹⁴ -

And if you will say, since maintains Rabbi

אם כן היכי מוקמינו בהגוזל בתרוא (בבא קמא קיד,ב) ההייא דרבנן דלקמן במסיח לפוי תומו -

⁷ The advantage of explaining in this manner is that the father and are in the same case, namely by himself (see footnote # 6).

⁸ The marginal note amends this to להשייאן [אשה].

Tos' כד, א ד"ה אבל in this manner do not agree with the mentioned previously. Rather agree with ר"מ (פנ"י ר"מ) who maintain that all the men in the house are required. This is not required. Rather agree with ר"מ (פנ"י ר"מ) who maintain that all the men in the house are required.

¹⁰ This is the rejected referred to previously in footnote # 3.

¹¹ This is the rejected referred to in footnote # 1. by writing ובהא נמי, may be indicating that certainly אין נמי is discussing the father alone (since all agree that requires two), however even regarding we cannot explain it to mean that he is only with another עד because there will still be a difficulty (albeit not as apparent and blatant as the previous difficulty). See 'Thinking it over' # 2.

¹² The advantage of explaining in this manner is that the father and are in the same case, namely together with another (see footnote # 6).

¹³ See footnote # 2.

¹⁴ See footnote # 2.

רבי indeed it is so, how does **פרק הגוזל בתרא** establish in that which taught later,¹⁵ in a case of ‘speaking innocently’¹⁶ -

ונאמן בתרומה דרבנן אבל בתרומה דאוריתא לא מהימן -

תרומה תרומה דרבנן but he is not believed to eat **דאורייתא**; this is how interpreted the ruling of רביashi in בתרא; the question is -

וְאֶלָּרֶבֶי כִּיּוֹן דְּסֵבִירָא לִיהְ דָּאוּן מַעֲלִין מַתְרוּמָה לִיוֹחָסִין -

- אין מעליין מתרומה ליוחסין רב**י** maintains that רב**י**

אָס כו סבירא ליה דמעליין מתרומה דרבנן לתרומה דאוריתא -

- מאנליז אתרוואה דרבנן לפרק אוריינטָה maintains רבי we assume that Therefore.

בדמשמע לעיל¹⁷ דכל היבא דאכילה בתרומה דרבנו אכילת נמי בתרומה דאוריתיתא -

As is indicated previously in the gemara, that whoever eats תרומה דברנן, also eats תרומה דאוריתא

תשובות answers:

ויש לומר דהאי דמצרביינו למיימר לעיל¹⁸ דמעלון מתרומה דרבנו לחלה דאוריתא או איפכא -

And one can say; that the reason it was necessary to say previously, that we are מעלין מהלה דרבנן להרומה or הלה דאוריתא to תרומה דרבנן מעלה - אורייתא

הינו משופך לא תקשי למאן דאמר אין מעליון מנשיאות כפיפ ליוחסין¹⁹ -

That is because there should be no difficulty according to the one who maintains - אין מעליין מנשיאות כפיהם ליוחסין

אבל רבashi בהגוזל אפשר דסבירא לייה כמאן דאמר מעליין²⁰ -

However (who said that the ruling of רבי is only בתרומה דברנן) **in הגזול** (פרק הגזול) **ר' אשיה** (מ"ד מעלין מנש"כ) **he may perhaps maintain according to the** (בדאוריתא), **that we are** (בריותה) **מעלין** (מדרבנן לדאוריתא) **and therefore will not need to interpret those two** (לייחסין), **but rather ר"א** (אין מעלין מדרבנן לדאוריתא) **will maintain that** (ר' אשיה).

¹⁵ ב' גمراה. The relates that there was a person who reminisced ‘innocently’ about his childhood that they would give him, and רבי מעלה him to כהונה based on his story.

¹⁶ means when a person relates an incident ‘innocently’ without any intention of testifying or proving anything. In certain instances such reminiscing is believed to a certain extent.

¹⁷ The Gemara there states (that if we maintain ליהסין, then) **אנו מעלון מתרומה דאוריתא**, and **ומסקין מתרומה דרבנן להלה דאוריתא**; therefore assumes the same applies that **תוספות** **ומסקין מתרומה דרבנן להלה דאוריתא**.

¹⁸ See footnote # 17.

¹⁹ The two seemingly contradicted the view of ליהסין (כה,א) on בריאותה. In order to resolve this contradiction it was necessary to assume that that לזרירותא מעליין מדרבנן.

²⁰ However, even though רבי can maintain nevertheless (who according to רב אשי is only discussing תוספות as stated previously (by footnote # 2). See מהרש"א.

offers an alternate solution:

ועוד נראה דלכולי עಲמא בין למאן דאמר מעליין מתרומה ליוחסין בין למאן דאמר אין מעליין -
An in addition²¹ it is the view of that according to everyone, whether the
all agree that, למ"ד אין מעליין מתרומה ליוחסין or whether מ"ד מעליין מתרומה ליוחסין -

מעליין מתרומה דגן תירוש ויצהר של ארץ ישראל ואפילו היא דרבנן לחלה דאוריתא -
We are from of grain, wine and oil of א"י, and even it is תרומה דרבנן מעליה to מעליה we are -

כיוון שבזמן המקדש היה דאוריתא²² -

Since that during the time of the mikdash the תרומה of the mikdash is דאוריתא is דגן תירוש ויצהר -
אבל תרומת²³ פירות או תרומת חוץ לאرض אין מעליין בכלל עלאה -

However [from] of other produce or תרומה of all agree that we are not מעליה -

אפילו לתרומת דגן תירוש ויצהר של ארץ ישראל דרבנן²⁴ -

Even to מדרבנן (even if it is) א"י of תרומת דגן תירוש ויצהר to מדרבנן -

דזוקא בתרומת ארץ ישראל²⁵ או חלה דאוריתא²⁶ בסוריא אמר מעליין מדרבנן לדאוריתא -
For it is only regarding [דאורייתא סוריא] which was that the תרומת א"י first said²⁷ that we are מעליה מדרבנן לדאוריתא -

אבל לא בבל -

But not from בבל; we are not from מעליה to חלה בבל.

והיא דהgoal בתרא איiri בתרומות פירות או חוצה הארץ -

בתרומה נאמן only where stated that he is only, פרק הגוזל בתרא in גمرا
יעקר בדאורייתא or תרומת חו"ל it is discussing פירות, which has no difference, and
therefore by such we are not even תרומת דתוי"צ דאי (דרבנן) מעליה מתרומה דרבנן.

resolved the difficulty; maintains אין מעליין מתרומה ליוחסין and therefore he also maintains תרומת א"י דגן תירוש ויצהר from תרומת א"י, but that is only from מדרבנן even though we are not even תרומת א"י מדרבנן from לתרומת א"י.

²¹ This answer disagrees with the previous answer and maintains that whether or not, does not depend on whether or not. Rather it depends on what type of מדרבנן.

²² מדרבנן one is obligated to separate דגן תירוש ומערחות תרומות from only. All other produce are only מדרבנן.

²³ Others amend this to מתרומה.

²⁴ This is referring to דגן תירוש ויצהר even everywhere even in א"י. It was necessary for תרומות to rule this way, for if we maintain that one can be from all (since they are both מדרבנן), we would inevitable be from all, and the difficulty with רבashi would remain for we would be from all תרומות דגן תירוש to דגן תירוש.

²⁵ יעקר בדאורייתא בזמנם המקדש י齊הר בזה"ז.

²⁶ The word 'דאורייתא' is deleted (by the marginal note).

²⁷ There is no difference between בבל (but not in סוריא) and הוללה (which is on בריתא states, בכח, ואכילת הוללה בسورיא). Seemingly there is no difference between בבל and סוריא since all מדרבנן is הוללה סוריא. This proves that there is difference whether as יעקרו מן התורה or if סוריא (if we assume כייבוש).

– וכן מתניתין דלקמן²⁸ דנאנים להיעיד בגודלו מה שראו בקוטן ומוקי לה בתרומה דרבנן –
 And similarly the later which states that certain people are believed to testify as adults what they saw as minors (one of them was regarding eating תרומה דרבנן by נאמנות for גمرا, and the established that this is only by תרומה דרבנן (the question again arises that we are – מעלה מהתרומה דרבנן לתרומה דאוריתא -
הינו בתרומת פירות או חוצה לארץ -

That is, **תְּרוּמָה דָּוֹרִיתָא** means **תְּרוּמָה צְוִילָה** or **תְּרוּמָה פִּירּוֹת**, from which we are not allowed to benefit.

Once תרומה דאוריתא claims that we are from תרומה דרבנן דתוי"צ, there is an additional ruling regarding תרומת דתוי"צ.

ולמאן דאמר מעליון מתרומה ליווחשיין²⁹ -

- מ"ד מעליין מתרומה ליוחסין

³⁰ אפיקו מתרוממת דנו תירוש וישראל דארץ ישראלי אפיקו היא דרכנו מעליון -

תרומה דרבנו even if it is even from תרומות דתוי"צ א"י ליהחסין מעלה.

תוספות proves his contention:

³¹ דהא רבינו יוסי סבירא ליה בפרק יוצא דופן (נדה מו,ב) תרומה בזמן הזה דרבנן -

- **דרבנן** is תרומה בוה"ז פרק יוציא דופני in ר"ב that (only) maintains in ב"ה

ודוקא משומך וקשור חולמי תרומה לעבד בלבד רבו הוא דעתך ליה דאיין מעליון -³²

And it is only because, חולקין תרומה לעבד ולא רבו ר"י maintains that is why he maintains - אין מעליין מהרומה ליהחסין

הא אי הוה סבר דאין חולקין הוה מודה דמעליון -

However if ר"י would maintain אין חולקין תרומה לעבד ולא רבו that תרומה בזה"ז עבד since there is no concern that he is an מעלין מתרומה ליווחסין according to מדרבנן (as brought down from מדרבנן ר"י), how can we be from מעליה according to ר"י. This proves that we can be from מעליה ליווחסין. א"י תרומת דתו"צ to תרומה מדרבנן provided it is ליווחסין.

תוספות anticipates a difficulty:

והא דאמר לעיל³³ מעיקרא אוכל בתרומה דרבנן³⁴ ולבסוף אוכל בתרומה דאוריתא -

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²⁹ See ב' כז.

³⁰ אדרבנָן בָּהָרְבָּן, even if we maintain that it is certainly from תְּרוּמָת אֶ"ם; we are even more so if we maintain that מַעֲלָה מִחְלָה דָאָרִיתָא.

³¹ There is a dispute later between who maintains **ר' יוסי** and who maintains **אין חולקין תרומה לעבד בלבד רבו** (**כח,ב**) who maintains **ר' יהודה**. The **גמרא** explains that in the vicinity of **ר' יוסי** they were not concerned (**מעלה ליהוחין מתרומה לעבד בלבד**). Therefore there is no concern if we will give the **הרומה** to the **עבד**.

³² חולקין לעבד שלא רבו ר"י ור"י where it appears that the מחלוקת between those who say that there is no concern if we will give the *mezuza* the *mezuza*, and as result of that there is the subsequent מחלוקת whether or not.

³³ אֶל-כֶּבֶשׂ (on the very top).

³⁴ This refers to the **תרומות חו"ל** they ate in בבל (see there רש"י).

And that which the said previously (regarding גדרה חזקה that initially you ate) **תרומה and at the end** (because of גדרה חזקה you eat even תרומה דרבנן) however just concluded that we are not from מעלת תוספות (the תרומה ח"ל they ate in דורייתא to בבל!

תוספה responds:

לא מכח שהיו אוכליין בגולה קדשי הגבול³⁵ אוכליין בתרומה דורייתא -

They did not eat (when they returned to א"י) **on the strength that they ate** (תרומה דורייתא for גלות בבל **in קדשי הגבול**)

אלא משום שהיו נושאים כפיהם בגולה שמעליין מנשיאות כפיהם לתרומה דורייתא -

But rather the reason they were able to eat **is because they were** – **מעליין מנש"כ** **לתרומה דורייתא**, גלות **in נו"כ**

ברירתא questions this interpretation of the תוספה:

אף על גב זהרי אתם בחזקתם بما הייתם אוכליין בגולה כולי -

Even though that the states that told them **that you retain your in what you were eating in**, namely, קדשי הגבול (תרומה) גולה, you may continue eating (דורייתא) in א"י, this statement –

משמעות שמכח אכילה היה מתירו -

Indicates that he permitted them in **on account of** their eating – **נש"כ**, תרומה דרבנן, and not on account of –

תוספה responds:

אין לחוש בכך³⁶ -

We need not be concerned with this question for all נחמה meant is that you will continue to eat [דורייתא] (but he did not mean to explain why you are permitted to eat [דורייתא]).

תוספה concludes:

וליהוא לישנא³⁷ ذקאמר בתרומה דרבנן אוכל בדורייתא לא אוכל -

תרומה And according to that view which states that נחמה permitted them to eat; **תרומה דורייתא but not to eat** (seemingly if the reason according to the first view is that they ate since תרומה דורייתא ובע"א why does the disagree?)

תוספה responds:

מה שלא העלים מנשיאות כפיהם לתרומה דורייתא הינו משום דרייע חזקיהו³⁸:

³⁵ ריש"י כד, ב ד"ה קדשי they ate in גלות בבל (see קדשי הגבול refers to the תרומה).

³⁶ In addition קדשי מזבח only may have meant that you will not be able to eat, נחמה.

³⁷ ואבע"א השתה נמי בתרומה דרבנן אוכל וכו' כה, א where it states כה, א.

The reason they were not elevated from נש"כ to תרומה דאוריתא is because their חזקה was flawed.³⁹

SUMMARY

(who maintains that the father alone is believed to be even together with another) rules that the father alone is believed to be even together with another. We can maintain that whether or not, is dependent on whether we maintain (then or not) (מעלין מעלין מנש"כ ליהחסין) or we can differentiate between (דרבען) from which we are even to, and (וילך) from which we are not even to (דרבען) of תרומה דתוי"צ (דרבען) from which we are even to, and (וילך) from which we are not even to (דרבען) of תרומה פירות (וילך) and (וילך).

THINKING IT OVER

1. אם () ר"ח maintains that the only way we can understand the question of תוספות is we maintain that the father alone is believed to be even together with another.⁴⁰ However even if means with another, the question of is still not understood; how can we compare להשיאו to, where one is sufficient and therefore even a קרוב is קרוב to, where two are required and therefore a קרוב is קרוב!⁴¹

2. negates the interpretation that means together with another.⁴² Since the reason he is because it is, how can even entertain the idea that a second is required?⁴³

³⁸ who wereبني ברזילי because they attributed their lineage to the ריע חזקיהו See Tos' CD, B, D"הiani

³⁹ The comments (the bracketed comments are from the translator): ולפי זה (דריע חזקיהו הוי טעם לשאיין מעלה [אפי']) דהש"י גרשינן לעיל (כה, א [ועי בתוו"ה וכי]) שפיר 'כ' מסקין מתרומה ליהחסין נמי (שאיין מעלה מתרומה דרבנן ליהחסין) ומכל מקום איינו סותר ראייתו (בדף כד, ב דריע חזקיהו מונע מלעלות מתרומה ליהחסין) דהשתא נמי (שאיין מעלה מתרומה דרבנן ליהחסין) יכול לומר (בסוגנו אחר דעתו) דאי לא תמא הבי (דריע חזקיהו), היכי הוי ברס' יידייה הא אותו לאסוקינהו לתרומה דאוריתא, ועוד דהשתא להאי פירושא (שאיין מעלה מתרומה ח"ל כלל) פשיטה ליה לתלמידא דאיין מעלה מתרומה דרבנן דחוץ לארץ אפיקו (תרומה דאוריתא וכל שכן ליהחסין לאיבעית אימא, על כן איינו דעתה (דריע חזקיהו מונע העלייה), ואין חור מדבריו (דריע חזקיהו מונע העלייה) דמעיקרא לא הביא דעתה (דריע חזקיהו מונע העלייה) מתרומה אלא משום (שם חשב הגמ' שהוא) אפיקל מדאוריתא, תוספות ישנים.

⁴⁰ See footnote # 5.

⁴¹ קובץ הערות (למס' יבמות) סי' ס"ה אות א and פנ"י, אילת אהבים See

⁴² See footnote # 11.

⁴³ פנ"י See

He is believed to feed him *Terumah*

נאמן להאכילו בתרומה -

OVERVIEW

The Talmud cites a person in which Rabbi Yohsin explained that the father is believed to marry him to a woman (based on the testimony of his father). Our *tosfos* reconciles this ruling with a seemingly contradictory ruling.

asks:

הקשה רביינו יצחק בן מרדכי דתנו בפרק עשרה יוחסין (קדושים דר' עט, ב ושם) -

The asked; we learnt in a משנה in Rabbah -

מי שיצא הוא ואשתו למדינת הים וכשחזר הביא עמו בניים ומתה אשתו¹ -

A who left with his wife overseas, and when he returned, he brought children with him and his wife died -

צריך להביא ראייה על בניו -

It is necessary for him to bring proof regarding his children. This concludes the משנה continues -

ואינו נאמן להאכילם בתרומה כדמותם הtems בגמרא -

And he is not believed to feed them, without proof that they are indeed his children, as is evident there in the **גמרא** -

דתניא הtems הביא ראייה על הגדולים² אין צורך ראייה על הקטנים³ -

For the there cites a which states; if he brought proof regarding his older children, no proof is required for the younger children. This concludes the **ברייתא** -

ואמר רבי שמעון בן לקיש עלה לא שננו אלא בקדשי gabol אבל ליווחסין לא -

And commented on this was taught only in regards to (which is **קדשי gabol**, but not in regards to) regarding he needs to bring even for the **קטנים** (who are **קדושים**). In any event it is evident from that regarding both **גדולים** and **קטנים** we do not depend on his word, but we need some outside proof (at least by **ברוכים אחריה**) -

והיכי קאמר רבי הכא דבר נאמן להאכילו בתרומה⁴ -

¹ If his wife returns with him and the (small) children are attached to the mother (ברוכים אחריה) that is sufficient proof that they are his children and he is **נאמן להאכילם תרומה**.

² This would (seemingly) indicate that if he did not bring a **Ketanim** (who are **קדושים**), he needs to bring a (even if they are **ברוכים**?!).

³ No proof is required for the **Ketanim** if they are **ברוכים**; however proof is required for the **גדולים** since they are not **ברוכים** **אחריה**.

⁴ See 'Thinking it over' # 1.

So how can rule here that the father is believed to be his son מאכיל רבי, without any outside confirmation?!

תוספות answers:

ותירץ דרבי תנא הוא ופליג –

And the משנה וברייתא answered; that רבי is a תנא and argues מס' in משנה וברייתא ריב"מ and maintains that the father alone is believed.

הוסףota offers an alternate solution:

ורבינו תם אומר דההיא קדושים אתיא כרבי יהודה דאמר⁵ אין מעלי לכהונה על פי עד אחד -
And the answers that the there in according to מסכת קדושים משנה ובריתא ר"ת
ר"י, who maintains that we do not elevate a person to based on the testimony of one witness⁶ -

קדשי הגבול דחתם היינו לכל דבר קדוצה בגון תרומה ונשיאות כפים ויוחסין -
קדשי for כהנים they are considered כרכום אחריה by ר"ל stated there that -
יוחסין and **תרומה**, **נש"כ** **קדושת כהונה** for instance, **קדושי הגבול**

הוספה anticipates a difficulty:

וְאֵיךְ אָמַר הַתָּם אֶבֶל לִיוֹחָסִין לֹא⁸ -

And regarding that which ר"ל stated there, ‘however not regarding יוחסין’, that the will not be sufficient for יוחסין; this seemingly contradicts what we are saying now that קדשי הגבול – (עלין מתרומה ליהוסין ר"י maintains יוחסין since ר"י) includes קדשי הגבול

responds, the term **יוחסין** there - **תוספות**

הינו יוחסין לקורבה כגו לסקול ולשרוף על ידו⁹ -

שריפה or סקילה or יהסין in regards to relatives, for instance to punish with **shari'a** on account of this child –

⁵ See previously מתרומה ליווחסין in the section **כג ב**. See (also) that since ר' י maintains משנה (תו"ד ד"ה ואיבעית) and תרומה therefore he requires two עדים (even) for it.

⁶ Therefore according to ר"י that two עדים are required for תרומה (ויהحسن), it is necessary for the father to bring proof (בנוי הקטנים ע"א) and/or [which is better than an כורכים אחריה for בניו הגדולים עדים (two עדים)]. However who maintains בידו להאיכלו פ"ע ע"א and אין מעלה מתרומה ליהحسن that the father alone is believed since (is at least as good as an ע"א).

⁷ According to the ר"ח we have established the קדושין in משנה וברייתא according to ר"י who maintains (see footnote # 5) that the proof of הרומה must be מעדין more than one witness, therefore we must say that the proof of הרומה must be מעדין more than one witness, which requires that it is like once we permit them to eat they will be מעדין, since according to everyone, ב' עדין is better than an ע"א.

וליכא למייר ליווחסין להשייאו Ashe דהא לרבי יהודה במוקום שנאמן להאכילו תרומה נאמן גם להשייאו Ashe דמלעlin מתרומה ליווחסין, Tosfot⁸ יושנים.

⁹ This means if this child (who was אחר אמו) had relations with his (alleged) parent he will not receive the punishment of or שרים (based on alone) unless there are עדם that this is their child.

proves his point:

בדמיסיק התם רבי יוחנן אמר אף ליוחסין ואזדא רבי יוחנן לטעימה دائمר סוקליין על החזקות -
As the concludes there (in קדושין) maintains the proof extends even regarding ר"י, יוחסין, for ר"י follows his reasoning, where he maintains that we stone (even if it is) based on חזקיות (only).¹⁰

תוספות offers an additional solution:

[אי¹¹ נמי הכא באשתו עמו דאין צרייך להביא ראייה בדאמר התם]:

[Or you may also say, that here where rules רבי, it is a case where his wife is with him and the children are, where there is no need to bring any additional proof, as the states there.]

SUMMARY

רבי, who maintains that the father is believed to be to his son, may be arguing with the view which requires a change of קדושין in that follows the view of ר"י (that case is when the wife is here).

THINKING IT OVER

1. The asks, how is it that maintains ריב"מ when from the asks, how is it that maintains ריב"מ when from the in it appears that the father alone is insufficient.¹² Why cannot we answer that רבי is discussing תרומה דרבנן and the קדושין in גם' is discussing תרומה דרבנן and the קדושין in גם'!¹³!

2. The answers that in our case it is the same case as in קדושין, why is it necessary for רבי to say that the father is since it is, when he is because it is גם' as the states in קדושין גם'?!¹⁵

3. According to the א"ג, how can we understand the stance of ר"ח, when it is a change נאמן להאכלו תרומה מפורשת?

¹⁰ This would seem to indicate that the dispute between ר"י ור"ל (regarding יוחסין) is in reference to the punishment of סקליה, which in turn supports the view of that יוחסין here refers to meting out the death penalty, but not regarding marrying a מיוחס.

¹¹ This seems to be an addendum (from Tosfos Yeshanim). See 'Thinking it over' # 2.

¹² See footnote # 4.

¹³ See פנ"י.

¹⁴ See footnote # 11.

¹⁵ See בית יעקב.

For it is in his power to feed him *Terumoh* – **שבידו להאכילו בתרומה**

OVERVIEW

רבי ruled that a father is to be **מאכילד** תרומה נאמן since it is **בידיו** of the father. Our讨論ת discusses the efficacy of this **להאכילו** תרומה.

תוספות asks:

תימה איך נאמין אותו על תרומה באין מגו הא אין בידיו להאכילו אחר מיתה¹

It is astounding! How can we believe the father regarding because of this **תרומה** of the father **to be מאכילד his son after the death** of the father -

ואם כן אין זה מגו -

And therefore since it is not **בידיו** אחר מיתה, **this is not a proper** **להאכילו** בתרומה **מגו**!

proves his point (that the **does not extend beyond the** **בידיו** of **נאמנות**)

כמו שמצינו ביש נוחלין (בב"א בתרא קי"ב) **גבוי בכור ופרק בתרא לקודשין** (ז"ע ע"ב) -

- **בכור regarding מסכת קדושיםן פרק יש נוחלין and in the last** **dtaniah yicir²** **יכירנו לאחרים** **מכאן אמר רבי יהודה נאמן אדם** **לומר זה בני בכור³ כולי** -

Where the teaches; 'the writes תורה' we interpret it to mean **he** (the father) **can make it recognizable to others** as well; **from this ruled that a person is believed to claim this is my son the etc.** The there continues -

למאי הלכתא אי לחת לו פי שניים אילו בעי למיתב ליה מתנה מי לא יהיב ליה -

In regards to what ruling is the necessary, if it is necessary to give this alleged portion of the inheritance, this cannot be **for if** the father wanted **to grant him** this additional portion **as a gift, could he not give it to him?!** He obviously can, so there is no need for a **פסוק**, since it is **בידיו**. The answers, the **גמרא** **יכיר פסוק** -

לא צריכה לנכסים שנפלו לו כשהוא גוסט⁵ -

¹ The son should not be able to eat **תרומה** **בידיו** of the father's death, since it is no longer of the father. See 'Thinking it over'.

² In **דברים** (חצ"א) **כאי**, it states; **כפי אתה נבכר בון השנאה יפיר לחת לו פי שניים**.

³ The father is believed even if initially another son was presumed to be the **bacor**.

⁴ The **גמרא** there actually asks this question of according to the **רבנן**, who argue with **"ר"י** and maintain that a father is not believed to say **bacor**, where it was always assumed that another son was a **bacor**. The **גמרא** therefore initially asked according to the **רבנן** why the **פסוק** of **יכיר** is necessary since the father is not believed against a **חזקקה**. The **גמרא** answered that **יכיר** is necessary where there was no **bacor** **מוחזק** and the father testified that this son is the **bacor**. The **גמרא** asks again **למאי הלכתא** as mentioned in **תוספות**.

⁵ A **גוסט** is a person who is about to expire and is not capable of carrying out any valid transactions. When the father received these assets he was in no position to grant them to his son as a gift since he was a **גוסט**, therefore the **תורה**

גומס is necessary only regarding the assets which father received while he was a **גמור**. This concludes the there.

תוספות concludes his question:

אלמא אי לאו קרא לא הוּה נאמן לפי שאין בידו⁶ -

It is evident from that if not for the father would not be believed regarding these assets, שנפלו לו כשהוא גומס because it is not (even though he would be believed regarding his other assets, which were to gift them to his). The question of **תוספות** is that here too, the father should only be believed as long as the father is alive, for then it is, but not after he passes on since it is no longer!

תוספות answers:

ויש לומר דלא דמי דהכא כיון שאין האכילו בחיו מושם בידו -

And one can say; that the two cases are not similar, for here since he is believed to feed him **הרומה** while the father is alive since it is **בידו** -

סבירא הוא⁷ שאין אפילו לאחר מיתה:

It is logical that the father is believed even after his death.

SUMMARY

Regarding the power of **כהונה** when it is no longer (as opposed to where it is limited to the).

THINKING IT OVER

תוספות question that he should not be believed (only),⁸ or is question that he should not be believed at all even **מהיים?!**⁹

writes that if the father previously identified this son as the son, then he receives double even from these assets even though it was not of the father to grant him these assets.

⁶ עוד קשה לרביינו יצחק דאין זה מיגו טוב שם יוליכנו בגורן ויתן לו חלקו הרי יפסיד See (in the margin) which states: והשתא דקאמר שהוא כהן נוטל כל אחד חלקו, ואין לפרש שבידו להאכילו בתרומה בשעה שהעדי שהיה יכול לומר איננו בני וכחן הוא תורה ר' דאם כן להשיאו אשה נמי נימא הכל. בתוספות לא תירץ והתרוץ שבפניהם מצאת. Tosfos ישנים:

⁷ Tosfos who makes the following distinction that regarding since he eats (for it is) then it will be a mockery (if we prohibit him from eating (for he either is a son or not a son); however regarding assets it can be understood that in certain assets he receives and in others he does not, just as he does not receive if it only (meaning debts that the father is owed) and not מוחזק. See הפלאה מהרש"ל

⁸ See footnote # 1.

⁹ See קובץ שיעוריים אות ט

במשיח לפי תומו –**Where he was reminiscing innocently****OVERVIEW**

מעלה בן ע"פ אביו רבי חיא and one was ר' חיא and the other was ר' אחיו לוליה. To identify who did what, the cited a ruling (in opposition to ר' חיא) that a father is believed to say, indicating that it was who was רבי. Therefore we must conclude that it was ר' חיא who was ר' אחיו לוליה. The asked but disagrees with, and answers that in the case of he was asked but disagrees with, and answers that in the case of he was. Our explains the identification process of the regarding ר' חיא and ר' חיא.

תוספות asks:

ואם תאמר ומנא לו דחכי הוא² –

מעלה בן ע"פ was רבי was ר' חיא and was ר' חיא. – מעליה אח ע"פ אחיו לוליה was ר' חיא and was ר' חיא.

دلמא רבי חיא העלה בן על פי אביו במשיח לפי תומו –

Perhaps by מעליה בן ע"פ אביו לכהונה was ר' חיא –

ורבי העלה אח על פי אחיו³ אפילו ללא משיח –

And even without, because it was rather because it was ר' חיא. – בידיו.

answers:

ואומר רבינו יצחק דמסתמא דבמאי דקתי נברייתא מילתא דרבי עשה רבי מעשה⁴ –

ברייתא ר"י said, that presumably acted in the very case which the stated was the ruling of – ר' חיא

offers an alternate explanation:

ועוד די אפשר דרבי העלה אח על פי אחיו לוליה אפילו ללא משיח –

¹ כה, ב.

² The merely stated a ruling of in a hypothetical situation; it never stated that was actually, and there is also no known story regarding ר' חיא. Since we now know there are two ways of being someone; either through the view of (the view of ר' חיא), or through (according to everyone), perhaps the opposite is true. See ‘Thinking it over’.

³ This would mean that allowed this person to collect from the farmers (and they would discharge their obligation by giving him the based on the testimony of the brother, since it is).

⁴ We know that one of them was ר' חיא, we know that the father is believed to have given the choice we assume that acted in accordance with his explicit ruling in the regarding ר' חיא and therefore was ר' חיא.

And in addition it is impossible that רבינו was even without **לוייה** **אח ע"פ אחיו** **ללויה** **was רבינו** **לפי תומו** (but on the basis of alone) -

זהתם אין שיעיך לומר שבידו לאכilio מעשר למאן דבר מעשר ראשון מותר לזרים:⁵

For there (regarding it is not possible to say that it is to feed him according to the one who maintains that מעשר ראשון is permitted to non-ליים.

SUMMARY

It is presumable that רבינו was, מעלה ע"פ אביו was, since that was his ruling, and (in addition) there is no regarding לוייה.

THINKING IT OVER

מעלה אח ע"פ אחיו ללויה who was רבינו asks that perhaps it was etc.⁶ What difference is there whether it was ר"ח or רבינו who was ר"ח etc. The point seems to be that רבינו was [even] because of alone, and only because of בן, but there seems to be no relevance if it was אח or בן!⁷

⁵ Since then this ‘brother in question’, could always eat, his brother had no special right to receive from the farmers (see footnote # 3.); this is not of the brother. However by אסורה לזרים, the son could not go and eat on his own, it was however of the father תרומה, therefore once he is permitted to eat the תרומה (on account of the of his father) he is also believed to collect from the farmers.

⁶ See footnote # 2.

⁷ See פנ"ג, כסא שלמה אילית האביהם and.

מבית הספר –**From the school****OVERVIEW**

The relates the story of יוחנן אוכל חלות גمرا and includes his recounting that they took him out of the house. Our תוספות ביהת הספר explains the relevance of this detail.

נקט שלא לומר שהוא עבד¹ כדי אמר בסוף פירקון² (לקמן זר כח,א):

The mentioned the fact of גمرا; והוציאוני מבית הספר in order that one should not say that he is an עבד כנעני, as the states in the end of this פרק.

SUMMARY

Eating תרומה is no proof that one is a כהן unless we can dismiss the concern that he may be an עבד.

THINKING IT OVER

Since תוספות is being very particular as to the details of this story; how will he explain the relevance of that which he mentioned ?!?!³

¹ An is permitted to eat תרומה as it is written (in כהן of a case) (ויקרא [אמור] כב,יא). עבד כנעני is the of the case.

² The there comments on the which states that a גדול is believed to testify that which he saw as a that a person left the study and was to eat טובל. The there comments that we are not concerned that this person was an (who is [also] permitted to eat תרומה), because as ריב"ל ruled that it is אסור to teach to one's teacher. The fact the he was in the study proves that he is not an עבד.

³ See מקדש זוד (ח"ג) טהרות סי' מו אות ב'.

Yes; after Ezra punished them

אין בתר דקנסינהו עזרא –

OVERVIEW

The explained that is a מעדן רישׁבָא that in a ברייתא first mentioned that follows the view of who states that even מעדן רישׁבָא, even מעדן רישׁבָא, even מעדן רישׁבָא. The continued to explain that¹ who maintains that לויי only given to the Cohenim and not to the Leviim. Our will be discussing whether this view of is according to only or is also according to רישׁבָא.

ולרבי עקיבא דקדום קנסא הוイ דוקא ללויב בתר קנסא אף לכהנים² –

So according to that before the קנס was specifically only for the Cohenim, after the קנס was given also to the Leviim –

אבל לרבי אלעזר בן עזריה דמקמי קנסא הויא אף לכהן בתר קנסא הויא לכהן דוקא –

However according to that before the קנס was given also to the Cohen, רישׁבָא, but not according to Cohen, קנס it given only to the Cohen and not to the Levi; according to this understanding –

והא דמעדר רישׁבָא חזקה לכהונה אתיא כרבי אלעזר בן עזריה ולא כרבו עקיבא –

So this which stated that קנס is only according to רישׁבָא, but not according to רישׁבָא, who maintains that even קנס was מעשר' להארך קנס, but not according to רישׁבָא, and Levi.

mentions an alternate view:

ויש שמחקין אין³ ומפרשים זהא דאמר בתר דקנסינהו עזרא הויא אפילו לרבי עקיבא –

And there are those who erase the word 'אין'; and they explain this which the Cohenim is valid even according to רישׁבָא –

דברת קנסא הויא לכלי עולם לכהן דוקא והוא כמו אלא –

For after the קנס, the according to everyone (even מעשר' קנס belongs only to

¹ See that regarding their receiving since they did not return from לויים, because Ezra punished them. **א"י** בבל כתובות פ"ב, ס"ג. **ונזיה** ה'כ'נו ק'ו א'ה'רנו עם ה'ל'ונ'ם ב'ע'ש'ר פ'ל'י'ם ו'ל'ו'נ'ם ג'ע'ל'ו א'ת מ'ע'ש'ר נ'מ'צ'ש'ר ל'כ'ית א'ל נ'ק'ש'כ'ת ל'כ'ית. The exact nature of this will be discussed in this Tosafot.

² This is a sufficient מעשר' for now the Leviim will have to share with the Cohenim.

³ According to our question, the Cohen responds to the question, by answering that indeed so, **אין**; indeed so, **אין**, by answering that indeed so, **אין**; indeed so, **אין**. Ezra responds to the question, by answering that indeed so, **אין**; indeed so, **אין**, by answering that indeed so, **אין**; indeed so, **אין**. However if we delete the word 'אין', it seems that the Ezra is retracting its original approach that he is according to only, and now maintains that he is (even according to רישׁבָא, and now according to רישׁבָא, and now according to רישׁבָא). Since after all agree (even that Ezra is מעשר' קנס), Cohen and Levi will agree.

the (and not to the), **and the answer is like the** would have said (אליבא דראב"ע; ⁴ אלא') meaning we are retracting the previous answer (that it is according to everyone (even ר"ע). This is the view of the **shu"t Shmonekunim** and **Mefarshim**.

תוספות disagrees:

ושיבוש הוא בידם זהה בכמה מקומות מוכיח דמעשר ראשון לוי אף בתר קנסא -

And they are mistaken, for in many places it is evident that is given to **מעש"ר** even after the **לוּי** -

- **קס עזרא** המלה **מעות** את הכהן ואת הלוּי להיות מפריש עליהם **כולין** -
בדתנו בפרק כל הגט (ויטו זף לא) **one who lends money to a** and **פרק כל הגט משנה** **משנה** **order to separate on their account, etc.**

- **וכו הטעם בגמרא**, **ישראל** שאמר לבן לוּי כור מעשר לאביך בידי -

And similarly there in the Gemara where it states, a Israel who said to a I have in my possession a of כור, which belonged to your father; indicating that the receives the **לוּי** - **מעשר**

- **ובפרק הזروع** (חולין קלא,ב ושם) **פרק הזروع** **פריך מעשר ראשון לדולי הוּא** -

And in **belongs to the** **מעש"ר** asks, but **פרק הזروع** - **לוּי**

- **וכו בכמה מקומות והיינו רבבי עקיבא** -

And similarly in many places it states that **מעש"ר** is for all those **לוּיים** **are according to** **ר"ע**; if however also agrees (to ר"ע) that after the **קס עזרא** (**ראב"ע**) belongs **לכהן**, whose view are these following?!

תוספות offers a different proof:

- **ועוד** ⁸ **דلمאן דאמר קנסא לעניים היכי הוּי חזקה לכהונה** -

⁴ See פנ"י. והא דלא אמר אלא לפי שלא הזכר שם אמרוא תחלה who states: יבמות כז,א תוד"ה שמואל

⁵ A person lends money to a **לוּי** and makes an arrangement with them that in lieu of payment, when the lender separates the **תרומה** and **מעשר** from his crop (which he is obligated to give to the **לוּי** respectively) he will retain the **תרומה** and **מעשר** for himself (he will sell the **תרומה** and may keep the **מעשר** and deduct their value from the amount they owe him. It is evident from this that the **מעשר** can be given to the **לוּי**; otherwise how may he deduct the loan from the **מעשר**, if the **לוּי** has no rights in the **מעשר**.

⁶ שם עמוד ב'.

⁷ The gemara there cites a proof which states that we are not the **moziah** from one Cohen to another. The gemara infers from this that we are the **moziah** from a **לוּי** and give it to the Cohen (as מתנות כהונה); proving that a **לוּי** means **moziah**. The gemara rejects this proof, saying that **מעשר** means **מעשר**. The asks but the **מעשר** belongs to the **לוּי**; why are we the **moziah**? עי"ש, מלוי לכהן וכ"ר.

⁸ ר"ע will disprove the view of the ruling of the **shu"t Shmonekunim** that the **חזקה לכהונין** is even according to **אכילת מעש"ר** **חזקה לכהונה** that the **חזקה** is according to the **tosafot** (תוספות) to whom did award the **מעשר**; one opinion is that he awarded it to the poor, and another is that he awarded it to the **כהנים** (so they will have food to eat when they are **טמא** and cannot eat [so they are considered poor]). It is obvious that if it was awarded to the poor, then **אכילת מעש"ר** **חזקה לכהונין** will shortly prove that this cannot be a **chazaka**, for perhaps the 'eater' is a poor person (and not a **Cohen**).

And in addition according to the one who maintains that the קנס was that should be given to the poor instead of to the rich, how can אכילת מעש"ר be a proof; **חזקת להונאה** expounds on this proof -

далיבא דרבינו עקיבא פליגי בסוף פרק יש מותרות יבמות פ"ב ושם -

For this argument in ר"ע (only) according to is פרק יש מותרות דאיתא למאן דאמר לעניים -

Where there is one who maintains that the קנס מעש"ר was given to the poor and there is one who maintains that it was given to the wealthy; this argument is only according to ר"ע -

דרבי אלעזר בן עזריה הוי דוקא לכחן ואף אילו לשיריים כמו קודם קנסא -

(עניי [לויה וישראל] [and not for the rich]) כהן מעשר ראב"ע is only for the poor and even for the wealthy as it was before the - קנס

דלא קנסט עזרא שהרי עלו -

For did not punish the wealthy since they went up from the poor like the rich who did not leave and therefore punished them. Obviously the view of קנסא cannot follow the opinion of ר"ע, it must follow the opinion of ראב"ע that initially was only for the poor and after the rich it was for either the rich or the poor according to the two. ¹⁰ מ"ד

ולמאן דאמר קנסא לעניים משמע התם דוקא לעניים responds to an anticipated difficulty:¹¹

ולמאן דאמר קנסא לעניים משמע התם דוקא לעניים -

For it seems there that the קנס maintains only מ"ד קנסא לעניים ולא לבניהם עשיריים אפילו ביום טומאה עניים הו -

dispute (whether קנס or קנסא לעניים is valid only according to ר"ע but not according to ראב"ע, who must maintain קנס and not קנסא לעניים. Therefore the ruling of רזקה להונאה can go only according to ראב"ע who maintains unequivocally that קנסא לבניהם; however it cannot go according to ר"ע since he can maintain קנסא לעניים). See 'Thinking it over' # 1.

⁹ ראב"ע maintains (see גמרא all) that (before the rich was for the poor and the rich). There is no reason to deny them the rights they always had, since they did nothing wrong. All agree that according to ראב"ע קנסא לעניים and not קנס, the rich may be an עני and not a poor person.

¹⁰ Once we establish that the opinion of קנסא לעניים can be only according to ר"ע and not according to ראב"ע, it follows that the rule of רזקה להונאה is only according to ר"ע and not ראב"ע, for since how can it be that the rich is only according to ר"ע, the rich may be an עני and not a poor person.

¹¹ ראב"ע entire argument is based on the premise that מ"ד קנסא לעניים is also according to ר"ע but only according to ר"ע. Therefore there is no purpose in trying to establish the הלכה according to ר"ע (in order that this be קנסא לעניים), since it cannot be for it cannot follow the view of ר"ע, so it must be only according to ר"ע, since according to him there can be no קנסא לעניים for why deny their due (see footnote # 9). Let us assume, however that the rich is also according to ר"ע, meaning that the rich (according to this) was for the rich not the poor ones (and no for the poor even the rich). If we assume this, it will be obvious that the ruling of רזקה להונאה is only following the view that קנסא לבניהם is both according to ר"ע and ראב"ע and for רשב"א for רשב"א is following the view that קנסא לעניים negates this possibility that ראב"ע can follow the view of רשב"א.

But not for wealthy טומאה even during their days, for that disagrees מ"ד כהנים that עניים are כהנים בימי טומאה¹²

In conclusion the view of ר' בא"ע who maintains חזקה לכהונה is only according to the view of רשב"א that maintains חזקה לכהונת לענים or קנסא לכהנים only and not at all. However maintains ר"ע קנסא לכהנים cannot be a חזקה לכהונה perhaps he is a עני.

תוספות (seemingly) digresses:¹³

ועניים דהתם אין לפרש עני לווים דוקא ולא עני ישראל וכחנים¹⁴ -

And we cannot interpret the there to mean that it goes only to - עניין ישראלי וככוניה but not to עניין לוויים

¹⁵ דאמ בנו ונשתברנו עוגי לויית במה שלא אלו -

Because if indeed this is so, it will turn out that the עניין לווים gained by not ascending to י"א –

- עניי כהנים does not exclude קנסא לעניינים offers another proof that תוספות ועדי דמשמע הtmp אילו הוו כהנים בימי טומאתם עניינים לכולי עלמא הוו שקי¹⁶ -

ועוד דמשמע הטע אילו הוא הינו מהנים בימי טומאות עגילים לכולי עלמא הו שקליל¹⁶ -

כהנים בימי טומאתם there that if the **גمرا** would be considered **עניות** everyone would agree that the receive **בכהנים** - **מஆ**

- מעשן כוונתReceive everyone would agree that the -
אם על נור דלאזנו חלובות מעוזב בע גיושבראל דבלינו ולא לרבעו האמבר¹⁷ -

Even though that (according to ר"ע) regarding the distribution of the **מעשר** is like the **תורה** of **ישראל**, for the **תורה** states that **מעשר** belongs to the **לוֹי** but does not mention the **בָּנִים**, therefore we cannot assume that **בָּנִים** means only **בָּנִים**.

אלא לעויניהם בין ערבי רבעיות בינו ערבי לנויניות –

¹² See footnote # 8. The meaning that he does not consider מ"ד קנסא לכהנים does not agree with the meaning that they will have what to eat (so they will have what to eat). Therefore we must conclude that according to the view of ע"ז that the Cohenim receive no מ"ד קנסא לערניהם contradicts the view of ע"ז that the Cohenim must receive מ"ד קנסא לערניהם as they always had.

¹³ It is perhaps the intent of מ"ד קנסא לעניינים to explain in detail what his view is. See also 8" מהר"ל ו מהרש"ג.

¹⁴ This interpretation would seemingly be justified, since initially לויים מושר was for exclusively (following the view of י'ר), it would be a sufficient if the לויים עשרים קנס would not receive, but only the לויים ענאים מושר; there seems to be no need to give it to all including ענאים חספota. עניי כהנים וישראלים negates this view. See 'Thinking it over' # 2.

¹⁵ If the עולה would be punished at all (since some of them were), and the לויים would have to share the מעש"ר. But now that no one was, the עולה will get all the without having to share it with the לויים and not with the עניים. It is a case of חוטא נשבך!

¹⁶ See footnote # 12.

¹⁷ There is no special reason to give it to theהנינים[even] if we assume (קנסא לעניין) and not to all according to ר' (that ר' מעשׂ is only לולאים), unless we assume that קנסא לעניין means all עניינים.

it עניי ישראל and regarding עניי לויים and עניי כהנים means both to לעניינים depends -

ולמאן דאמר מעשר ראשון מותר לזרים¹⁸ שקלי אפילו עניי ישראל –

For according to the one who maintains that is permitted to be eaten by it, זרים, then even receive עניי ישראל – מעש"ר

אבל למאן דאמר אסור לזרים אין נראה שינתן לעניי ישראל כדי למוכרו –

However according to the one who maintains that is forbidden does not seem proper that it should be distributed to so עניי ישראל may sell it -

דמילתא דעתך ידי תקלת לאatakino רבנן דעתך למשח דלמא אתך למיכליה –

For the will not institute an enactment which can cause a hazard; namely the may come to eat it if it is given to them -

[כదאמר בסמוך לא מביעא¹⁹ לרבי מאיר דאמר אסור לזרים قولין] –

מעש"ר [as the shortly states, there is no question that we do not distribute גמרא גמרא according to ר"מ who maintains that is מעש"ר לזרים etc.]

(מ"ד קנסא לעניינים clarifies further the view of ר"ע (according to the view of ר"ע):

ולרבי עקיבא לא הפסיק עזרא את הלויים מכל וכל להשותן לישראל וכהנים –

And according to Ezra, ר"ע did not exclude the completely and compare them to, כהנים and ישראל to, meaning -

שלא יטלו עשירים לויים אלא עניי לויים בתורת עניות²⁰ –

That the wealthy cannot receive only the poor may receive it as paupers, but not as לויים, this is not so -

אלא ללוים בין עניים בין עשירים היו חולקים לעולם כדמותם בכל הנהו שהבאתי –

But rather they would always distribute to all whether מעש"ר or עניים, as is evident from all those places which I brought proof from -

שהיו נוטלים בתורת לויות²¹ –

Where they would receive on account of their status.

מעש"ר בתורת לויות offers an additional proof that (according to the view of ר"ע) received עניות:

¹⁸ here would mean גמרא here (and non-Israelites). See the here (and גמרא here).
יבמות פ, א זרים

¹⁹ The reason it is because of the concern אסור לא מביעא (certainly not) is because of the concern.

²⁰ This would seemingly be justified, since לויים (because they were not punished), we may assume that he punished all the לויים except he allowed the לויים as עניים as מעשר, but not as לויים. However negates this view.

²¹ If the reason the receive המלה את הלוי (as in the case of מעש"ר mentioned previously) is because they are עניים, then why mention, the המלה את העני should have mentioned לשנה, since that is the reason he is receiving the מעש"ר.

ועוד דברו גמליאל בספינה שנתן מעשר ראשון לרבי יהושע בן חנניה (מעשר שני פרק ה' משנה ט') -
And furthermore when in the ship - ר'ג to מעש"ר gave his -
אי בתורת עניות יהיב ליה אמאי לא יהב ליה נמי מעשר עני שהרי מעשר עני נתן לרבי עקיבא -
If he gave it to him because of his pauper status why did not also give to ר'ג the **for he gave the עני** Therefore we must say that ר'ג received regardless of whether he was poor or not. This proves that received **לויים** only and not (only) בתרורה עניות and not (only).

תוספות rejects this last proof:

ומיהו יש לדוחות דלאולם בתורת עניות נתנו לו -

However it is possible to fend off this proof, that indeed gave the Rib'a ח"ה ר"ע a right to deduct interest - מעש"ר בתורת עניות

ומה שללא גתו לו מושך עני לפי שהיו לו מאתים זו -

And the reason he did not give him עני מעשר because he owned two hundred
- זוז -

דאינו נוטל במעשר עני כדתנו במסכת פאה (פרק ח' משנה ח') -

- מסכת פאה משונה עני מעשר עני as the rules in

אל משאך ראשו יכול אפיקו יש לו מאמינים זע²²

However he may take even if he has (**מאתים זוז מעש"ר**) (even if he is receiving it proves this point - עניינה תוספות).

זה איא לא מאן דאמר דאפיילו כהנים עשירים בימי טומאה עניין נינהו²³ -

For there is this view that even כהנים עשירים ביום טומאה are considered so certainly one who has and is poor may surely take –

One more rebuttal to the last proof of ג"ר in the ship:

ועוד דלא רצה ליתן כל מתנותיו לעני אחד:

And finally (even if we assume that he received the עניות ר"ג (מעש"ר בתורה העניות did not want to give all his offerings to one; עני he wanted to spread it out amongst many.²⁴

SUMMARY

²² Regarding מDAOРИיתא עני must be given only to the poor therefore we are stringent that one who has more than עני cannot receive it. However regarding ר' where לויים all מDAOРИיתא receive it, therefore even though there was the קנס עזרא that only receive it, we need not be so stringent as not to allow anyone who has עני to receive it but rather anyone who is poor may receive it even if he happens to own מDAOרים. See 'Thinking it over' # 3.

²³ These had more than **מאתים** and they certainly would not be permitted to receive **כחנים** even **בימי מעש עני**, and nevertheless there is the view that regarding **מעש"ר עשירים בימי טומאתן** **עניהם נינהו**, so certainly one who just has **מאתים** is eligible to receive **מעש"ר**.

²⁴ See that ר' עבידת צדקה was a ב"מ יא, ב"ד הנתון so it would be distributed to many poor people.

ללוים ולעניהם maintains that after קנס עזרא the المعש"ר is only and not for the Cohenim (and therefore can agree that קנס עזרא לכהונה (מעש"ר חזקה לכהונה). According to ר"ע (even) after קנס עזרא or (למ"ד קנסא לכהנים) Cohenim receive together with either all all לעוים (ענוי ישראלים למ"ד מעש"ר מותר לזרים (and ענוי Cohenim means according to the מ"ד קנסא לעניהם).

THINKING IT OVER

1. מעש"ר asks that according to the מ"ד קנסא לעניהם how is it possible that תוספות should be a מ"ד קנסא לעניהם (חזקה לכהונה).²⁵ However why cannot we say that the Cohenim means even to ענוי Cohenim (קנסא לכהנים מ"ד)?²⁶
2. ענוי לעוים rejects the view that it means only and not for the Cohenim (קנסא לעניהם).²⁷ How can even entertain such a thought (that the Cohenim did not receive ענוי Cohenim when the states²⁸ פסוק הלוים מעש"ר, ויה הכהן בון אחרון עם הלוים בעשר הלוים) indicating that the Cohenim took the Cohenim (להוים)?²⁹
3. מעשר עני questions why did Ribah give to Ribah only מעשר ראשון (לענוי לעוים).³⁰ Why cannot we answer simply that initially Ribah was an עני, however after Ribah gave him his he was an עשיר (he had more than מאתים זוז) and therefore could not accept the מעשר עני?

²⁵ See footnote # 8.

²⁶ See מהרש"ל ומארש"א.

²⁷ See footnote # 14.

²⁸ See footnote # 1.

²⁹ See אילת אהביכם מהרש"א (הארוך).

³⁰ See footnote # 22.

בתר דקנסינחו עזרא –**After Ezra punished them****OVERVIEW**

לוים explained that the ruling of רשב"א is valid after punished the גمرا. It seems from the גمرا that it is a known fact that עזרא punished the לוים. Our Tosfos discusses what the source for this fact is.

לא אשכחן בהדיा בקרא דקנסינחו –

We do not find explicitly in a פסוק that עזרא punished the לוים –

רק מצינו בעזרא נחמה¹ והיה הכהן בן אהרן עם הלוים בעשר הלוים –

We only find in a פסוק that it states, ‘and the son of אהרן should be with the son of the Cohen should be with the Levites by the share of the Levites’ –

ואיך למיין זה כי קאמר² כשהיא השיבא הלוים לחלוקת בית הגרנות יבוא הכהנים עמהם –

So we can interpret this to mean that when the will come to take their share of in the threshing place, the should come with them to take their share as well. This interpretation of the פסוק would be acceptable to ר"ע who maintains³ that even after the קנס, the Cohen and the Levites both received – מעשר קנס

ומיהו לרבי אלעזר בן עזריה דבר קנסא דוקא לכהן לא משמע מהאי קרא⁴ –

However according to ר"ר קנס is given only to the Cohen, there is no such indication in this (for it states Cohen with the Levites in the threshing place; seemingly indicating that both the Cohen and the Levites receive – מעשר קנס; the Levites;

תוספות anticipates a possible solution (and rejects it):

דיליכא למיין עם הלוים דקאמר קרא היינו לקבל מהם מעשר ראשון משלחת⁵ –

For we cannot interpret the words of פסוק which the states to mean that the Cohen should go with the Levites in order to receive from the Levites their share which the Levites are required to separate from the crops they grow on their private fields –

תוספות rejects this solution:

¹ פסוק לט.

² The simple meaning of the פסוק (if it is not referring to the Cohen) would be that should come with the Levites when the Levites receive their share so that the Cohen will receive the tithe from the Levites. However this is suggesting that this maybe (also) referring to Ezra.

³ See previous חות' ד"ה לא at length.

⁴ This Tosfos asks that not only is there no proof from this פסוק, but on the contrary, this seems to contradict the ruling of ר' רב"ע that Cohen and Levites receive the tithe!

⁵ This will at least remove the question on ר' רב"ע, even though it still does not give us a source from קנס עזרא.

דהא משלחם לא קנסם עזרא כדמות בפרק הזרע⁶ (חולין קלא,ב) -

פרק הזרע did not punish the regarding their crops as is evident in עזרא.
The question remains that the seemingly contradicts the view of ראב"ע פסוק.

תוספות answers:

- **ויש לומר דרבנן אלעזר בן עזריה לא נמנעו הלויים מכל וכל מלילך לביית הגנות לחולק בעשר**
And one can say that according to ראב"ע did not cease completely from going to the to receive their share of even after קנס עזרא מעש"ר בית הגנות
כדאמר בסמוך דלמא איקרי ויהיב לייה —

As the here immediately states, ‘but perhaps it happened and they gave the
- משנה to the times of the ' so if it is possible that this happened in the times of the ר' -
לויים

כל שכן בימי עזרא שעדיין לא פשט הקנס שהיו הולכים בבית הגנות⁷ -

So in the time of where the was not yet widely accepted, the would certainly go to the to receive the
- מעש"ר במתן הגנות

ולכך נאמר⁸ שילכו הכהנים עם הלויים -

So therefore the states that the should go with the
כהנים, so that the will receive the and inform the farmers not to give to the לויים -
- מעש"ר

תוספות responds to an anticipated difficulty

ולמאי דאמר קנסא לעניים הא דכתיב והיה הכהן היינו בכהן עני -

And according to the one who maintains, קנסא לעניים we will need to say that this which the writes פסוק means a poor (and even though כהן only mentions עניים nevertheless the פסוק given to all, not only כהנים עניים מעשר -
ומושום דכהנים עניים שכחיח טפי -

Because poor are more common than poor כהנים - יישראים

לפי שאין כל כך עסקים במלאה אלא בעבודת בית המקדש -

Since are not that involved it regular work, but rather they are only involved in the service of the
- ביהם"ק

וגם אין להם קרקעות נקט כהן -

And also they own no properties, therefore the tend to be poor, that is why the mentions כהן, פסוק

והוא הדין עני יישראל למאי דאמר מעשר ראשון מותר לזרעים⁹ -

⁶ The there writes עזרא! You can say that punished them not to give them (according to do we say that we can take away from them their crops (even according to ראב"ע).
- The (then) did not heed קנס עזרא.

⁸ This is referring to the פסוק in footnote # 1.

⁹ According to the it will be better understood that refers to only כהנים עניים כהן מ"ז מעש"ר אסורה לזרעים!

But the same rule applies to the one who maintains that עניין ישראלי according to the one who maintains that עניין ישראלי is permitted to do something.

תוספות offers an alternate source to the enactment of עזרא:

והרב רביינו יוסף פירש מדכתייב (במלacci ג¹⁰) הביאו את כל המעשר אל בית האוצר -

And explained since it is written, ‘bring all the treasure to the treasure house’, we derive from that that the פסוק is for ענש"ר -

דבית האוצר היה לשכה שתיקון עזרא לחת שם תרומה הכהנים כדכתייב בעזרא (נחמייה י¹¹) Since the house was an office which was instituted to place there the house for the cahanim as is written in עזרא -

וכיוון שאומר להביא שם המעשר אם כן של הכהנים הוא -

So since the house says to bring all the same states to the same, this proves that it belongs to the house, even though states מלאכי עזרא, and we ascribe this to even though states מלאכי עזרא -

וקיימא לנו (מגילה זז טו,א) דמלאכי זה עזרא -

Because we have established that עזרא is מלאכי.

תוספות responds to a seeming difficulty:

ולמאן דאמר לעניינים נקט אל בית האוצר משום דכהנים עניינים שכיחי טפי כדרישית -

פסוק מעש"ר לעניינים because it goes to all, mentions because they are more common, as I have explained.

תוספות offers an alternate explanation for the difficulty:

אי נמי אל בית האוצר לא ליתן לכהנים אלא לחלק לעניינים¹² -

Or you may also say, that the words אל בית האוצר does not mean to give it to the house, but rather to distribute it to the cahanim.

תוספות asks:

והרב רביינו אלחנן הקשה דבסטוף עזרא משמע שהמעשר היה ללוים¹³ -

¹⁰ See ‘Thinking it over’ #1.

¹¹ והיה הפקנו בנו אפרקון עם הלאיים בעשור הלאיים והלאיים יעלוי את מעשר המעשר לבית אלתני אל הלאיים פסוק לט. The full reads: פסוק לט כהנים העניים יעלוי את מעשר המעשר לבית האוצר. The words which the must give to the house are referring to the house (see גראות).

¹² There will still be proof that קנס ללוים עזרא (לענין), for if there was no עזרא, why the need to bring the מעש"ר to the house; it can be given directly to the house. However if גראן, then we understand that it had to be brought to the house, since the עניים were not accustomed to go to the house (see גראות). Alternately; the גראן just wants to explain why there is no contradiction to the house; but not to say that we derive from that פסוק קנס לענין; but not to say that we derive from that פסוק קנס לענין.

¹³ See ‘Thinking it over’ #2.

And asked that from **the end of עזרא it seems that the was for the** ה"ר אלחנן - (כהנים not like that it was only for ראב"ע) לויים -

דכתיב¹⁴ ואדע¹⁵ כי מניות הלויים לא נתנה (להם) ויברכו איש לשדהו הלויים והמשוררים כולי -

For it is written, ‘and I realized that the portions for the were not given to them and each of them ran away to their fields together with the singers, etc.’ -

משמעותם של הלויים והמשוררים היו חולקים -

It is evident from that **פסוק that the לויים and the would share** in, מעש"ר contrary to the view of ראב"ע.

תוספות offers a resolution, but rejects it:

נדריך לומר זה היה מקמי דין סינינו עזרא אך קראי לא מוכחי היב:

And it will be necessary to say that this was before punished the פסוק; **however the verses indicate otherwise,** the verses there seem to be written in order and this verse is written after נחמה י' לט where it states והיה הכהן וגוי קנס. Therefore the פסוק of [ה] ואדע[ה] is certainly after קנס.

SUMMARY

We may derive the קנס עזרא either from the פסוק or from the והיה הכהן וגוי of פסוק כהנים קנסא לעניים even if we assume for the הביאו את כל המעשר אל בית האוצר of מלאכי עניים were more prevalent.

THINKING IT OVER

תרומה בית האוצר where the קנס עזרא explains that we derive from the פסוק. Seemingly if there how could they bring there, since the laws of תרומות ומעשרות are different regarding אכילה וטומאה?

2. Is the question¹⁷ of on the first explanation of or on the explanation of ה"ר יוסף?¹⁸

¹⁴ נחמה יג'.

¹⁵ The פסוק reads 'ואדע'.

¹⁶ See footnote # 10.

¹⁷ See footnote # 13.

¹⁸ See ז"ג.

והאמר רבי יוחנן דברי הכל אין ערער قولיו –

However said, all agree there is no contesting, etc.

OVERVIEW

מעלה Our cited an unclear between us, ר"א ורש"ג מחלוקת as to when we are in a case where an was already on the status; for taught that everyone agrees ע"א. Therefore if there would be merely an ערער פחות משנים. This statement of ר"י is mentioned several times in ש"ס; always in the form of a challenge: ‘But ר"י maintains 'אין ערער פחות משנים'. It never says explicitly in what context ר"י made this statement.¹ Ourתוספות will resolve this issue.

נראה לרביינו יצחק דרבו יוחנן עיקר דבריו² על משנהנו –

(אין ערער פחות מב' ר"י (that the main statement of ר"י was said regarding our משנה (of לכהונה –

ולחכى לא קא משני הכא הני מיili היכא דאייכא חזקה דכשרות כולי –

And therefore the did not answer here (in response to the challenge of החזקת 'when is this ruling of ר"י valid, only when there is a משנה, כשרות etc.', however when there is no (as it may be in the case of our), then perhaps even an ערער חד is sufficient –

בדמשני בפרק עשרה יהסין³ (קדושים דף עג,ב) –

אין ר"י said As the answered in גמרא The reason is simply because when he meant our מ' משנה.⁴

תוספות asks:

ואם תאמר והויאל ואמתניתיו קאי היכי פריך מיניה התם⁵ ובפרק קמא דגיטין (דף ט,א) גבי גט –

¹ לא איתפרש היכא ר"י who writes (regarding this statement of ר"י) that ר"ש"ג גיטין ט,א, ד"ה דברי יוחנן See

² It obviously applies to other situations as well, since the גמרא refers to this statement in various situations, nevertheless דברי הכל אמר' where there is a and therefore says that ר"י דברי דבריו על משנהנו.

³ The there states that the היה (midwife) is not believed (regarding the status of the newborn) if there is an ערער on the status of the child. The there asks how can an ערער of one contradict the testimony of the היה, when ערער חד חזקת כשרות משנים says ר"י. The answered that there is a difference whether there is a (then אין ערער חד) or not. In the case of היה, the infant never had a; therefore even an is insufficient.

⁴ will therefore assume that in our גמרא there is a אין מעילן משנה (as the shortly concludes). This will avoid any discrepancy with the גמרא in קידושין (see previous footnote # 3). See ‘Thinking it over’ # 1.

⁵ See footnote # 3.

גمرا **משנה ר"י** is referencing our challenge from the ruling of **ר"י יוחסין**, the ruling there in regarding **חיה**, and the ruling in the first of **פרק גיטין** regarding⁶ - **גט**

دلמא הא דקאמэр רבוי חנן דלא מהני ערער דחד היינו היבא דאייכא עד אחד דמקשר -

Perhaps this which ר' י"י rules that עדין דחד is ineffective, that is only where there is one עד who certifies his status –

דكتני מעליון לכהונה על פי עד אחד -

As the states, ‘**we elevate to כהונה based on one witness**’ indicating that there is an עדרען of two is required, however by where there is no substantiating עדרען,⁷ perhaps even an עדרען is valid (even in a case where there is a חזקת כשרות).⁸

תשובות answers:

ויש לומר דהש"ס ידע דבריו יהונתן אמסקנא דבר -

And one can say; that the גمرا (which asked the question in קדושין וגייטין knew that ב"ר (when he ruled אשה מ) was referring to the conclusion of the discussion -

דחתה ביה בול ואמר רב עד אמר לרב חיינו ולרבינו הילל - Was referring to the conclusion of the discussion

That initially there was publicity (בֶן גְּרוֹשָׁה) that this person is a and then an **עַז came to qualify him and to remove the **קוֹל** -**

ונתנו ב' כב' נאמרי דברי גבושים ובו מלוכה הינה דברי ה' גיגונא אמר רב כי יהונתן דבאיינו שגין

And two people came and claimed that he is a חלוֹצָה, and in such an instance ר' י maintains that two עדימִם are required to make the claim of חלוֹצָה, but one alone is insufficient. This will now show that the ruling of ר' י is even when there is no העכשיר. Two עדימִם are required in this case -

אין אל גב דהעד שהכשיר והקהל במאו דליתגנו דמי -

Even though that the המCSIר and the opposing קול are as if they do not exist; they cancel out each other (as will shortly explain); so there is no for he is cancelled out by the הוטל, and nevertheless two are required to disqualify him. This proves that the ruling of ר"י is even when there is no העמCSIר.

ע"א תוספתה explains now why we assume that the קול cancels out the א:

⁶ The gemara there states that if a **ט** is brought in **א** and there are then **ערירין** **ב**, it cannot mean **דוח** for **ר**, etc.

⁷ See ‘Thinking it over’ # 2.

⁸ If we would not assume that ר"י is referencing this משנה, it would be difficult to maintain that ר"י is discussing only a case where there is an עד המכשיך. It is not implied in his statement. However now that תוספות maintains that ר"י is referencing this משנה, and the משנה is discussing a case of עד המכשיך, then it is implicit that s"y's ruling may apply only if there is an עד המכשיך.

שהרי העד גרווע מון הקול אי לאו משום חזקה דמסיע ליה לבטל הקול -

חזקה עד is inferior to the rumor (as will point out); if not for the **קول**, which assists the **עד** to nullify the **קול**. Now there is a **חזקה**; the father is as a **כהן** מוחזק, nevertheless the **בָּן** גרוועה, nevertheless the **עַד** האמץיר is believed. However, we believe the **עַד** in spite of the **קול**, only in combination with the original **חזקה**, which assists the **עַד** and conflicts with the rumor. Were we to compare the **עַד** against the **קול** without the aid of a **חזקה**, then the **קול** will be stronger than the **עַד**.

שהרי הקול פוטל והעד איינו פוטל לרבי יוחנן:

for a **קול**, which claims that he is a **כהונה** will invalidate his **בָּן** גרוועה, even against a **however one**, **עַד**, who claims that he is a **כהן**, cannot invalidate the **according to ר"י** ¹⁰ **חזקת כשרות קול** ¹⁰ This proves that a **קול** is stronger than an **עַד**. It is only because the **עַד** is assisted by the **חזקת כשרות קול** of the father in our case, that we validate the **כהונה**. The status of this (**עַד המCTSר קול**) is as it was originally, when we only knew of the **חזקת כשרות קול** of the father, without a **קול** and without an **עַד**; for the **קול** and the **עַד** cancel each other out.¹¹ It is at this point that **ר"י** insists that any new must consist of two **עדים**. This proves that **אין ערער פחות משנים** is valid even if there is no **עַד המCTSר**.

SUMMARY

We know that **ר"י** and **רשב"ג** are not discussing an **עד**, since **ר"י** stated concerning their **עפ"מ** that **אין ערער פחות משנים**. This ruling of **ר"י** applies (only) if there is a **המCTSר**, even if there is no **קול**; similar to the case of **עלין** where the **עַד המCTSר קול** cancel out each other.

THINKING IT OVER

⁹ This we can see from our **בָּן קול**, מוחזק באבואה **כהן** הוא; even though it was **גمراא**; nevertheless when there was a **בָּן קול** nevertheless the **כהונה** was voided.

¹⁰ Seemingly derives this (that an **עַד** cannot invalidate a **קול**) from **ר"י**, who states that **עַד** cannot invalidate a **קול** from **המCTSר**. See **מהרש"ל**, who question the validity of this assumption, that an **עַד** cannot invalidate a **קול**. This is what **ר"י** is trying to prove, that (**ר"י** maintains that) an **עַד** cannot be **פוטל** (even if there is no **המCTSר**), **חזקת כשרות קול** (it seems to be circular reasoning, for it is possible that an **עַד** can be **פוטל** against a **קול** [and it is stronger than a **עַד**] and the reason is because there is an **עַד**). The **מהרש"ל** explains that we derive this (that an **עַד** cannot contest a **קול**) from the **גדרא**'s answer in **קידושין**, that **ר"י**'s rule is only when there is a **המCTSר**. This teaches us that when there is a **המCTSר** an **עַד** cannot contest it (which makes him weaker than a **עַד**). Our explanation is (merely) explaining how the **גדרא** come to the conclusion that **המCTSר** requires **ערער תרי**, not on account of the contradicting **עַד**, but rather on account of the **המCTSר**. The explanation is that there is no **עַד** since he is cancelled by the **קול**. Alternately the **מהרש"ל** explains that otherwise (if an **עַד** can invalidate a **קול**), the **המCTSר** could have said that an **עַד** invalidated the **המCTSר** (without resorting to a **קול**) and another **עַד** subsequently came and was **מctsר**, etc.

¹¹ Even though the **קול** is superior to the **עַד** alone, nevertheless in combination with the **חזקת כשרות קול** (and the **עַד**) cease[s] to function. Only the **כהונה** remains, which validates the **קול**.

ערער חד ר"א ורשב"ג מחלוקת משנה our מחלוקת משנה between ר' יוחנן and ר' יוחנן assumes that according to our משנה ר' יוחנן is in a case where there is a case where there is a **חזקת כשרות**.¹² Why should we assume that; perhaps there is no sufficient against an **ע"א**?¹³

¹² See footnote # 4.

¹³ See fn. 10.

¹⁴ See footnote # 7. Generally in case where an נָשָׁה is a woman is also נָמָן.

¹⁵ בֵּית יַעֲקֹב See.

There is no contesting with less than two**אין ערער פחות משנים –****OVERVIEW**

ר"י stated that there can be no **ערער** unless two are contesting. Seemingly this would exclude any and all types of contesting (even a **תוספה**; **קול**) disabuses us of this notion.

לאפוקי חד דלא הוי ערער אבל **קול נמי** פוסל בתרומה קודם שבא העד המכשיר:²
 The term **אין ערער** is only to exclude an **ע"א** of one; that it is not considered an **ע"א**; **ערער**; however a rumor can also initially invalidate the from eating **תרומה** if the rumor began **before the qualifying came** and testified that he is a **כהן**.

SUMMARY

A **פוסל** is **קול** (even) when a **ע"א** cannot.

THINKING IT OVER

The **קול** can be against a **פוסל** and an **ע"א** cannot (indicating that **קול** is stronger than **ע"א**).³ Once there is an **ע"א**, a subsequent **kol** is not effective to be **פוסל** (indicating that an **ע"א** is stronger than a **kol**).⁴ How can we reconcile this?

¹ The **kol** is even if there is a **פוסל** (as opposed to an **ע"א** who cannot be **פוסל**).

² Once there is an **ע"א** initially then the **kol** cannot be **פוסל** (even if there is no **kol**). See ‘Thinking it over’.

³ See previous **תוס' ד"ה** והאמר (at the end).

⁴ See footnote # 2.

ואתא עד אחד ואמר ידענא ביה דכהן הוא –

And one witness came and said I know of him that he is a *kohain*

OVERVIEW

משנה גמרא gives a rather complicated case describing the in the (according to that **ר"י אין ערער פחות מ"ב**). Our explains why a simpler case would not be sufficient.

תוספות responds to an anticipated difficulty:

לא בעי למימר דפליגי אי מעליין על פי עד אחד כשהקהל פסול¹ –

מעלה did not want to say that are arguing whether we are ר"א ורשב"ג – **פISONIS** is קול when the ע"פ ע"א

דפשיטה ליה דלהש"ס דלא פסיל קול לכולי עלמא כיון דאייכא עד וחזקה –

פISONIS will not be קול according to everyone the to according to gmarah since there is an עד המCSIIR and the initial כהן –

תוספות offers an alternate solution why the gmarah does not use this case:

ועוד זkol לא הוイ קרי² עוררין:

And additionally the would not have referred to a קול as עוררין.

SUMMARY

All agree that a חזקה ועד המCSIIR cannot mean a קול.

THINKING IT OVER

Can we infer from the that according to the second answer it is not all that certain that the קול is ineffective against an חזקה כשרות?

¹ The proposed case (where they argue) would be as follows; we are that the father is a כהן, there was a קול that he is a and an ע"א testifies that he is a כשר. The argument is whether the ע"א (together with the חזקה כשרות) is sufficiently strong to negate the קול or not.

² ע"א states in the that קול A does not qualify as משנה (כג,ב) because עוררין in its place. أي מה that עוררין would be considered if not for the ruling of ר"י, whilst a קול is more like a passive undercurrent), therefore it was necessary to say that two עדים came to contest his status.

And they elevated him

וְאָסְקִינִיה

OVERVIEW

The **חזקה** details the case where ר"א ורשב"ג argue. There was a father who was a Cohen, and this was followed by a Kol that the son is (so he was denied the rights of Cohen), after which an ע"א testified that the son is קשר, whereupon he was (re)elevated to the status of Cohen. This was followed by two claiming that he was a Cohen and another saying that he is not. According to one opinion the whether we are the son to Cohen or not in this situation depends on whether we are concerned for Tosfot¹ or Zilhotat Davi Digna discusses the ramifications if we maintain דב"ד.

תוספות asks:

ואם תאמר ולמן דחייש לזיולה² דבר דין היכי אסקורוי³ כיון דאחתיניה מחרמת הקול⁴ -

And if you will say; according to the one who is concerned for זילותא דבר דיןא, how could they elevate him (based on the testimony of the ע"א) since they already lowered him on account of the rumor; elevating him to כהונה after lowering him is a זילותא דבר"ד!

rejects a proposed solution:

וליכא למיין⁵ דיליכא זילותא دبي דין אלא היכא שהוRIDוחו שתי פעומים⁶ -

And one cannot say that there is no זילوتא בב"ד unless he was lowered twice;
therefore at this point (where only one עד came) he was lowered only once and there is no זילותא. תוספות rejects this notion for there is זילותא even if there is a one-time reversal

כדמוכח בחזקת הבטים⁷ (בבא בתרא דף לב,א) -

¹ If we are concerned for **הריה ותורי** and the son has a **חזקת כשרות**, nevertheless we will not elevate him to **כהונה**, since we already lowered him; this will be a **דב"ד זילותא דב"ד**.

² ב"ד means the cheapening of ב"ד. If ב"ד reverses its ruling, they will not be respected; their honor will be tarnished.

³ See footnote # 1.

⁴ question may (also) be if the first זילותא דב"ד is regarding the מחלוקת it is not necessary that any other came; this point where the (first) זילותא was sufficient to establish their מחלוקת whether we are concerned for זילותא דב"ד.

⁵ **שהורידוהו שני פעמים וכוכ'** who writes; **ר"ה דחישין** See.

⁶ One might argue that only a dual reversing of its ruling will cause a *צילהות דבר*, but not a one-time reversal.

⁷ The case there is by חזקת קרקע (where initially one brought עדות that the field belonged to his father, and also that he was there) השwi חזקה; the other party just brought עדות that he was there as well. Initially the field was awarded to the one who had had the right. Later the losing party bought עדות אבהתא as well. There is a discussion there whether we are concerned for זילוחה דבר"ד (according to that case there was only a single reversal and nevertheless it was considered a זילוחה דבר"ד). In that case there was only a single reversal and nevertheless it was considered a זילוחה דבר"ד (according to that case there compares that case with our case).

As is evident in the batim.

answers: תוספות

ויש לומר דליך זילوتא דבר דין אלא היכא שהורידוהו על ידי עדות -

And one can say; that there is a זילותא דבר only when he is lowered on account of testimony by - עדות

אבל בהורדה שעל ידי הקול ליכא זילותא דבר דין⁸ -

However the lowering caused by a קול does not cause if that ruling is reversed. Therefore at this point since they lowered him only because of the קול, all will agree that it is not a זילותא if they elevate him on the testimony of the ע"א.

תוספות anticipates a difficulty:

ואף על גב אמרין (ויתין דף פא, א) גבי גירושה לכהן⁹ שלא מבטלים כלל -

And even though we learnt regarding a divorcee and a כהן, that we do not nullify a rumor, so why is it that here we are קול the מבטל that he is a בנו גירושה with the testimony of the ע"ז?

- גירושה לכהן replies; the reason we are not by the מבטל כלל

הינו משום דעתך לא מסקין ליה לעולם פסול מבטלי -

That is because there is a remedy to that situation (the כהן and the woman can marry others¹⁰), however here (by the קול of בנו גירושה), since if we will not elevate him to כהונה, based on the testimony of the ע"ז, he will always be פסול לכהונה, therefore we are מבטל the קול.

תוספות offers another distinction between here (where we are מבטל קול) and in גיטין¹¹:

אי נמי בתרומה דרבנן¹² הקילו:

Or you may also say; regarding תרומה דרבנן they were lenient and allowed this suspected to eat on the basis of the ע"א even though there is a בנו גירושה. However

⁸ Perhaps he; לאו דוקא אהתינה אלא כלומר ממילא ירד ב"ב לב, א ד"ה ונפק that he writes in ב"ב that it is alluding to what he writes in ב"ב here (תו"י א' who writes; **אי נמי אהתינה לאו דוקא אלא שירד**) to avoid any controversy. See here (אות א') who writes; **מעצמו**.

⁹ The case there is where there was rumor regarding a כהן that he wrote to his wife, and they were still living together. The gemara there says that we are not מבטל this (see ב"ה וברנדה that it means we are not even with his wife), and we force the כהן and his wife to separate from each other (since a אסור בגרושה is כהן).

¹⁰ See סופר.

¹¹ Tosfos is not however (answering the first question by) saying that there is no by a זילותא, for if this were so how can we compare our case which is to the ב"ב in דרבנן where it is a question of גזילה דאוריתא. Rather Tosfos distinguishes when we are מבטל a קול and when not (when there is no זילותא דבר).

¹² See 'Thinking it over'.

by the there is an גירושה לכהן. איסור מדאוריתא

SUMMARY

There is עדות זילותא זב"ד (only) when the original ruling was based on (but not if it is based on a). We are קול מבטל if there is no remedy or if it is only a דרבנן.

THINKING IT OVER

answers that by we are תרומה דרבנן through an ע"א¹³. What type of תרומה פירות or תרומה חו"ל are we discussing here; if it is תרומה דרבנן say that the and ר"י previously (כג,ב on) argue whether תרומה (כח,ב ד"ה נאמן) that from when previously stated מעלה מתרומה ליוחסין everyone agrees that we are not even תרומה פירות or חו"ל certainly not? On the other hand if we are discussing (which is תרומת דגן וכו') regarding which stated (there) that all agree that we are to מעלה מדרבן בזה"ז, how are we to be because it is a, since we are דרבנן, תרומה דאוריתא so there is a חשש דאוריתא!¹⁴

¹³ See footnote # 12.

¹⁴ See שלמה

אנו אחטינן ליה אנן מסקין ליה – We lowered him, we will elevate him

OVERVIEW

The details the case where ר"א ורשב"ג argue. There was a that the father was a, and this was followed by a that the son is a (so his rights were forfeited), after which an ע"א testified that the son is a, whereupon he was (re)elevated to the status of Cohen. This was followed by two claiming that he was a and another saying that he is a. Initially the explained that we are not and we return him to his status. The question discusses is how can we give him a status when there are two (who contradict the and maintain that he is a.

פירש בקונטרס¹ אף על גב דתרי ותרי נינהו אוקי תרי להדי תרי ואוקי גברא אחזקתייה² – explained; even though there are two against two (so how can we elevate him to, nevertheless we place the two against the two to cancel them out and we place this person on his presumptive status of Cohen.

questions this explanation:

וקשה לרביינו יצחק דבפרק האומר בקדושיםין (ז"ט, א' ושם) קאמר גבי ינאי³ היכי דמי – גمرا the מסכת קדושיםין in פרק האומר in, for ר"י states regarding what is the case –

אלילמא דתרי אמרاي אשtabai ותרי אמרاي לא אשtabai –

If we say that two said she was captured and two عדים said she was not captured (and that is why ינאי was vindicated), that is not a valid explanation, for –

מאי חזית דסמכתה אני פירוש אני דאמרו לא אשtabai סמוך אני –

Why do you see to depend on these, meaning those that said she was not

¹ בד"ה ואנן.

² See there who writes ואוקמינו אחזקיה קמייתא דאסכיניה על פי עד הראשון שהוא נאמין דהא אכתי אין עוררין דkul לאו עוררין ריש"י. (See footnote # 57.)

³ There was a controversy surrounding the מלך Cohen (גדולה). There were rumors that before his birth, his mother was in captivity among non-Jews; thereby making (her a and making) זונה (מדרבנן) who is פסול לכהונה. [A Jewish woman who had relationships with a non-Jew is considered a זונה. She is forbidden to marry a Cohen.] Any child she has from a non-Jew is considered a child, who is פסול לכהונה. A woman who was held captive among non-Jews is considered as a זונה, regardless whether it is known for sure if they had any relationship with her. The חכמים 'suggested' to that he give up the Cohen on account of these rumors. The there continue to relate that the matter concerning her captivity was investigated and the rumor could not be substantiated. The גمرا there asks how is this that the rumor could not be substantiated, and ינאי was vindicated (as here continues).

captured, depend on the others who say she was captured; the question is -

ואמאי קאמר ויבוקש הדבר ולא נמצא -

So why did the say the matter was investigated and could not be substantiated, when seemingly it is substantiated that is the son of (at least a captive and should be (least a מסקן). This concludes the citing of the question on אוקי תרי לכהדי because we say ינאי תרי ואוקי גברא! What is the question there?!

והתס⁴ פירש בקונטרס דלא אמרינו אוקי תרי בהדי תרי ואוקי גברא אחזקה - cites answer to this question:

ואהאי תרי בהדי תרי ואוקי גברא אחזקה -

And explained there that in the case of ינאי we do not say ריש"י - **ואהוקי גברא אחזקה** -

זהא לא באו להעיד על אמו אלא על ינאי ولو לא היה חזקת כשרות -

Because the **did not come to testify regarding** mother (who has a **עדים**) but rather they were testifying regarding the status of **ינאי, ינאי and had חזקת כשרות זו.**

In summation; ריש"י is saying that even though the status of **ינאי** is completely intertwined with the status of his mother, nevertheless since we are not discussing the mother, only **ינאי**, therefore the **חזקת כשרות** of the mother is not effective for **ינאי**, the son.

תוספות disagrees:

ואין נראה לרביינו יצחק דחזקת האם מהניא גם לינאי כדמותם הכא⁵ -

And the ריש"י disagrees, for the חזקה of the mother is effective even for as it seems here⁶ -

ואמרינו נמי לעיל בפרק קמא (ז"ג, א, ושמ) לדברי המכשיר בה מכשיר בבתה⁷ -

And the also said previously in the first that the one, who validates her, validates her daughter as well. The same should apply to **ינאי** and his mother.

⁴ ואיתך אוקי תרי לכהדי תרי ואוקי איתתך אחזקה הני מילוי אי היא קמן והיתה באה לב"ד להתרה אבל where he writes, בד"ה סמור. There was no discussion regarding the permissibility of the mother to marry into only the status of **ינאי**.

⁵ The suspected here also has no מעלה him; the reason we are of the father who is to be a כהן, the same should apply to that the father should apply to him.

⁶ It will be necessary to say (according to) that the חזקה האב (תוספות) means (not merely that the father is, for how does that negate the possibility of the son being a father, but rather) since the father is he is also בחזקת כהן כשר that he will not marry a (פנ"י) [See also קובץ שיעורים ב"ב אות קלב (פנ"י) (see)].

⁷ The case there is where a (unmarried) woman was pregnant and she claims לכשר נבعلתי; the view of ר"ג is that she is believed. There is an opinion in the Gemara that just as she is believed regarding herself (that she is not כהונה similarly the daughter that is born is also כהונה. This is because the חזקה of the mother is transferred to the daughter, even though the daughter has no חזקה כשרה.

הוסףota responds to an anticipated difficulty:

ואפִילוּ מְאוֹ דָּפֶל בְּבַתָּה⁸ הַיְינוּ מְשׁוּם דְּמֻלָּה עֲשֵׂו גְּבִי זְנוֹת⁹ -

And even the one who invalidates the daughter for כהונה, that is because the חכמים made an extra stringency for יוחסין regarding גנות.

יבנאי mentions and negates another attempted resolution between our and the case of גمراא תוספota

וגם אין לומר כמו שתירץ רביינו תם דליך למיمر התם אוקטני אחזקה -

And we can also not say as the ר"ת answered, that there by נאי we cannot say that we should place זוקה on the חזקה of the mother -

לפי שכל הנשים היו בחזקת שבויות¹⁰ -

Because all the women were presumed to be captives. This is the answer of the נ"ר –

תוספות rejects this answer:

דאס בו היבי מיתוי מיניה ראייה על אשתו שזינתה בעד אחד¹¹ -

For if indeed all the woman were שבירה, how can אביכי bring proof from the story of regarding the case of a woman who an ע"א claimed she was מזונה -

דשאני הtam דכל הנשים בחזקת שבויות אבל אשתו זינתה היא בחזקת היתר -

For the case of נאי is different (than the case of אבוי), since (according to the ר' ה) all the women were בחזקת שבויות, therefore the ע"א is believed (since he is supported by a חזקה), however by the case of נאי (the case of the alleged woman has a חזקת היתר, so what proof does אבוי bring from נאי). Therefore we must say that in the case of נאי there was no חזקת שבואה either, and had a חזקת היתר (just like the case of אבוי).

In summation; the view of חקמת הארץ (האָבָב) is that the תוספות we therefore need מהני ללבת (ליבן)

⁸ We could therefore say that the פולש בבחה regarding קדושין in יגאי maintains, therefore the חזקה here maintains קדושה האם מרבני לכת גمرا, and the חזקה here maintains קדושה האם לא מהני ליגאי. *לכהונת מעלה* therefore we are the son.

⁹ The **חכמים** were stricter regarding a child who was born from **זנות** (like in the case of the unmarried woman) and decreed that in that case the **האם לא מהני לבת** (**חזקת האם לא מהני לבת**) (perhaps because since she is promiscuous, she is not that careful with whom she has relations with). However where the child was not born from **זנות**, like here or in the case of **ניאי**, all will maintain that **חזקת האם מהני לבת**.

¹⁰ According to the ר"ת it was presumed that all the women in מודיעין (the place where we suspect was captured) were captured during a war. In addition to this presumption there were עדים who testified that the mother was captured and עדים who testified that she was not captured. Even if we are to say, nevertheless, אוקי תרי לבהדי תרי the חזקה is that they were all captured.

¹¹ There is an argument there between an אבִי ורְبָא in a case where an אבִי told the husband that his wife was מונֶה, whether the wife becomes לבעלה or אסורה to the husband. To prove his point, cited the case of תרי ותרי there, for we should follow the עדים who say לא אישתבא said עדים and two who said עדים and one who said עדים, therefore we need to say that there was one who said עדים and two who said עדים, then נאי that said עדים would be vindicated. If however there would not have been the two that said עדים would be פסול because we believe the עדים.

אשר is בן גירושה where the alleged תרי ותרי because of the האב, and the case of ינאי where he would be (if there would be הוצאה האם even though there is a).

offers his interpretation:

ונראה לרביינו יצחק דתרי ותרי ספיקא דרבנן הוא¹² ומדרבנן החמירו שלא מוקמין לה אחזקה -
And it is the view of the that ר"י is ספק דרבנן and it is that we are strict and we do not place her on her; this explains why by ינאי he would be פסול -

והכא בתרומה דרבנן הקילו -

And here regarding the חכמים תרומה דרבנן were lenient and permitted him to eat חזקת היתר since there is a (and ספיקא דרבנן ל科尔א).

In summation; ר"י and ר"ש both agree that by we follow the הוצאה. However according to ר"ש that is only if the person in question has a הוצאה (as in our case where he has a [through the ע"א] but not where the הוצאה comes from the parent (as by ר"י). The רבנן maintains that even where there is a הוצאה, if it is an איסור דאוריתא (like by ינאי) consider it a ספק and we are מהמיר.

will cite several sources which seem to contradict the ר"י and resolve them:

ובפרק בכל מערבין עירובין דף לה, א) גבי תרומה ונטמאה قولוי -

وترומה with עירובי תחומיין פרק בכל מערבין became טמא, etc. -

ספק¹³ הרי זה חמץ גמל¹⁴ דברי רבי מאיר¹⁵ ומוקי לה רביה ורב יוסוף בשתי כתבי עדים -

¹² we follow the הוצאה and if there is a הוצאה it is permitted; however the decree that even though there is a הוצאה it should still be considered as a ספק. Therefore if the issue at hand is a תורה issue (like the case of ינאי, where a ספיקא דאוריתא להוציא, notwithstanding that there is a הוצאה (see 'Thinking it over' # 1); however if the issue at hand is a (like in our case where we are debating whether he can eat תרומה דרבנן ל科尔א) then it is permitted since ר"י negates the view that תרומה דרבנן ל科尔א is a הוצאה and we do not take the הוצאה status into consideration. Obviously if there was a הוצאה איסור, then it would be (whether it is an איסור דאוריתא or an ודי איסור).

¹³ There was a doubt as to when the became שבת began in which case it is not a valid עירוב (since once the becomes טמא and has to be burnt it is no longer when begins), or it became after the onset of (in which case it is a valid since it was when began).

¹⁴ Literally this means 'donkey camel'. It is as if a donkey is pulling him in one direction and the camel in the opposite direction so he can barely go anywhere.

¹⁵ A person may place his עירוב (up to) two thousand from (his home in) the city. The entitles him to go an additional distance of אלףים אמה in all directions from the place of the (his) only. In our case if the עירוב is valid, that is his place and he can go אלףים אמה from the place of his only. If the עירוב is not valid he can go only from his home (and cannot go past the עירוב ר"מ). maintains that we place both stringencies on him and he can only go from his house to the place of the (two thousand but no further because perhaps the עירוב is not valid), and he cannot go from his house in the opposite direction from his עירוב.

If there is a **doubt** as to when the became טמא עירוב, **this** person is like a ‘**donkey camel**’; **this is the view of ר' מ**. **And ספק established** that this was a result of **two groups of עדים** who offered contradictory testimony as to when the became טמא. This concludes the citation from the **גמרא**.

הוּא דָלָא מַוקְמִין לְהַחְזֶקֶת¹⁶ דָלָא נַטְמָאת אֲפָעָם גַּבְעָתָה בָּזְמָן הַזֶּה דְּרַבְּנָן -

The reason we do not place the status and assume that it did not become טמא before since טמא, since **טרומה בזיה** – שבת – **דרבנן** – **הינו משום דערובי תחומיין דאוריתא לרבי מאיר**¹⁸ –

That is because ר' מ maintains that עירובי תחומיין is a דאוריתא, therefore we need to go – **לחומרא** –

offers another distinction between the case of עירוב and our cases:

אי נמי שאני הטע דאייכא ריעותא דהרי נטמאת לפניך ולא אמרין השטא הוא דאיתמי¹⁹ –

Or you may also say; it is different there by, עירוב for there is a flaw in its טהור, since presently it is טמא, so we do not say it became now (during שבת), but rather it was טמא in the past up to the time we knew it was – טהור

חזקה דהשתא anticipates a difficulty with this reasoning that we follow the reasoning²⁰:

אֲפָעָם גַּבְעָתָה בָּזְמָן הַזֶּה דְּחַסֵּר וְאַתָּא נַדְחָךְ בְּבָבָ –

(because perhaps the עירוב is valid).

¹⁶ Since it is a case of טרומה (חו"ת) we should place the **חזקה** on **עירוב**, and **דרבנן** is קולא since it became טמא (as late as possible) after **שבת** began (see following footnote # 17) and the **עירוב** should be valid. See ‘Thinking it over’ # 2.

¹⁷ This is not precisely the same case as here (or by נמי) where one group of **עדים** say there was no (or she was not captured), however in the case of **עירוב** both groups of **עדים** agree that the **טרומה** became טמא (and is presently טמא), nonetheless since both agree that initially it was not טמא and one maintains that it became after **שבת** began, we should assume that its initial status remains until we became sure that it is טמא (which is after **שבת** began). See second answer (footnote # 19).

¹⁸ This seemingly means that even though the concern whether it is טמא or not is only regarding a **פסול** (where we would rule that **עירוב** is not טרומה at all, nevertheless since this impinges on a **דאוריתא** since it is not טרומה) therefore we do not say **עירובי תחומיין**. That is reserved exclusively for instances where the entire issue is **עירוב**, like in our case; eating **טרומה** [Alternately, the **טרומה** now is certainly טמא, so as far as the **טרומה** is concerned it is irrelevant as to when it became טמא; the question is only whether the **עירוב** (which is a **דאוריתא**) is valid, so therefore we are מהMRI.]

¹⁹ See footnote # 17. Instead of following the **חזה** דמעירא when it was טהור and assume that it remained until we know for certain that it became טמא, we can follow the **חזה** דהשתא that it is now טמא and assume that it was טמא all the time up to the point where we knew for certain that it was טהור.

²⁰ See previous footnote # 19.

²¹ The **גמרא** amends this to read: **דחסר אי לאו דאייכא למימר חסר ואתאי ר' ש**. The there is discussing a **מקרה** that had the **שיטור** (of **סאה**) and after a while it was found to be lacking the **טבילה**; the rule is that any **טבילה** that was done after

Even though that regarding a מקוה we [would be prone to] say it is now that it became deficient (and not that it was deficient earlier), and we do not follow the חזקה דהשתא, but rather the חזקה מעיקרא; why is it different by עירובי תחומיין?

תוספות responds:

הכא דאיכא שתין כתין עדין לא אמרינן השטא הוא דאיתמי²² -

Here where there are two groups of עדין and one group said it became before, we do not say it became now (after שבת began).

In summation: According to this last answer we say that by a ספיקא דרבנן [even if it is if there is a חזקה דהשתא we rule, provided there is no ליקולא חזקה היתר] (however if there is a ספק [just a regular we rule (however if there is no ליקולא חזקה דהשתא we rule) even if there is a חזקה דמעיקרא ליקולא סברא [except when there is telling us to follow the חזקה דהשתא (as by מקוה)].)

תוספות anticipates an additional difficulty on the פ"י:

ובשנים אומרים מות ושניהם אומרים לא מת דאמירין לעיל (ז"ג כב,ב) לא תצא -

And in the case where two said the husband died and two other said he did not die; where the ruled that if she remarried she need not leave her new husband -

ולא מוקמינן לה אחזקת אשת איש²³ -

And we do not place her on her initial status as a married woman, which would prevent her from being together with her new husband. This contradicts the view of the ר"י that

the last measurement is invalid. The חזקה דהשתא there explains that we follow the חסר (where it is) and not the nature of a מקוה, because the nature of a מקוה is that it loses water a little at a time and not all at once. Therefore since now it is a חסר we assume that it was losing water for a period of time. It is apparent from that if not for this reasoning of חסר ואתאי we would follow the חזקה דמעיקרא and the past will be valid. Therefore it follows that by סברא where there is no חסר ואתאי there is no logic to tell us when it became now. We should follow the חזקה דמעיקרא (that it was) and not the חזקה דהשתא (that it was).²⁴

²² In a case where there is a ספק (without contradictory עדין) as in the case of the מקוה we could say that we follow the חזקה דמעיקרא (if not for the סברא of חסר ואתאי) and rule; however in a case where two testify (as by עירובי תחומיין where two state that it was before שבת) we cannot follow the חזקה דמעיקרא and say that it became on שבת, since there are two who testify that it was before שבת.

²³ This question does not seem to relate to the view of the ר"י, for the ר"י maintains that by ספיקא דאוריתא even if there is a חזקה היתר, nevertheless if it is a אסור it will be (see footnote # 12). However by ב' even if we disagree with the ר"י and maintain that ספיקא דאוריתא is a חזקה היתר so certainly when there is a חזקה היתר she should be and be tzatz. However, we can explain this as follows; if we maintain that ספיקא דאוריתא is a חזקה היתר, then we can explain the ruling of בר' ל' לא תצא as the explained it previously that נשות לאחד מעדייה ואומרת בר' ל' דין תורה תוח'ה that by ספיקא דאוריתא is that we follow the חזקה, so once she has a חזקה איסור, that cannot change her status as an נשות לא' מעדייה ואומרת בר' ל' ג"א. [This scenario of נשות לא' will have to be utilized in (some of) the following cases.]

by every ת"ת we revert to the initial חזקה status. In this case her status is that she is an א"א; how can we allow her to remain married to the new husband??!

answers; the reason why it is לא יצא (despite the presumption that a woman is meticulous) -

הינו משומך חזקה דעתה ומנסבא²⁴ מרעה לה לחזקת אשת איש

That is because the presumption that a woman is meticulous in verifying her husband's death, **and** only then does **she marry, weakens her א"א**, and since she and the עד she married claim with a certainty that the husband died, therefore – לא יצא

anticipates a difficulty with the assertion that in this case:

אף על גב דברניים אמרים מות אמרין בהאשה רביה יגמאות פ"ב דמותרת לחזור לו²⁵ –

Even though the states in פרק האשה רביה that if two witnesses testified that the husband died, she is permitted to return to her first husband –

וכיוון דליך חומרא לבסוף לא דיקא²⁶ –

And since there is no stringency at the end, she is not that meticulous to prove that her husband died, therefore here too (by שנים אמרים מות וכו'), where there are two that say he died, she is seemingly not חזקה א"א, and the א"א is not flawed, so why לא יצא?

answers:

מכל מקום הכא כיון דמחישין זה את זה אייכא חומרא²⁷ –

Certainly עדים since the two שנים אמרים מות וכו' contradict each other there will be the **חומרא לבסוף** (she will be), therefore she will be דיקא and that makes a difference in the **ריעותא**. חזקה א"א.

continues the discussion regarding ת"ת דיקא ומנסבא:

²⁴ The woman wants to be certain that her husband is dead before she remarries (in order to avoid the complications if he should return [that her children from the new husband will be ממעזרין, and she will be נשאת לא' מעדרה וכו'], therefore this diminishes the power of her א"א and we consider her a ספק and since she is we rule that לא יצא (see footnote # 23). See 'Thinking it over # 3.

²⁵ The rule is as follows; if there is only one witness that her husband died she is permitted to remarry; however there will be dire consequences for her if the husband returns (alive); she will not be able to remain with either of her husbands and she loses her כתובה from both husbands, etc. However if two עדים testify that her husband died and she remarries and her original husband returns she is permitted to return to her original husband (she is obviously prohibited from remaining with her current husband since she is the א"א of her original husband).

²⁶ The there explains the reason that we allow a woman to remarry based on the testimony of only one עד, is since we will be very strict with her if her husband returns, therefore we are sure that she will be דיקא ומנסבא, out of fear that if her husband returns she will have to face dire consequences. However when two עדים testify that her husband died, the consequences are not that severe, therefore there is no דיקא ומנסבא. In the case of שנים אמרים מות דיקא ומנסבא לבסוף no, and she is not דיקא ומנסבא, therefore the א"א remains.

²⁷ See TIE previously on כב ב' ד"ה הבא footnote # 5.

ובשנים אומרים נתגרשה ושניהם אומרים לא נתגרשה דאמרין נמי לא יצא -

And in the case where two say she was divorced and two other say she was not divorced, where the ruling also was - לא יצא

אף על גב דלא דיקא²⁸ -

Even though that by she is not גירושין דיקא ומיינסבא since it is true and she has a right to remarry –

rejects a possible solution to this question:

וליכא נמי חזקה דיין האשה מעיזה פניה²⁹ -

And we cannot also say that there is presumption that a woman is not brazen to claim that she is divorced unless it is true -

DSLAL BAFNI BELEH MEIZAH³⁰ VEL SHON HICHA DEMSIIYUN LE UDIM³¹ -

For a woman is to say I'm divorced not in the presence of her husband, and she is certainly where witnesses are supporting her; therefore her claim that she is divorced is meaningless. The question remains why since it is true and she is in possession of a right?

answers:

ויש לומר דמכל מקום דיקא³² לפי שיראה שיוזמו עדיה³³ או יפסלו אותם בגזלוונתא³⁴ -

And one can say that notwithstanding that her permission is divorced based, nevertheless she is afraid that her witnesses may be impeached or they will be disqualified as robbers.

²⁸ When her permission to remarry is based on the death of the husband, the woman is believed because if he returns she has no contradictory claim (he is her husband and alive), however if her permission to remarry is based on divorce, then (seemingly) she is not believed, for she thinks that even if the husband returns she can always claim that he divorced her.

²⁹ The rule is if a woman claims in her husband's presence; 'you divorced me', she is believed because the woman is in the presence of her husband. Therefore if it were not true that she is divorced she would not have to claim that she is divorced. Perhaps this applies to this case as well, that since she claims that she is divorced (see [end of] footnote # 23), she should be believed (even though she has a right), because of the rule.

³⁰ A woman does have to claim 'I'm divorced' even if it is not true, if she makes this statement not in the presence of her husband. There is no proof that the statement is true.

³¹ Here there are two that support her claim that she is divorced, therefore she will have the right to say even in the presence of her husband (even) if it is not true.

³² דיקא ומיינסבא is retracting his previous assumption that there is no right to remarry.

³³ Other may come and say that on the date in which you claim that her husband divorced her in this place, at that time you were with us in a different place and could not have witnessed the divorce you describe. This is called the former and the latter are believed. She will then lose her right.

³⁴ Other may come and claim that the woman stole something (some time prior to their testimony). They will be disqualified as false. See 'Thinking it over' # 4.

In summation: the **הזקה** (even by **דיקא** and **מיבשבא**) can be removed through the **גירושין**.

ר"י has an additional difficulty with the תוספות:

ובאהה רבה (שם צג, ושם) גבי בעו מיניה מרוב ששת עד אחד ביבמה מהו³⁵coli -

And in ששה פרק האשה רבה, regarding that which they inquired from ‘what is the ruling of a single witness by a **יבמה**, etc.’

³⁶ אמר להו **תניתו** אמרו לה מת בנד ואחר כד מת בעליך ונתיבימה – ³⁷

answered them we learnt this in a משנה: 'They (witnesses) said to her, 'your son died first and afterwards you husband died' so she was מתייבם -

ואחר כך אמרו לה חילוף הדברים³⁸ יצא והולד ראשון³⁹ והאחרון⁴⁰ מזר -

And then they told her it was the opposite; your husband died before your son, the rule is **she must leave her יבם** and the first and last child is a **מזר** for they were born from an **איסור כרת** relationship. This concludes the **ש"ר** which cited. **ש"ר** continues -

היכי דמי אילימה תרי ותרי מאי חזית דסמכת אני דאסרי ליבם סמוך אני דשו לה -

What are the circumstances of this case, where the ruling is if you will say that it was two (who said the child died first and she is מותר הולך ומזר);

אשרה ליום (**ליבורם**) why two (**עדים**) said the husband died first and she is **why do you see to depend on these** latter witnesses **who forbid her to** (and you rule **חزا** and declare her children to be **מזרים**), **depend on these** former witnesses **who permit her to** (and we should permit her to remain with the **יבם** and the children are **מאי** there continues with s'chotot proof.⁴¹ The **גמרא** however discusses this issue of **חוית וכו'** -

وكثرة دمائي فرید وهذا ایت لـ لاوكمي احـزـكـه⁴² دـاسـورـه لـ يـبـمـ شـمـتـ بـعـلـهـ تـحـلـهـ⁴³ -

³⁵ The case there is where an **עד** testified that the husband, who was childless, died, which requires the husband's brother to be **מייבם** his deceased brother's wife. Can he be **מייבם** her if there is only one **עד** who testifies to his brother's death. The reason not to, is because perhaps she has a close relationship with her brother-in-law and would (gladly) marry him without the **ג'יינט** **ומיינסבדא**.

³⁶ יבמות צב, א.

³⁷ In this scenario if the child died first, the husband died childless and she is a proper *יבמה* and eligible for *ירום*.

³⁸ In this scenario where the husband died first he was not childless when he died therefore his wife is forbidden to the brother-in-law as אשת אחיו שלא במקומם ביום קרת הנזירים. The children of a relationship are קרת הנזירים.

³⁹ This refers to the child that was born to her and her ים before they heard the second testimony (that she is forbidden to the ים).

⁴⁰ This refers to the child that was born to them after they heard the second testimony.

⁴¹ It cannot be discussing ר' ש' תומך (as ר' ש' asked therefore we must say that initially only one עז came and said your child died first and she was on the basis of his testimony (thus resolving the query that an עז is believed by a במא) and then two עדים came and said חילוף העבריים therefore therefore עז.

⁴² Before any of the **עדים** came she was because she was an **איסור** for she had a son. We do not know who died first, the **חזקת איסור** should determine that the husband died first and she remains **אסורה לירוח** as she always was.

And it is difficult to understand of ר"ש question of **מי חזית** (even though currently she may be to the **for it is proper to place her on her that she is forbidden to her** and that therefore we would assume that **her husband died first** leaving a child, which prohibits her from **יום ר"ש** suggest that we should be **סמרק אהני** and permit her to remain married when this runs contrary to her. **חזקת איסור ליבם**

בחזקת היתר proves that this is a valid (even though currently she may be to the **since both her husband and her child are dead**):

בדאמרין בפרק ארבעה אחין (שם ז' לא, א, וט) **గבוי נפל הבית עליו ועל בת אחיו כולי**⁴⁴

As the states in **פרק ארבעה אחין** regarding the case where **the house collapsed on him and on his brother's daughter, etc.**

continues to ask on the ruling of ר"ש (according to the s' explanation):

עוד כיון דתרי ותרי ספקא דרבנן הוא יש לאוסרה כדאמרין גבי ינאי

תו"ת since (בחזקת איסור ליבמה (even where there is a **considered by the** **רבנן as ספק** (and if it is a **לחותרא**, we should prohibit her from the **יבם as** the **יבם explained by ינאי** (that even though his mother had a **חזקת היתר**, nevertheless since it is a **לחותרא issue** we go **לחותרא**, the same should apply by the **יבמה**)).

rejects an anticipated answer to this question:

וחתם לא דייקא כדאמרין התם זימני דרומה ליה ליבם -

⁴³ This question seems to be both on ר"ש and the ר"י who agree that by **תו"ת** we follow the **חזקת איסור** (but not on the **רבנן** later in this **תוספות** (see later by footnote # 51).

⁴⁴ has two wives and, where **לאה** is the daughter of his brother (whom he may marry). The rule is if dies childless, cannot be his daughter and not even (who is not related to him by blood, because she is a **צורת ערוה**. In this case the house collapsed on and **לאה** and they both died. If **ראובן** dies first, then at the moment of his death neither nor were eligible for they are and respectively. However if died first, is no longer a **צורת ערוה** at the time of **ראובן's** death and she would be eligible for to **יבום**. The ruling is that must receive from before she can marry anyone else (because perhaps died first and she is but **זוקה ליבם** for perhaps died first and is an **אשר אה שלא** **ראובן** **רחל** **צורת ערוה** since she was a **חזקת היתר לשוק**, since **רחל** was always **צורת ערוה** (the **אבוי's** question) that she is considered even though that currently she is **חזקת איסור לשוק** (for she has no husband and no **צורה**), nevertheless we follow the **חזקת הדשתה** (not the **חזקת מעיראה**), similarly here too (by her husband and son) since she is **חזקת מעיראה** (because of her son), we do not consider the **חזקת הדשתה** but rather the **חזקת איסור ליבם מעיראה** and she should be **תצא**, so what is **ר"ש** question [Others explain to mean that just like by **נפל** **היליצה** we rule that she cannot be **מחייב ליבם** because of her **חזקת איסור** (or that she must receive **לחותרא** even though it is **תზא**, so too by we should also rule that she should be **תצא**. However, the difficulty with this explanation is how can we compare an **חייב להילוץ** to the ruling of **תצא והולך ממזר** or **חייב להתייבם לכתלה** **איסור להתייבם לכתלה** **צ"ע, בעד**]

For there (by with her son) **there is no** ⁴⁵, **דייקא גمرا** as the states **there**; ⁴⁶ ‘sometimes she likes the **'יבם** and wants to marry him so she will not be **לייבם**.

תוספות answers:

ויש לומר דמכל מקום מהני דיוקא דעתה לעניין מרעה ליה לחזקת איסור לייבם ⁴⁷ -

And one can say; that nevertheless (even though there is the **of her**) **רחמא סברא** (that nevertheless) **is sufficient to be the מרעה לייבם** **דייקא**, for she is still somewhat out of concern that she may be **לייבם**.

תוספות responds to an additional anticipated difficulty:

והא דבריך נמי התם قولיו ועוד ממזר ספק ממזר הווא -

And regarding this which **ר"ש** **asks there** by the **'יבם** and her son, etc.; ‘and furthermore, if we are discussing a case of **תו"ת**, how can the state that the children (from the **'יבם** are **מזרים**) at most **they are**, since there are two **ספק ממזרים** who claim **לייבם** so she is **לייבם**. This concludes the difficulty – **תוספות** now continues with the difficulty –

אף על גב דבחזקת איסור לייבם היא -

Even though she is to the **חזקת איסור** so according to the **ר"י** that by we follow the **חוקה**, she is **לייבם** and therefore the children are **מזרים**; how can **ר"ש** argue that they are only **ספק ממזרים** –

תוספות responds –

מכל מקום לא הוי ממזר ודאי דמהני דיוקא דעתה כדפרשין ⁴⁸ -

Nevertheless the child is not a for her (lesser) **is effective to be חזקה מרעה as explained previously** -

תוספות offers an alternate (and opposite) explanation why the children are (only):

ועוד כיון דתרי ותרי ספיקא דרבנן ⁴⁹ **אין לנו להעמידה על חזקה ולהתירו במזרת**

⁴⁵ בחזקת א"א even though she is stated previously that by ב' אומרים מה וכ"ז nevertheless since she is א"א that makes a difference in the דין ריעותה ומינסבבא since there is the concern of **דייקא**.

⁴⁶ **יבמות צג, ב**. See (the end of) footnote # 35.

⁴⁷ The query by ע"א **לייבם** was whether this lesser (because of **דייקא גمرا**) is sufficient to allow her to be based on the testimony of an ע"ז; however, it is certainly sufficient to be the **מרעה** by **תו"ת**.

⁴⁸ See footnote # 24 & 47. This [lesser] is effective not only in regards to her (that **יבמה**), **לא תצא** (by **דייקא ומינסברא**) is effective not only in regards to her (that **יבמה**), but even regarding the children that they are not **מזרים** (only **ספק ממזרים** [even if we would rule **תצא**]).

⁴⁹ The ruling of **תו"ת** is that even if there is a **חזקת היתר** or that as result of following the **חזקת היתר** there will be a certain **אסור מספק דאוריתא דרבנן** (in a situation), the rule that it is **רבנן**. If we would follow her **חזקת איסור** and declare the child **קולה** (since he is born from the **יבם** of **אשת אחיו**), this would result in a leniency that he is permitted to marry a **מזרת**; we do not allow this leniency because (notwithstanding the **חזקת היתר**, which permits him to marry a

חזקת furthermore since ספק דרבנן is תו"ת we cannot place her on her – מזרת a in order to permit the child to marry a

offers an alternate solution to the questions asked previously on the ר"י:⁵⁰
ורבינו יצחק בר ברוך פירש שלא אמרינו בכל nisi אוקמא אחזקה –

And the explained that the reason we do not say in all these cases, let us place it on the initial, is – חזקה –

לפי שהשניים שמוציאים אותו מהחזקתו של היתר הם מעדים תחלה⁵¹ –

Because the two that remove him from the initial of permissiveness testified first –

ומיד כשהעידו יצא מהחזקתו על ידי עדותן ותו לא אמרינו אוקמא אחזקה⁵² –

So as soon as they testified that it is forbidden, it left its initial status of through their testimony (and it has the current (חזקת אישור), and we will no longer say place it on its initial. חזקת היתר

ולחכמי פריך לעיל⁵³ מי שנא רישא ומאי שנא סיפה –

And therefore it is understood that which the asked previously, what is the difference between the רישא (by נתקודה where we rule and the סיפה (by לא יצא) (by נתגשה where we rule), for the situation is –

דשנים שאומרים נתקודה העידו תחלה –

חזקת who said נתקודה they testified first (and removed her from her – לא יצא, so why (חזקת א"א to פנואה

ובשנים שאומרים נתגשה אף על פי שהם העידו תחלה⁵⁴ מכל מקום היתה בחזקת אשת איש –

And by עדים המתירים testified first,

במזרת אסור בכשרה (מזרת he remains a and therefore he is).

⁵⁰ This refers to the cases of ב' אומרים נתגשה and ב' אומרים מה וכי, etc.

⁵¹ For instance in the case of the עדים (חזקת היתר) (whose mother had a נegated her (ייןאי) (and negated her (היתר) came before the who said עדים (לא אישתבי) (who appear first testify against the חזקה, for why should עדים come to substantiate a which is already in place?!

⁵² The by תו"ת is the status that the first עדים give; not the status that was before came, for the first group of עדים nullified that initial חזקה and created a new חזקה.

⁵³ אם נשאת לא יצא ב' אומרים נתקודה וב' אומרים לא נתקודה by ב' אומרים נתגשה וב' אומרים לא נתגשה she is by ב' אומרים נתגשה but by ב' אומרים נתגשה she is by ב' אומרים נתגשה this explains the difference (according to the ר"י). What is the difficulty in the rule?! See Tos' בג' ד"ה מא גمرا.

⁵⁴ This would seemingly cause us to rule לא יצא since she is now ב' החזקה. However according to this understanding the גمرا should not have asked מ"ש רישא ומ"ש סיפה (that they should both have the same), but rather that the ruling should be the opposite in both cases (by קדושין לא יצא and by גירושין); however the גمرا asks that the ruling should be the same in both cases. Therefore explains (according to the מהרש"א) that the first set of עדים can only be from the מזיא (by but קדושין there assumed that the first set of עדים can only be from the מזיא (by גירושין), so he asks מ"ש סיפה מ"ש רישא since in both cases there is a sort of החזקת אישור (by קדושין through her initial status).

מציא nevertheless she was **בחזקת א"א** (and that assumed that מקשן cannot be asked only therefore the two asked מקשן מהזקה). מ"ש רישא ומ"ש סיפא therefore the two asked מקשן מהזקה.

וכו ההייא דהאשה רבבה ⁵⁵ ודינאי ⁵⁶ שניים המוציאין אותו מהחזקתו באו תחלה -

And similarly in the case of ינאי in both these cases the two פרק האשה רבבה which remove him from the came first.

According to the ב by ריב"ב we follow the חזקה; however not the initial, but rather the status which the first group of עדים bestow. It is not necessary to rely on עדים דיקא and מינסבא in order to explain the contradictory גמרות.

The ר"י disagrees:

ואין נראה לרביינו יצחק דהא הכא בשמעתינו מוקמינו ליה אחזקה -

And this is not the view of the גمرا (regarding the alleged (בן שמואל) for here in our (בן גרשום) – (מוחזק באבוח דכהן הו) חזקה (that he should be) –

אף על גב דבר פסלו הטעים והוציאו מהחזקתו -

Even though two invalidated him and took him out of his initial by testifying that he is a בן גרשום, this testimony was before there were two who testify that he is a בן כהן; according to the ריב"ב he should be – פסול

rejects a possible answer:

ואין סברא ⁵⁷ שיועיל מה שעד אחד המכשיר העיד קודם ⁵⁸ -

And it is not logical to answer that the first testimony of the should be effective to the extent that it places him – בחזקת כהן

offers another reason why the difficulty cannot be resolved:

ועוד דברashi ממשע ⁵⁹ דברyi למימר דאפילו אותו שניהם לבסוף דמסקין ליה:

⁵⁵ This is the case where the first group said מת בנק ואח"כ מת בערך (permitting her for), so therefore the ruling will be that since the first removed her (even though initially she was removed).

⁵⁶ The two that say his mother was captured testified first, therefore removing her.

⁵⁷ This seems to be ר' ש"ג opinion that the **ב"ה** אנן because of the ע"א (see footnote # 2).

⁵⁸ The ריב"ב (seemingly) maintains (according to ר' that only) have the strength to remove him from the initial חזקה; however an ע"א cannot nullify a ע"א (for an ע"א is even weaker than a ע"א as pointed out previously on the **ב"ה** והאמר). And even if he does establish a חזקה when the two came later and testified that he is a בן גרשום they nullified that חזקה (like anytime two come to nullify a חזקה).

⁵⁹ The originally established the between ע"א and א"א in a case where an ע"א came initially then two and finally one ע"א, and the argument is whether there is a **זילותא דב"ד**. On this asked why do we need that an ע"א came first and last, the same concern of **זילותא עדים הפסלים** will be if the two came first and then the עדים came and if we are not worried he will be a **בן כהן**. This indicates that even if the **המכシリים הפסלים** came first he still retains his **חזקת כשרות**; not like the ריב"ב.

עדים **and furthermore it seems that even if both ר"א wanted to say⁶⁰ that even if both** המתיריהם **came at the end** (after the ones testified) **we would still elevate him**, עדים הפטולים even though there were no at all who sustained his, there were only כהונה to, even though there were no at all who sustained his, there were only כהונה to, according to the rule ריב"ב he should have a חזקת פסול and not be elevated to by this. תו"ת כהונה to.

SUMMARY

ר"ש"י maintains that by תו"ת we follow the חזקה, but only regarding the person in question; the חזקה of the mother (father) does not apply to the child.

ר"ת agrees that we follow the חזקה (and the המני לבת), however if it is בחזקת האם מהני לבת and it is a issue the חכמים ruled that it is אסור מספק (if it is לאוריתא); however if it is a issue then it is מותר. The חזקה מדרבן negates the חזקת איסור אשא דיקא ומינשבא (even by גירושה and יבמה).

עדים ריב"ב maintains that the effective חזקה is the one established by the first.

THINKING IT OVER

1. maintains that even though תו"ת we follow the חזקה, nevertheless תוספות מהרש"ל asks that this contradicts what wrote previously that we are by דין מכשיר (כב,א ד"ה תרי) since we place him on his, and we do not say that he is כשרות פסול מדרבן. How can we justify the question when the case there is regarding קיום שטרות מהרש"ל' לכאן, and how can we answer his question?⁶³

2. asks in the case of the טמאה עירוב (ספק), that since תרומה בזזה⁶⁴ we should place the תרומה בזזה⁶⁴ on its. It seems that if would

⁶⁰ ואומר רבינו יצחק בן אברהם דרב אש"י נמי מוקי לה כשבא עד אחד המכשיר קודם שנים (על הגלוין) The comments: הפטולים אבל בבא שנים הפטולים תחלה ואחר כך בא שנים המכשירים בזזה אחר זה לא בעי לאוקמי דהא לא הו קרי במתניתון על פי עד אחד (ד'כין דכי אתוי עד אחד אין ממש בדבריו עד שבא אחר אףלו תו"ת נמי ר"א asked he meant to say that we can explain the (whether תו"ת פ"ע"א) (whether תו"ת פ"ע"א) We cannot say (says the) that it will be considered since the two did not come together but they came one after the other (after the one testified ר"א) so it is פ"ע"א. The objects that ר"א certainly cannot mean this since when the first came his testimony is meaningless (it contradicts two עדים), therefore when ר"א asked he meant that there was an ע"א, however his question was, why do we say there was only one ע"א בתחלה, there could even be two ע"א and the issue of זילותא will remain. The ר"י however can argue that ר"א says if the מחלוקת regarding ע"א mention ע"א at all, let it be a regular תו"ת; proving that ר"א maintains by a regular תו"ת we place him on his initial even though the חזקה הפטולים came first.

⁶¹ See footnote # 12.

⁶² See שבchorah.

⁶³ See מהרש"א.

⁶⁴ See footnote # 16.

be there would be no difficulty (for it would be a **דאוריתא להומרא**). However the whole rule of the **הרומה** is so, even if the **עירובי תחומין** is **מדרבנן**, the question is regarding the **עירוב** which is a **דרבן**, so we should still be **מתיר**!

3. **בחזקת א"א** explains that by **ב'** **אומרים מות ובור' אומרים וכו'** even though she is nevertheless **חזקת א"א** **מרעה** is **ашה דיקא** and **מיינסבא חזקה** of the **חזקת א"א**, since the **חזקת א"א** is **ארובה תרומה** so even if there were a **היתר**, the ruling is that by a **ספיקא דאוריתא** (**מדרבנן**) we go **להומרא**; **לחותר** why therefore is the ruling **לא יצא!**⁶⁷

4. **שמעא יוזמו** states that a woman is **דייקא** (even by **בדיוק**) out of concern that **בדיוק** she is not **בדים שמת** (alone) she is not **שמעא יוזמו וכו'**.⁶⁸ Why then did previously state that by **ב'** **עדים שמת** **תוספות** **תוספות**?⁶⁹ **שמעא יוזמו וכו'** when there is the same concern of **דייקא**?

המקרה - הדין	רש"י	ר"ג	ריב"ב
אבוה כהן, קול הפסול, עד המכשיר, ב' עדים הפסולים, עד המכשיר – כשר	אוקמי אחזקת היתר של אבוה לגבי תרומה דרבנן	אוקמי אחזקת היתר של אבוה כהן, קול הפסול, עד המכשיר, ב' עדים הפסולים, עד המכשיר – כשר	אוקמי אחזקת היתר של עד המכשיר
אין לינאי חזקת היתר ולא דנים על האם אישתbaiyi וב' אומרים לא אשתחbaiyi – פסול	מדאוריתא אוקמי אחזקת היתר של האם ומDRVBNן אסור מספק	אוקמי אחזקת איסור של ב' עדים הראשונים שפסלי	אין לינאי חזקת היתר ולא דנים על האם אישתbaiyi – פסול
עירוב ספק (תו"ת) תרומה טמאה – אסור	א. ע"ת דאוריתא ופסול מDRVBN. ב. חזקה דהשתא דטמא ביחד עם ב' עדים הפסולים.	עדוי טומאה לפנה"ש באו תקופה	
מקווה שנמצא חסר – פסול	סבירא דחסר ואתאי אף שאין עדים פוסלים		
ב' אומרים מות ובור' אומרים לא מות – לא יצא	דייקא ומינסבא מרעה להזקת איסור, וגם בגרושה וגם ביבמה	אוקמי אחזקת היתר של ב' עדים הראשונים שמתייריים	
מת בנק ואח"כ מות בעל והעידו להיפך – לא יצא	דייקא ומינסבא גם ביבמה אף דרחה ליה.		

⁶⁵ See footnote # 24.

⁶⁶ See footnote # 12.

⁶⁷ See footnote # 23.

⁶⁸ See footnote # 34.

⁶⁹ See footnote # 26.

על ידי ממון מותרת לבעל – For money; she is permitted to her husband

OVERVIEW

The Mishnah teaches regarding a woman who was taken into custody by gentiles; if it was because she owed them money, she is permitted to her husband (upon her release). Tosfot will explain that she is permitted even if her husband is a Cohen who is prohibited from having marital relations with a woman (including his wife) if she lived with a gentile, even against her will.

נראה דמותרת אפילו לבעל כהן שלא חישין אפילו לאונסא משום דמרתתי להפסיד ממונם –
It is the view of that she is permitted to her husband even if he is a Cohen,¹ for we are not concerned even for coercion, since the gentiles are afraid to lose their money² if they will violate her –

ולא דמי לשבייה³ –

And this woman who was נחbeschă is not comparable to a captive woman who is אסורה לכהן.

מותרת לבעל כהן proves his point that she is:

וכן מוכח בגמרא דקאמר לא שננו אלא שיד ישראל תקיפה על העובדי כוכבים –

And this is also evident in the name of ר'ש בר ר'י, where states in the name of ר'ב, ‘we did not learn this rule that מותרת לבעל only in a situation when the hand of the Jew overpowers the gentiles; the Jews are in control of the government, then she is מותרת לבעל –

אבל יד העובדי כוכבים תקיפה על עצמו⁴ אפילו על ידי ממון אסורה לבעל –

However if the gentiles are in control over ‘themselves’ [the Jews], she is forbidden to her husband even if she was taken on account of money’. This

¹ She is certainly permitted to her husband if he is a Yisrael, because there is no reason to suspect that she was willingly (since they are not holding her for ransom), and even if they may have coerced her to be, she is permitted מזונה לבעל כהן. The truth is that she is even אסורה to this woman, if she had relations with the guy, even if she was an אונס.

² The reason of ברצון דמרתתי להפסיד ממונם is seemingly more applicable to אונס than to רצון (there is a greater chance they will lose their money if they are her, than if she is the gentile). Rather the reason refers to the probability of an act of זנות (an act of by אונס עכ"ם is more probable than an act of by רצון אש"ה) and nevertheless we are not concerned since דמרתתי וכו'.

³ The captives do not owe their captors money; therefore the captors are not that concerned that they will lose money and therefore feel free to violate the woman. However in our case where the gentiles are owed money and are holding the woman as collateral for their loan they do not want to ‘damage’ their security, in order to be certain that they collect their debt.

⁴ This is a euphemism to refer to the Jews without saying so directly since it is an undesirable situation.

continues - **גמרא** תוספות concludes the

ועל כרhone הינו לכהונה⁵ מזכאMRI אף אנו נמי תנינה מההיא דרייחקהו בני משפחתה⁶ -

And **perforce we must say** that אֲסֹרָה לְבָעֵלָה means to her husband, the אֲסֹרָה רַבָּא, or any other כָּהֵן, since said, ‘we also learnt this ruling of that from that משנה⁷, where there was (somewhat of) a similar case and the family of this woman distanced themselves from her; they would not let her marry into their family because of this incident -

והא לא שייך אלא לכהונה⁸ -

And this concept of ריהוקה בני משפחתה is applicable only by **כהונה**; out of concern that if she was נבעלה (even) she becomes a זונה and cannot be with a man -

דבישראל לא שיעז וריהקוה בני משפחתה דאיינה אסורה אלא לבעה⁹ -

For by a family of בני משפחתה the concept of יישראים is not applicable for even if she was מזונה ברצון she is only forbidden to her husband, but she may marry anyone else in the family (who are not כהנים).

יעוד ראייה דתנו בפרק שני דמסכת עבודה זרה (דף כב,א) – לבעלה כהן even מותרת she is ע"י ממון תוספות offers an additional proof that:

- מסכת ע"ז פרק ב' משנה בפונדקאות של עובדי כוכבים מפני שחוזדים על הרביעיה¹¹ - אין מעמידין בהמה בפונדקאות של עובדי כוכבים מפני שחוזדים על הרביעיה¹¹ -

We do not place unattended cattle in the gentile inns because they are suspect

⁵ The ruling that if she is אסורה לבעל her means only לכהן (since בועל משפחתה (בעל ישראל) since she is אסורה לבעל her means only לכהן, but not to Cohen, as shortly states).

⁶ The proof that brings to support the view of she is from the proof that if רְבָא (that if רְבָא) is תְּקִיפָה (she is תְּקִיפָה) since there are מושנָה מוֹתָרָה לְבַעַלָה (she is מושנָה מוֹתָרָה לְבַעַלָה); עֲדִים שֶׁלֹּא נִתְמָאָה is actually from the fact that the states that she is מושנָה רֵיחָקָה בְּנֵי מִשְׁפָחָתָה indicating that if there are no עֲדִים she is אֲסֻרָה. However since the mentions that it is a case where (initially) מושנָה, this proves that we are discussing a case of כָּהָנוֹת וְסִפְ�וָת explains. See ‘Thinking it over’ # 1.

עדיות פ"ח מ"ב⁷

⁹ We must say that the הונאה referring to איסור כהונת בנו משפחתה in that family because she was presumed to be a זונה. However if it was regarding an איסור to יישרל she would (at most) only be אסורה לבעלה even if she was מזנה ברצון, but not to the rest of the family.

¹⁰ ריחקה בני is (seemingly) not (completely) satisfied with the first proof, because perhaps we can say that ריחקה מפנה is referring to a (and as the states בַת יִשְׂרָאֵל) and the reason why she became promiscuous, but not that she is because they felt she became promiscuous. See ‘Thinking it over’ # 2.

¹¹ ובני נח נאסרו בה דכתי ב בראשית ב, כד והוא לבשר who writes; ד"ה שהשווין there רשי". See עכו"ם is forbidden for אחד יצאו בהמה היה ועוף וכיון לפניו עור לא תמן מכם של.

of bestiality; the גمرا there continues¹² -

ורמיינהו לוקחין מהן בהמה לקרבן¹³ -

But I will challenge this, for we learnt, ‘we may buy from them an animal for a answers¹⁴; this proves they are not רביינה! החוש על הרביעה ’קרבן -

לא קשיא הא לכתלה והא דיעבד -

There is no difficulty; here regarding the בפונדקאות של עכו"ם initially; one should not do it for there is the possibility of, **and here** by רביינה it was already done and we assume that there was no בהמה לקרבו גمرا there continues -

ומנא תימרא דעתני בין לכתלה قولיהם לא תתייחד אשה עמהם מפני שחוודים על העניות -

And how do you know that there is a difference between etc. and regarding the ways of the עכו"ם answers for we learnt in a 'משנה, a woman should not seclude herself with because they are suspect of immorality'; the גمرا continues -

ורמיינהו האשה שנחבה על ידי עובדי כוכבים על ידי ממון מותרת לבעה -

But I will challenge this ruling, for we learnt in (our), a **woman who was** גויים **on account of money is permitted to her husband** (so how can you say they are גمرا), the גمرا continues -

אלא שמע מינה שני לו בין לכתלה לדיעבד -

But rather this proves the point that we can derive (by resolving the contradiction) that **there is a difference between** (that she should not be with, since they are even if she was גויים **and** (חוודים על העניות עכו"ם [by נבעלה] מתייחד). This concludes the citation from that Abel continues גمرا

משמעות דין לחוש כלל שנבעלה -

It is apparent that there is no concern (בדיעבד) **that she was at all** (not even (באונס -

דאוי מותרת לבעה ישראל קאמר שלא חיישין שמא נתרצת -

For if means only to a, **ישראל** meaning that we are not concerned that perhaps she consented to the זנות -

אבל לבעה¹⁶ כהן אסורה דחיישין שמא נאנסה אם כן לא הוה מיתי מידיו:

¹² כב,ב.

¹³ אסורה לקרבן is בהמה הנרכעת A.

¹⁴ כנ,ג.

¹⁵ ע"ז כב,א.

¹⁶ See ונקט רישא לבעה אגב סיפה, ובגמרה נמי נקט לבעה אגב מתניתין who writes; תוספות ישנים מותרת להונאה did not write (according to).

However she would be forbidden to her כהן husband, for we are concerned perhaps she was coerced to זנות; if that is so the גمرا did not bring any proof at all that there is a difference between her and, because they will coerce her, however she is מותר לבעה ישראל because even if they coerced her she is still מותר באשתו שזינתה באונס is ישראל, since a woman should not be מותרת לבעה כהן even though a woman should not be because they are החשודין, however she is בדיעד.

SUMMARY

An אשת כהן שנחבה ע"י עכו"ם is permitted to her husband even if he is a כהן.

THINKING IT OVER

1. It seems that needs to prove (from ריב ריחקה בני משפחה תוספות) that the ruling of כהונה (only) is referring to (only).¹⁷ How can we understand otherwise that is discussing a נישראל, for why should she be אסורה לבעה if תקיפה even a נחבה ישראל why should be different?!¹⁸

2. What is the advantage of first proof¹⁹ over the second proof?²⁰

3. אפָן נמי תנינא of איך דאמר ריב proves that is referring to כהונה from the ruling of לישנא קמא which challenges ריב; for Seemingly could have proved it from the ruling of תוספות if ריב maintains that she is אסורה לכהונה even if תקיפה, there can be no question on ריב from the ruling of משנה in משנה. Obviously our [according to this interpretation of ריב] argues with the ruling of לכהונה (which permits her to כהונה). Why did not bring this proof from the ק"ל?!²¹

¹⁷ See footnote # 6.

¹⁸ See פג"י.

¹⁹ See footnote # 10.

²⁰ See מהר"מ ע"ז כג, א.

²¹ See כסא שלמה.

יעל¹ ידי נפשות אסורה לבעל –

And because of capital punishment; she is forbidden to her husband

OVERVIEW

The states that if a woman is taken into custody (נחבה) by gentiles on account of monetary issues (that she owes them money), she is even, מותרת לבעל her, and previously explained that she is even מותרת לבעל כהן (for we are not even for אונס). The continues that if, however, she was taken because she was condemned to die,² she is forbidden to her husband (if she is released). will תוספות clarify whether this only means לבעל כהן, or even לבעל ישראל, for we are מזנה ברצון that she was.

אסורה לבעל comments that this rule of תוספות –

הינו אפילו לבעל ישראל דחיישין טמא נתרצת כדי למצא חן שלא ירגנה³ –

Means she is prohibited even if her husband is a, **ישראל**, for we are concerned, perhaps she agreed to, **זנות**, in order she should find favor in the eyes of the gentile, so that he will not kill her –

תוספות anticipates and rejects the opposing viewpoint:

דאיל בעל כהן קאמר ואסורה טמא נאנסה אם כן הוה ליה למיימר אסורה לכהונה⁴ –

For if the meant she is **forbidden** only, because we are concerned perhaps she was, אסורה לבעל ישראל (but she is never **נאנסה**) because we are not that she was, if indeed this is what the means, **משנה משנה** the should have stated she is **forbidden to**, כהונה and not that she is forbidden [only] to her husband.

אל ודאי אפילו לבעל ישראל אסורה –

Rather we must certainly say that she is forbidden even, לבעל ישראל, out of concern that she was נבעל ברצון as just explained.

¹ The states that this is a continuation of the previous חוט' טוס'. They are one.

² See רשי ד"ה ע"י.

³ The fact that she was released may support this assumption that she was, נבעל (ברצון) for otherwise why was she released if she is מחייב מיתה!

⁴ may be presenting a twofold difficulty with the interpretation that she is אסורה לבעל כהן only. Firstly the should be more precise and not lead us on to mistakenly assume that it means she is even אסורה משנה. Secondly (and more importantly) the means is incorrect, she is not merely but rather she is to every since we suspect her of which makes her a (even if it was). [In the where רישא טמא לבעל לעכו"ם]. previously explained that she is even מותרת לבעל כהן, there is no difficulty why did not the state משותה לבעל כהן because the term means to whomever her husband is whether a or a כהן. However here where we wish to limit the term to a only, the should have been more specific. See also on the previous טוס'.]

תוספות asks:

ואם תאמר צנועות לישטרו⁵ ذקודם לכונ⁶ מסרנו נפשיהם -

And if you will say; the modest women should be permitted, for there is no concern that נבעלו, since previously they were willing to sacrifice their lives not to have relations with the – עכו"ם

כדמשמע בריש מגילתין⁷ (ז"ג,ב) גבי כל הנשאות ברבעי תיבעל להשר תחללה -

As is indicated in the beginning of this מסכת, regarding the statement of רביה, that there was a decree that whoever marries on Wednesday should first be with the minister –

תוספות answers:

צריך לומר זהכא חישיבין על כל אחת שמא אינה צנואה⁸ ואפילו נראה צנואה שמא אינה :

And it will be necessary to say that here (in the case of we are concerned regarding each individual woman that perhaps she is not a צנואה, and even if she appears to be a צנואה, we are still concerned that perhaps she is not a צנואה and was נבעל to the – עכו"ם נבעל).

SUMMARY

A woman who was נחשפה (even) אסורה is נחשפה בידי עכו"ם ע"י נפשות we are concerned that she was נבעל ברצון to save herself.

THINKING IT OVER

tosfos asked that the צנועות should be mean only, or even לכהונה?⁹

⁵ The connection of this question to that which Tosfos said previously that she is even אסורה, may be that if she is only אונס, then we can (perhaps) understand that even though she is a צנואה, nevertheless she was נבעל. (see [however] footnote # 6), however if she is even אסורה, the צנועות should be מותר because there is no reason to assume that they were נבעל. See 'Thinking it over'.

⁶ This may mean that they allowed themselves to be killed by the הגמון, before they knew that is permitted (מהרש"א), or it may mean that they would kill themselves before allowing the הגמון to be with them (רש"ב).

⁷ The first ג,ב in our מסכת stated that a married woman on יום רביעי stated that from the 'danger' and onward they married on יום חמישי (instead of יום רביעי). רביה explained that the decree that סכנה was this decree that there is no danger; rather they are forced to be married. The question is, there are who will be מוסר נפש rather than to be נבעל, therefore it is a סכנה for the woman. The answer is, these should be צנועות, since they will not be מוסר נפש to their husbands since they will not be married (even אונס). Why do we say that all the women are אונס?

⁸ Previously (on ג,ב) the called it a סכנה (and changed the wedding time) because we know that in the general population there are who will be צנועות; however we do not know for sure which individual is a צנואה, therefore they are all אסורות.

⁹ See footnote # 5 & 6.

Here it is the **כרכום of that kingdom**

כאן בכרcum¹ של אותה מלוכה –

OVERVIEW

משנה ר' יצחק בר אלעזר in the name of חזקיה resolves the contradiction between our (which states that a city that was conquered by the other, כרכום all the women are), פסולות כהנות and the other (which states when a woman enters a city in the time of war, all the wine remains); that one is discussing a כרכום of that kingdom, and the other is discussing a כרכום of another kingdom. There is a dispute between מותר (who maintains that by רשות, the wine and the women are) and אסור (who maintains that by איסור, the wine and women are), as to how to explain this answer.

פירוש² שיושביון בטח לפि שאין אחריהם מchnה³ ויש פנאי לנסך ולבועל –

The explanation of the answer is that the women are resting securely for there is no other camp of enemy soldiers coming after them (for they are in their own and therefore there is time to pour wine to their own to be בועל the Jewish women –

אבל בלשת של מלכות אחרת שאימת מלכות שבאו בגבולות עליהם אין להן פנאי⁴ –

However the raiding soldiers of another kingdom, who are afraid of the soldiers of the kingdom they invaded, have no time to rest and to be בועל.

וכן פירוש רבינו חננאל ורבינו תם וכן מוכח בירושלמי⁵ –

And the **ר"ת** and the **ר"ה** also explained it in this manner and this is also evident in the that by תלמוד ירושלמי everything is allowed and אסור is prohibited that everything is prohibited.

גמרא⁶ explains the continuation of the תוספות:

ופריך כרכום של אותה מלכות אי אפשר דלא ערקה חדא⁷ מנייניהו –

¹ The word כרכום means a siege (see **רשות** ד"ה כרכום). The army which laid siege on a city captured it and entered into the city.

² The word פירוש is the customary manner in which תוספות implies that he is negating another interpretation; in our case, פירוש, as mentioned later in this footnote (see footnote # 13).

³ Let us assume the captured a rebellious city within their country; no one is coming after these soldiers; they just defeated their enemies and there is no longer any opposition.

⁴ They are in a rush to take whatever booty they can and run away before the local soldiers come.

⁵ In our editions. See there (in our editions) that the rule of the **ר"ט** is משנה כרכום של אותה מלכות אבל כרכום של מורותה אחרית כלשימים הם, and the women are.

⁶ According to **רשות** that they are, the question of the **כרכום** of that kingdom is א"א דלא ערקה חדא וכו' גמרא that מורותה of the kingdom they are understood, that there is always the possibility that one soldier would leave his company and either be מנסך or בועל. However according to that by כרכום של אותה מלכות תוספות they are, א"א ערקה חדא וכו' what is the question of the kingdom they are.

אסורות גمرا asks, why is it that by **כרcum של אותה מלכות** all the women are, since it is impossible that none of the women escaped from the - הכרcum והוּ לְמַשְׁרִינָהוּ לְכֹלָהוּ וְלִמְיָתָלִי לְכֹלָא⁸ דְּבָשְׂבוֹיה֙ הַקִּילוֹ⁹ -

And on account of this one woman we should permit all the women and assume the lenient view regarding each woman, for the **חכמים were lenient regarding a – שביה**

proves his point that it is appropriate to say in this instance (even though the majority of the women did not escape):

כדאמרין בסמוך¹⁰ אם יש מחבואה אחת מצלת על כל הכהנות قولן –

As if **ר' יצחק בן אשי** says shortly in the name of **רב אידי בר אבין** if there is one hiding place in the city, it ‘saves’ all the **כהנות** that they are all (even though not all the women can hide in this place, only a minority [at most]), similarly here since (at least) one will have escaped, all the women should be permitted.

תוספות responds to an anticipated difficulty with this proof:

אף על גב דמספקא לנו באינה מחזקת אלא אחת¹¹ הכא פשיטה לנו דשרו –

Even though **ר' ירמיה** poses a question if the **מחבואה** can contain only one woman, is it on the rest, nevertheless here (by escaping), it is obvious to us that all the women should be permitted; the difference is -

זהתם לא ודאי נחבות אבל הכא ודאי ערקה¹² –

That there by the **מחבואה** it is not certain that even one woman hid in this, therefore there is room for doubt whether it is **כלן**, however here (at least) one woman certainly escaped, therefore we can judge each woman that she is the escapee.

פירוש¹³ now challenges:

⁷ The text in our reads **ללא ערך** (עקר, לפי הב"ח) חד מניינו גمرا in the masculine, (seemingly) referring to the soldiers, not to the women. See (and the הגהות וציוונים אות ד' מהרש"ל on the margin of the (newer) גמרא).

⁸ It is virtually certain that (at least) one woman escaped and is certainly hid. We should therefore rule that each woman is for perhaps she is the one (of the few) who escaped.

⁹ The rule that a **שכונה** is merely a **דין** since we are not certain that she was. Therefore the **חכמים** ruled that if there is a **ספק** in their status, we assume the lenient position and she is.

¹⁰ See later on this.

¹¹explained that the question was since one can escape, they should all me. However we see from this מוחתרות אלא אחת **אינה מחזקת** that we are in doubt whether we say that since one woman can hide, therefore all should be. Why should the possibility of escaping be different than the possibility of hiding?!

¹² We are not certain if any of the women were aware of this and additionally we are not aware that any woman actually had the opportunity to hide in this particular (see **מחבואה** ‘Thinking it over # 1). However it is a virtual certainty that in an entire city (at least) one woman managed to escape entirely from the soldiers. The **גمرا** answered that there was extremely tight security and no one was able to escape.

ולפירוש הקונטראס קשה טובא חדא דפריך נתלי לחומרא ובגי מחייבאה תליןן ל科尔א¹⁴ -

And there are many difficulties on גمرا¹; **פירוש"י**; **firstly (#1)**, the initially **asks that we should assume the stricter view** (that perhaps one soldier managed to leave his group and be **בועל** or **מנסך**) and therefore all the women (and wine) should be **on account of one**, and on the other hand **regarding the we мхבוах assume the lenient view** (that perhaps some women hid) and therefore all the woman are **מותרתו** because of the possibility that some hid!¹⁵

An additional question on **פירוש"י**:

ועוד דמה מתרץ¹⁶ דמהדר למטא כלוי¹⁷ ואין אדם נכנס לשם והוא קתני בלשת שנכנסה לעיר¹⁸ -

And additionally (#2), what does the answer, that the king placed chains, etc. around the city, etc. so no person can enter the city (and that explains why in ע"ז it is **מותר גمرا** but how can the state this **when the states**, ‘**a משנה which entered the city**; it is evident that the soldiers entered the city.

Another question on **פירוש"י**:

ועוד כיון דאהיה דעבדה זורה פריך הוה ליה למיימר אי אפשר דלא ערק חד מיניהו ונסך¹⁹ -

And furthermore (#3), since the is asking the question of גمرا, **on the** **משנה of** **בשעת מלחהה** (where it states that all the wine is **מותר גمرا**), the **should have phrased** the question, ‘**it is impossible that one of them did not escape and was** – **מנסך** –

A further question on **פירוש"י**:

ועוד דהתם מפרש טעמא לפי שאין פנאי לנסך -

¹³ maintains that נשים are by **ברכום** (in רשות) for the king wants to protect them.

¹⁴ According to, however, both the question of **מחייבאה** and **כוי** are both תוספות.

¹⁵ If we are permitting all the women on account of the one (or few) that hid; how can we possibly be אוטר all the women on account of one who was maybe **גבולה**?! See ‘Thinking it over’ # 2.

¹⁶ The asked why by **גمرا** **בדקה מלכות** (the **ברכום** **על** **משנה** according to רשות) they are, perhaps one of the soldiers was able to escape, enter the city, and be **בועל**.

¹⁷ It would seem (according to **חוספה** [understanding of]), that the war was waged outside the city and (once the city was conquered) efforts were made that no one should enter the city.

¹⁸ According to, however, the chains in our **משנה**, we placed inside the city to assure that no woman escapes; however (even if we assume that in the **בלשת** there were also chains, nevertheless) they were not made (that secure) to assure that no one enters (especially raiding soldiers).

¹⁹ According to (in רשות) the question (on the **משנה** in ע"ז) is why is it, perhaps one soldier left his post and was **בבעל** (and others maintain that **גمرا** is **ברכום** that **בבעל**); however the **גمرا** should have mentioned **ニיסוך** (not **בעילוּת**) since that is what the **משנה** in ע"ז is discussing. [Alternately the **גمرا** should have clarified what this soldier is doing (when he escapes); i.e. that he is **מנסך**. Otherwise it is not that clear. However according to that the question is on our **חוספה**, there is no need to explain what she did; if she escapes she is obviously **מותרת**.]

And in addition (#4), the there in **explains the reason why the wine is **because the has no time to be** - מנסך מותר**

ולית ליה טעם לפי שאין כרכום של אותה מלכות רוצה להשחת את בני העיר -

And it did not give the reason that the כרכום of the local kingdom does not want to destroy the property of the citizens of the city, as רשי maintains.

One final question:

[ועוד Mai Shana Sheut Melchama Meshut Shalom]²¹ -

And finally (#5) why is there a difference (regarding the whether it is a time of war or if it is a time of peace; in all cases all the wine should be мотор since according to רשי does not want כרכום של אותה מלכות להשחת את בני העיר?!)

offers an [alternate] explanation [according] to פירושי:

ויש ליישב לפי שיטת הקונטרס²² -

And we can explain the according to (even) גמרא - פירושי

דרבי יצחק בן אלעזר לא ATI לשינויי²³ מתניתין אהיה דעבודה זרה -

That did not come to reconcile the contradiction from our (which states to the לשנה²⁴ of which states לשנה²⁵ לשנה²⁶) - מותרות

אלא אית ליה שינוייא דבר מרוי ומתניתין דחתם נמי בכרכום של מלכות אחרת -

For rather agrees with the answer of ריב"א that there is a difference between תקיף (for which they have no time) and (for which they have time since מותרות), and the there in **is also** discussing a of a כרכום (להו יצירתיו), and לא בא לפירושי מתניתין²⁴ -

And is only coming to explain our ריב"א that even though לשנה²⁵ answered that בכרכום של, בכרכום של מלכות אחרת (ולבסוף יש להם פנאי that is only, however, they are since מותרות, since פנאי, אחת, אינה רוצה להשחת בני עירו²⁶).

וכן משמע בפרק בתרא דעבודה זרה (ז"ע, א) דפרק התם ממתניתין דהכא אמרתניתין דבלשת -

²⁰ On the contrary during peace time the certainly does not want כרכום לשנתה את בני העיר!

²¹ However according to that we are discussing our, לשנה²², and the distinction is whether there is or not; the above mentioned questions are not relevant, and there is very good reason to distinguish between where there is no לשנה²³ where there is לשנה²⁴.

²² The following explanation will answer all the question on פירושי [except for the first one (see [however])].

²³ See marginal note that others amend this to read, לשוני רומייא דמתניתין.

²⁴ Question #2 is answered because we are not discussing the לשנה of the city and therefore indeed in our לשנה²⁵ is secure and no one can enter. The גמרא could not have said לנסך (question # 3) since we are discussing our לשנה regarding בעיליה. There is no question (#4) why we do not mention שאון פנאי לנפק because in our לשנה²⁶ we are not discussing בעיליה. And indeed there is no difference in our לשנה whether it is a לשנה or שעת שלום or שעת מלחמה (#5).

²⁵ It will be necessary to say that the two cases, לשניות, does not refer to the two cases regarding our לשנה.

And it also seems this way from the **גמרא** in the last **פרק ע"ז** of **פרק גמרא**, where the **here asks from our here** **משנה** **בלשת there** **משנה** **there of** (as the **גמרא** asks here), and the **גמרא** there offers only the answer of ר"מ -

ולא מיתתי התם²⁶ דרבי יצחק:

But does not mention there the answer of ר"י בר אלעזר; indicating that is not reconciling the **משניות**, but rather qualifying the answer of ר"מ regarding our here.

SUMMARY

מלכות אחרית **משנה** **תוספות** (according to ר"י) maintains that our **משנה** discusses, and the **תוספות** (according to ר"י) maintains that both are **משניות**. However **מלכות** maintains the exact opposite. It is possible that ר"א and **מלכות** **משניות** are differentiating in our whether it is **משנה** or **מלכות** (where it is or (where it is). מותר

THINKING IT OVER

1. It appears from ר' ירמיה איבעיא that in the **תוספות** regarding a which is **מחבאה** of **איבעיא** that in the **תוספות** regarding a which is **מחבאה**, that we are not certain if even one woman hid in the **תוליה**.²⁷ However the phrase, **מי אמרין כל חדא וחדא הינו הא**; indicates that one certainly hid!

2. asks on (#1), how can the **גמרא** ask regarding the **תוליה** **לקולא** **לחומרא** **תוליה** **לקולא** **לחומרא**?²⁸ Seemingly by we are discussing wine (**ניסוך לע"ז**), therefore the **גמרא** asks that we should be, **תוליה** **לקולא** **לחומרא**, however by we are discussing a **שבואה**; therefore we are **תוליה** **לקולא** **בחבואה הקילו!**²⁹

3. How will explain why (according to [own] view) the **תוספות** in **ע"ז** **גמרא** did not offer the answer³⁰ of ר' יצחק בר אלעזר?³¹

²⁶ See ‘Thinking it over’ # 3.

²⁷ See footnote # 12.

²⁸ See footnote # 15.

²⁹ See מהרש"א.

³⁰ See footnote # 26.

³¹ See רמב"ן.

והלך באחד מהם ועשה טהרונות¹

And he went on one of them and touched טהרונות

OVERVIEW

The משנה (which the גמרא cites here) states a case where there were two roads, of which one was טמא, and two people traveled, each on one of these roads, and afterwards they touched, and discusses the status of the טהרונות. Our Tosafot explains why the משנה did not discuss the status of the people (whether they are טהור or טמא) instead of the status of the טהרונות.

להכי נקט ועשה טהרונות דלענין האדם אנו מזיקיים שנייהם לטבול ולהזות² -

The reason the משנה mentions, ‘**and he touched**’, is because **regarding the person** there is a different solution, for **the ב' ב"ד requires both of them to immerse** in a **and be sprinkled** with the **מי חטא** to purify them from their טומאה. The reason for this stringency is -

פנ יבואו לידי טומאה ודאי אם יגעו שנייהם בכבר אחד -

Lest it will result in a certain, if for instance **they will both touch the same loaf** of bread. The loaf will be certainly טמא, for one of these two are certainly טמא -

לכך אומר להו זילו טבילה³ דהא נהרא קמייכו -

Therefore in order to prevent this from happening, the **says to** the two of **them**, ‘**go be [and additionally** since he is טמא מספק there is no reason not to be **for the river is before you**’; there is no need to perpetuate the **טבילה** which can turn into a **טומאה**. However regarding the **טהרות** there is no option of **טבילה**; if they are טמא they need to be burnt.

offers an alternate explanation⁴ why the משנה discusses the **טהרות** and not the people:

ועוד דמשום דברי למתני סיפא⁵ זהה⁶ וטבל טהור⁷ הלא בשני ועשה טהרונות הרי אלו טהרונות -

סיפא wanted that the case in the **תנא** משנה should be like the case of the **[ב' שבילין]** of **רישא** [**משנה ג'**] of **משנה ה'**, which

¹ קרבנות or purified items may refer to either קדשים or תרומה (the meat of).

² However there is no recourse for טהרונות which become טמא; they need to be burnt.

³ The amends this to read, **טבילה וענוד דהא**.

⁴ See footnote # 14.

⁵ The amends this to read, **סיפא ברישא** זהה.

⁶ The beginning of the there is: **אחד טמא ואחד טהור, הלא באחד מהם ועשה טהרונות ונأكلו** משנה as the **זהה** and **שנוי שבילים**, and then **טהרות** and **טהרונות** continues. The case is the same as in **משנה ה'** (but with one person); however after he touched the first, they were eaten, so we do not discuss their status for they no longer exist. The issue is regarding the second set of **טהרות**.

⁷ The **רש"** amends this to **טהר**; as it is written in the there.

is: ‘**he was sprinkled** with the water, **מי חטאת**, **and immersed** himself in a **טמא** and became **טהור** (he is now even if he initially took the **טמא** road), then **he went in the second path and touched** other **טהרות**, **these second are טהורות**,⁸ the **משנה** continues -

ואם קיימות הראשונים אלו ואלו תלויות⁹ -

And if the first that he touched, **still exist** (they were not eaten), **both** the first and second **are ‘hanging’;**¹⁰ they are **טמאין מספק** -

ואם לא טהר בינוים¹¹ **הראשונות תלויות**¹² **והשניות ישרכו**:¹³

And if he did not immerse himself between the first and second touching **the first** **טהרות** **טהרות** **תלויות** **and the second need to be burnt.**¹⁴

SUMMARY

The **משנה** discusses the **טהרות** instead of the person because the **טהרות** do not have the option of **טבילה**, or because the previous **משנה** was discussing the **טהרות**.

THINKING IT OVER

Why is it that (in the first case) where **נأكلו הראשונות** **שניות are טהור** (even though there is the possibility that the second road was **טמא**),¹⁵ and in the other two cases the **השליות ראשונות are תלויות** (even though there is the possibility that the first road was **טהור**)?¹⁶

⁸ We assume that the first road was **טמא** and therefore the first **טהרות** (which exist no more) became **טמא**, and the second road (and therefore the second **טהרות**) is **טהור**. See ‘Thinking it over’.

⁹ We are now discussing both sets of **טהרות** where one of them is certainly **טמא** (**טמא** for one of the roads was certainly **טמא**), therefore they are both **טמא** (**טמא** since we do not know which road is **טמא**).

¹⁰ We do not burn them immediately; we wait until they spoil first and then burn them.

¹¹ Therefore after he went on both roads he is certainly **טמא**.

¹² Perhaps the first road was **טמא** so the first **טהרות** are **טמא מספק**.

¹³ At this point he is certainly **טמא** (see footnote # 11), therefore the second **טהרות** are **ודאי טמא** and need to be burnt.

¹⁴ This **משנה ג' ד' עי"ש** is discussing the **טהרות** specifically (for there is a difference whether the first still exist), not the person directly, therefore the following **המשנה ה'** also chooses to discuss the **טהרות** instead of the person.

¹⁵ See footnote # 8.

¹⁶ See footnote # 8.

ואם נשאל זה בפניהם וזה בפניהם עצם טהרות –

טהורות And if one asked for himself and one for himself they are

OVERVIEW

The משנה (which the **גמרא** cites here) states a case where there were two roads, of which one was טמא, and two people traveled, one on each of these roads, and afterwards they touched טהרות, and the משנה rules that if they each came separately to inquire as to their status and that of the טהרות, the **טהרות** are qualified. Our Tosfot qualifies this ruling.

לא שיאכלם אדם אחדadam כו יאכל וدائ טומאה -

When the משנה stated that the טהרות are טהרות, it did not mean that one person may eat both sets of טהרות, for if he will indeed eat them both, he will certainly eat טהרות which are טמא, which is certainly forbidden, but rather the משנה means that separate people may eat each set of טהרות. –

תוספות proves his point:¹

דרכי אמרינו בשבועות בפרק ב' (ז' יט,א) הלא בראשו² ולא נכנס בשני ונכנס חייב³ -

For this is what the states in the second פרק, 'he went on the first road and did not enter the second afterwards, and then we went on the second road and entered into the second' - מחדש בטומאה ביהם⁴ he is for entering theape

דטמא הוּא⁵ ממה נפshed:

¹ seeks a proof for one may argue, if we allow two different people to eat each set of טהרות (even though we know that one of them is eating טומאה ודיי), so why cannot one person eat both טהרות. [Alternately one may argue that since we already ruled for each individual that the טהרות which he touched are טהור; that the יתר remains and cannot be reintroduced (as part of a ספק) even if both are eaten by one individual (see מהרש"ל).

² There too we are discussing a case of טמא ב' שבילין, where one was טהור and the other was טמא.

³ The here continues; there continues; how can he be (when he was not on his second time).
[The here continues; there continues; how can he be (when he was not on his second time).]

⁴ He is חייב כרת if he entered קרבן (עליה ויורך) and חייב if he entered בשוגג.

⁵ See that we can derive from the second case of the ברייתא (see footnote # 3, where he was and נטהר in between his trips) where if one person went on both roads he is חייב even though it is possible that each time he entered שטח he may have been טהור (the first time perhaps it was the road which was נטהר, and the second time, perhaps the first road was טמא and he was already from that through the נטהר), nevertheless he is חייב for he is either for the first time or ביאת שנייה similarly here even though on each we are not sure that he is eating טמא (and therefore two people are permitted to eat them) but between the two, the one person ate טהור. [Alternately (see and footnote # 1 [in the brackets]) that since the גמרא asks on ר' (see footnote # 3 [in the brackets]) how could he be חייב since he is surely טמא, when seemingly we can answer that after he went on the first road he asked and was told he is טהור, so therefore that היתר

Because he is טמא in any event (either by traveling on the first road or on the second road).

SUMMARY

In a case where each one asked separately and we rule that the two are טהור that is only for two different people but not for the same person.

THINKING IT OVER

1. Why is it that both the מהרש"א and מהרש"ל are of the opinion⁶ that proof cannot be from the רישא which actually quotes?⁷
2. Why did not bring proof (that one person may not eat both) from the ruling (in this same משנה) that if they asked simultaneously everything is טמא; one person eating both טהור is seemingly the same as נשאלו בב"א?! Similarly Tos' Tos' could have brought proof from the previous טהור in משנה (cited in the previous Tos') that by ב' שבילין that by מטהר if he was not in between, the טהור are טמאות.⁸

remains and cannot be introduced again later (as part of the ספק). The fact that the מגרא did not consider this answer proves that we do reinstate the ספק once there is a מ"ג that now he is certainly טמא, the same is here that we reintroduce the previous היתר as part of the ספק and the two sets of טהור are forbidden to eaten by one person because one of them is טמא. See 'Thinking it over' # 1.]

⁶ See footnote # 5.

⁷ See Tos' Tos' who cites commentaries who derive proof from the רישא הארכן.

⁸ See Tos' Tos' מגן גבורים מהרש"א.

בבא לישאל עליו ועל חברו –**When he came to ask about himself and his friend****OVERVIEW**

ר' גمرا cited the query of in an attempt to resolve the query of what is the ruling if the can only hold one, are all of them or not. The first establishes that the between the two people who walked on the other (who walked on the other) clarifies what this means.

אין לפרש שבא לישאל בבת אחת דתתם מודו قولיהם עלמא דעתאות –

One cannot explain that the meaning of means **that he asked simultaneously** about the status of both of them, **for in that case all will agree** (even that the are טהורות) – and we know this –

מכל שכן דברו לישאל שניהם בבת אחת –

With an obvious certainty from the case of **where they both came to ask simultaneously**, where we rule that they are – טמא

אלא מיيري ששאל על עצמו וטהרוו ואחר כך בא לישאל על חברו? –

But rather the case of is **discussing a situation where he first asked regarding himself and** pronounced him (since it is a self-contradiction that both of their are טהורות, when we know for certain that one of their is טהור). Certainly in the case where one person comes and asks for a ruling concerning himself and his friend, where the self-contradiction of ruling them both is so much more apparent, since we are giving a contradictory ruling to one person that we cannot give such a ruling. In short, if we cannot offer a contradictory ruling to two people we certainly cannot offer a contradictory ruling to one person.

דמר מדמי ליה לבת אחת כיון ששאל על שניהם במעמד אחד³ –

Where one master compares it to a simultaneous question (where they are),⁴ since he asked for both of them in one hearing –

ומר מדמי ליה לזה אחר זה כיון שטיחרוו קודם –

¹ When two people come and ask (even in a separate case) we can still imagine that will tell each one (separately) that since it is a self-contradiction that both of their are טהורות, but nevertheless the ruling actually is that since they came they are טהורות, when we know for certain that one of their is טהור. Certainly in the case where one person comes and asks for a ruling concerning himself and his friend, where the self-contradiction of ruling them both is so much more apparent, since we are giving a contradictory ruling to one person that we cannot give such a ruling. In short, if we cannot offer a contradictory ruling to two people we certainly cannot offer a contradictory ruling to one person.

² It is apparent from later, where he says that it was in a separate case (see footnote # 3), that the case here is where he came to and asked about himself and was מטהר him, and then he (immediately) asked about his friend.

³ See footnote # 2.

⁴ See ‘Thinking it over’.

And the other master (ר' יהודה) compares it to a case of one after the other, since they already pronounced him טהור, so in this case as well they are both – טהור

continues with the concluding resolution of the regarding the **גמור** תוספות - איבעיא - והכא נמי כיון דשרו לכולחו בבת אחת דמי⁵ -

And here too (by the **since we are considering permitting all of the**, **כהנות**, **it is like a simultaneous** situation and they should all be **אסורות לכהונה**, for it is an inherent self-contradiction to say that they are all **טהורות** when there was place for only one in the **כהנת** – מהבואה

anticipates a difficulty with the comparison from **שבילין** to מהבואה **תוספות** - שבילין where he is asking about both of them – **אף על פי שאין בא לפניו אלא על אחת** -

Even though only one woman is coming before us to inquire on her status alone, so how can we compare this to the **שבילין** where he is asking about both of them –

replies: **תוספות**

מכל מקום הדבר ידוע לכל שהרבה כהנות היו והוא כאלו בא לשאל על כולם בבת אחת – Nevertheless it is comparable, for it is common knowledge that there were many **כהנות** in the city and when this woman is asking about herself, it is as if she is asking about all the women simultaneously (it is like the case which negated in the beginning where he is asking about both of them where it is surely – **טמאות**) – **והכא מודו כלוי עולם** –

So in this case where the inquiry includes all the **everyone admits** (even ר' יהודה) that they are **אסורות לכהונה**, because it is like the case which negated in the beginning where he is asking about both of them simultaneously, where they are surely **טמא**.

negates **פרש"י**: **תוספות**

ובחנם דחק בקונטרס לפרש כרבי יוסי:

And it was for naught that ר"ש awkwardly explained that they are since **אסורות לכהונה** because in this case even ר' יהודה is like **ר' יוסי** is הלכה **כולן אסורות מודה**.

SUMMARY

The meaning of **בא לשאל עליו ועל חבירו** is that he is asking consecutively in one first about himself and after he is told that he is **טהור**, he asks about his

⁵ It is like the situation which negated in the beginning where it is **טמא**.

⁶ The **ר' יהודה** is a (according to **תוס' פרש"י**) because the **גمرا** does not mention anything that the proof is because **אליבא דכו"ע**, but rather it seems that it is **ר' יוסי הלכה כר' יוסי**.

⁷ בד"ה הכא.

friend. However if he asks simultaneously about the two of them, everyone agrees that they are טמא, and similarly by it is assumed that the question of one will affect all the others, and therefore all of them are according to everyone.

THINKING IT OVER

בבא לישאל עליו ועל חבירו of ר' יוסי in the case of (and as says שואל מטהרInitially; now that they cannot be the second one since it is like בב"א, will the change its ruling and be the ⁸?⁹ שואל מטהר

⁸ See footnote # 4.

בד"ה עוד Thema (here) ברכת אברהם and משנה למלך פ"ט ה"ב מהלכות אבות הטומאות.

לא תהייח עמו אלא בעדים –

She should not seclude herself with him; only if there are witnesses

OVERVIEW

The Mishnah cites a gemara¹ which rules that she should not seclude herself with her husband if he gave her a provisional get. There are varying views as to which case the Mishnah is referencing, and the reason for this ruling.

פירוש בקונטרס² משום גט ישן³ –

רש"י explained that the reason she should not be with her husband is because we are concerned for a get⁴ ישן.

ולא פירש לטעמה דפירש בגיטין⁵ (דו עג,א) –

And here did not explain this according to his view as he explained it in גיטין⁶, where Rash"i explains that the rule of לא תהייח עמו is referring to (the previous Mishnah [see footnote # 1] which cites) a case where a man gave a get to his wife and said, this get should be effective from today, if I will die. The reason why Rash"i is as follows there –

דבמהיים אם מתי מגורשת למפרע משעת נתינה ולא תהייח עמו משום חשש קידושים –

Because in the case where one states when giving a get, ‘the get should be effective from today if I die’ (**מהיום אם מתי**), the rule is that when the husband dies, **she becomes divorced retroactively, from the time of the giving of the get, and therefore she should not be with her husband after she receives the get, because there is the concern** that during this **ביהוד**, there will be a sake

¹זה גיטיך אם מתי, וכו' לא אמר כלום. מהיום אם מתי, גיטין עג,א. This follows a previous Mishnah which reads: גיטין עב,א in which reads: מעכשו אם מתי ה"ז גט.

²שכיב מרע שכחוב ומר גט לאשתו ע"מ שם מה יהא גט למפרע וכו' והוא ליה גט ישן רש"י where writes גט לא. See footnote # 4.

³ A get ישן means ‘an old get’. A get is a get that was written and before it was given to the wife (or before it became effective), the husband and his wife were secluded together. Rash"i rules (in גיטין עט,ב ב"ה) that it is prohibited from using this get, because it is possible that they will have a child (from this encounter) and (since the get has an earlier date) people will (incorrectly) say that her get preceded her son (and there will be unsavory rumors about the lineage of her son). Here too since there were many after the date of the get there is the concern of קודם לבנה (see following footnote # 4)

⁴ It will be necessary to say that when Rash"i writes ‘שהם מה יהא גט למפרע’, it means that the get will become effective a ‘while’ immediately preceding his death (and therefore there is [only] the חשש of get ישן). However it cannot mean that the get is effective from the time of giving, for then there is no חשש of get ישן (see footnote # 7). [There is also no need to mention the חשש of a get, for there is the greater concern of get ישן (see footnote # 6).]

⁵ זה שנתן גט ואמר לה מהיום אם מתי, לא תהייח עמו, שמא יבא עליה, דאיقا למ"ד חיישין שמא בעל לשם ד"ה לא רש"י, וזה שנתן גט ואמר לה מהיום אם מתי, לא תהייח עמו, שמא יבא עליה, דאיقا למ"ד חיישין שמא בעל לשם ד"ה לא רש"י, וכו'

of קידושין, and she will regain her marital status, while she thinks (after her husband died) that she is divorced. This concern and interpretation is -

כמו המגרש אשתו ולנה עמו בפונדק בית הלל אמרים צריכה הימנו גט שני (שם ז"ח פא,א) -

Like the case of one who divorced his wife and she slept over with him in an inn, where **rules that she needs a second גט from him** in order to be divorced, for the same reason that there may have been קידושין רשי. This is how explains the משנה גיטין in לא תתייחד עמו - מס' גיטין in לא תתייחד עמו

[ולא שיא גט ישן כלל לפירוש זהתם]⁶ -

[And the idea of גיטין is not at all applicable to his explanation there]⁷ -
וכן משמע התם בגמרא⁸ -

And this is what it seems from the גמרא there that the concern is that she will be מקודשת. This concludes the discussion of גיטין in פירש"י (and here in כתובות).

תוספות offers his interpretation:

אבל לרביינו תם דפרש מה היא באותן הימים קאי אמהיים אם מתי -

However according to the ר"ת who explains that the question (which the question asks there in ר"ת, 'what is her status in those days'; the ר"ת explains that 'those days' refer to the case where the man said to his wife, 'here is your גט, משנה there is what is her marital status until the husband dies (and according to ר' יהודה who maintains that she is considered to be fully married, the גמרא there¹⁰ explains that she is not divorced from the time of the giving of the גט) -

ונעשה kaoomer מעת שניי בעולם -

for we assume that (when he said **it is as if he said**, the גט will be effective **from the last moment that I am in the world (alive)**) -

⁶ The **שש** of גט ישן is in a case where the גט was written but does not become effective until after the **יום** (either because it was so stipulated or because it was not given until after the **יום**). In this case there is (only) a **שש** of false rumors regarding the child that he was born after the divorce (since the date on the גט is before the time of the **יום**), even though that in truth the child was born before the effective date of the גט. [There can be no **שש** of קידושין, since indeed she is still married to her husband.] However if the **יום** took place after the גט became effective, there is a more serious concern; she is already divorced, and now she is living with a man (her former husband), who may be her בועל, and so in reality she is married, while in her mind she thinks that it was 'merely' a **שש**, ביאה לשם קידושין, and she is [still] divorced and may remarry [without יבום]. This involves the **שש** of גמרא in רשי. [יבמה לשוק **אשת איש** קידושין or **אשת גט** קידושין] This explains that the concern of גיטין in לא תתייחד עמו is on account of גט ישן, and in the **שש** according to רשי is because of בועלה לשם קידושין.

⁷ She is therefore if she had a child by this **יום**; it is indeed greater concern that people will say it, since it is true. [In addition for if she is there is the greater concern of קידושין.]

⁸ The **גמרא** there states that if we saw that by her husband we are concerned that it was **לשם קידושין**.

⁹ מה היא באותן הימים רבי יהודה אומר **כאשת איש לכל דבריה** רבי יוסי אומר **כאשת איש מגורתה ואינה מגורתה** עג,א משנה

¹⁰ עג,ב. If we were to assume to mean literally that the גט becomes effective retroactively from the time of death, we have the problem of **מן**. Therefore we interpret his words to mean **מעת שניי בעולם**.

שאין דעתו לגרשה אף על פי שאומר מהיום אלא שעה אחת לפני מיתתו -

For even though he said, nevertheless he does not intend the hour to retroactively take effect as of now, but rather his intent is that it takes effect, one 'hour' before he dies; according to this explanation -

הוי טעמא משום גט ישן ובתוספתא¹¹ משמע כפירוש רבינו תם:

קידושין because of גט ישן, and not because of (since she is still married to him). **And in the Tosfeta it seems** that the reason for מהיום אם מתי גט ישן is as the explained, on account of גט ישן, for means that the קידושין goes into effect right before he dies, so there can be no חשש of גט.

SUMMARY

The reason why the rules depends on whether she is or (ביה לשם קידושין because of גט ישן) whether she is (where the reason is because of גט ישן).

THINKING IT OVER

Why indeed did רשות change his explanation in כתובות פשט גיטין?!¹²

¹¹ From the time there it is evident that by she is immediately preceding the. Therefore there is no חשש of קידושין but only of מיתה. See גט ישן TosfosInEnglish.com

¹² See שיטה מקובצת.

שפיר אמר לך דכתיב ויכר יוסף –

He answered you properly, for it is written and Yosef recognized

OVERVIEW

The story cites the story of the two brothers, that when **מרי** said he did not recognize the newcomer, **ר' חסידא** (seemingly) supported his claim, by saying he is justified in not recognizing you, etc. This will explain why it was necessary to justify his claim; did **ר' חסידא** know whether or not he was the (missing) brother?!

זה שבא נולד כאן והלך עם אביו למדינת הים¹ –

This new brother **that came, was born here** and lived here together with his brother, **MRI**, **and he later went with his father overseas** -

ועתה כשוב ואמיר לא ידענו לך² מיחזי בשיקרא³ –

And now when he returned and told him, 'I do not know you', it appears as a lie -

כפי היה לו לידע אם הוא אחיו אם לאו כיון שמכרו קודם –

For **should have known** MRI definitely whether he is his brother or not, since he **recognized him previously** when he lived here with his father; MRI should not have equivocated -

להכי אמר ר' חסידא דשפיר אמר ליה שאינו מכירו כדאשכחן ביחס:

Therefore **said that** (nevertheless MRI is not necessarily lying for) **he answered you correctly that he does not recognize you, as we find by** **יוסף**.

SUMMARY

MRI knew his brother when the brother was younger.

THINKING IT OVER

If MRI would have said, 'he is definitely not my brother'; what would/could/should have been the response of **ר' חסידא**?

¹ This must have been a known fact that the father left with another son (since we are comparing it to the story of **חנן**).

² This does not seem to be an outright denial that he is not a brother, but rather he claimed that he was doubtful whether he was his brother.

³ Perhaps **ר' חסידא** should deal more harshly with MRI (or **חנן**) for equivocating and not being truthful.

**אמר ליה איה לי סחדי ומסתפינו מיניה דאיןיש אלמא הוא –
I have witnesses but they are afraid of him for he is a strong man**

OVERVIEW

In the story of ר' חסדא and his alleged brother, the brother responded to that he has witnesses that he is a brother, however the witnesses are afraid to testify since ר' חי is a powerful person. ר' חי then told ר' חי that he should bring witnesses that they are not brothers. The perhaps ר' חי (or the brother) asked that that this too is of no avail since the witnesses will lie (out of fear of ר' חי), to which the ר' חי responded that nevertheless they will not lie. ר' חי qualifies this.

נראה לרביינו יצחק דמייריו שהביא עדים –

It is the view of the ר' חי that we are discussing a case where the brother (of ר' חי) brought witnesses to support his claim –

ואומרים אותו עדות שאתה שואל לא נאמר¹ לך כלום עליו דרגלים לדבר² שהוא אלים –

However the witnesses said, ‘we refuse to testify (on your behalf) the testimony which you are requesting’ (regarding his status as a brother to ר' חי); therefore **there are grounds to suspect that ר' חי is a feared person.** continues with the ר' חי –

אמר ליה זיל צולי פירוש לך הבא אותם³ עדים עצם⁴ שיראים להיעיד⁵ עלייך –

said to ר' חי, ‘go, etc. bring witnesses that he is not your brother’; the explanation of the request was, go and bring these same witnesses who are afraid to testify on behalf of your brother (as previously mentioned) –

שייעדו שאינו אחיך או שייאמרו שאינם יודעים אם הוא אחיך אם לאו⁶ –

That they should testify that he is not your brother, or they should say that they do not know whether he is your brother or not –

¹ The הגהות הב"ח amends this to read; נאמר כלום דרגלים (deleting the words and עלייך).

² It is not however a conclusive proof that ר' חי was a brother (see מהרש"ל), for perhaps the brother was a brother and the knew that he was not a brother, but were afraid to testify (see also כסא שלמה).

³ Our text in the reads, זיל איתהיהם גمراה (bring them) which supports the view of ר' חי that was required to bring the same witnesses to testify (however the ב"ח is ב"ח (bring), which is [seemingly] not according to הוט').

⁴ It is not sufficient (see הכתמת מנוחה) [or necessary] that ר' חי should bring other witnesses that should testify on his behalf, but rather since ר' חי is aware that these witnesses have testimony to offer, therefore ר' חי required [or allowed] that these witnesses testify.

⁵ The הגהות הב"ח amends this to read; להיעיד שייעדו (deleting the word עלייך).

⁶ In either of these two cases (even if they said they do not know), ר' חי will be vindicated, for as the states later that the will not lie, and since these עדים (who were initially brought by the brother to prove his relationship) testify that they do not know of any relationship, therefore ר' חי is exonerated.

- **וקאמר השתא נמי כיון שיראים ממנה ישקרו לומר אינו אחיו או שאין יודען אם הוא אחיו** -
And the brother [or] asked on the ruling of ר"ח since the witnesses are afraid of [MRI] MRI, now when will present them **they will still lie and either say he is not his brother, or that they do not know whether he is his brother** (and answered that even though they are afraid to testify but nevertheless they will not lie.)

תוספות explains that this ruling of ר"ח was only because the said they will not testify -
אבל אם אין רגלים לדבר אין נראה כלל שהיא נאמן לומר גברא אלמא הוא -
However if there are no grounds for the accusation that is a MRI is it does not seem that the brother will be believed at all to claim that - **גברא אלמא MRI** is a MRI

תוספות proves his point:
אדם לא כן כל אדם יאמר על חבריו שהוא גברא אלמא ויביא הוא עדים ואם לא יביא יפסיד -
For if you will not say so, but rather maintain that the brother merely claimed that MRI was a without any substantiating evidence, then **every person will claim regarding his** (responding) **litigant that the opposing litigant is a** **גברא אלמא** **and** therefore the opposing litigant **should bring witnesses** to disprove my claim against him, **and if he will not bring** appropriate witnesses **he loses** the case. This would be a ludicrous proposition; therefore this proves that the claim of MRI will not be accepted unless it is substantiated.

תוספות offers (additional) proof that MRI was required to bring the same: **עדים עוד דק אמר השתא נמי אותו ומסחדי** -

And in addition the brother [or] **said, that now also they will testify** falsely on behalf of MRI, this proves that they are the same witnesses, for otherwise if MRI was to bring new witnesses how can the brother claim that the new witnesses will lie because they are afraid of - MRI

אתו משום דמסתו מיניה הני סחדי מסתו מיניה בולי עלמא:

Just because these witnesses that the brother brought are afraid of, does that imply **that everybody is afraid of** MRI?! Obviously not, therefore we must say we are discussing the same witnesses.

SUMMARY

One can claim that the opposing litigant is a MRI only if he can substantiate

⁷ גבר אלים MRI may mean to say (that even though we will not believe a spurious claim that someone is a nevertheless) that one can present a claim against a known MRI and argue that the witnesses are afraid of him, so let the MRI bring witnesses to justify his denial. This too is obviously unjustified. See Tos' b"m l'teb d"ha zil.

⁸ See 'Thinking it over'.

this claim; for instance that the claim of **עדים** declare that they will not testify; in which case the man must (can) use these **עדים** to validate his claim.

THINKING IT OVER

גבר אלים **תוספות** is teaching us two (seemingly) separate rules; one that the claim of **עדים** is valid only when there is **דבר**, and also that [needed to] (could) use these **עדים** to prove his point. However seems to mingle the two rules and considers them as one, because first **תוספות** brings proof to the first rule and then **וועוד** writes and brings a proof (only) to the second rule;⁹ are these two rules intertwined?!¹⁰

⁹ See footnote # 8.

¹⁰ See **מלא הרועים**, **שיטה ישנה** (**למהר"י קוורקוט**), **חכמת מגונה**.

תרתי לא עבדי –**They will not do two wrongs****OVERVIEW**

ר' חי resolved the contradiction between our where her שפהה משנה is believed that she was not defiled, and the where her שפהה משנה is not believed (by her silence) that there was no intimacy, because a שפהה is generally quiet, so regarding ל'ת היחד we are concerned that she will be quiet (even if something untoward happened), however by שבואה when she states that ל'נ טמאה she would not openly lie. The supported this view of ר'א from the story of where ר' חי מר' גمرا said that the two wrongs תוספות עדים will not do two wrongs.¹

explains that the two wrongs are; one -

שישתקו² ולא יידעו האמת ועוד שייאמרו שקר וכו' גבי שפהה:

That they remain silent and not testify to the truth that he is the brother of, **MRI**, **and secondly that they will lie and testify that he is not the brother, and similarly regarding the maid-servant** that she will remain silent regarding the truth and in addition lie that her mistress was ל'נ טמאה; this she will not do.

SUMMARY

It is easier to be passively wrong than actively wrong.

THINKING IT OVER

Would the same thinking of ר'ח apply if ר'מי were to bring different عדים; would we also believe them because תרתי לא עבדי, or is it only regarding the same עדים who were initially silent?

¹ Seemingly the cases of שפהה MRI and שפהה are not similar. By MRI the silence of the (by not saying the truth) causes the brother a loss; however by שפהה (where we want to say that she will not lie and say ל'נ טמאה; however) her not testifying that the شבואה was נטמאה is irrelevant since her mistress is regardless. See ר'יטב"א.

² may be saying that the תרתי לא עבדי does not mean they will not do two wrong things to hurt someone (for by her silence does not hurt anyone) but rather, a person may feel comfortable in not doing what is right (by being silent and passive), however they will not go so far as to do something actively wrong, such as testifying falsely. See ר'ח ט' חות' שאן"ג for a seemingly different explanation.

במשילה לפי תומה –**When she was speaking innocently****OVERVIEW**

רַב פָּפָא differentiated between the testimonies of her שפחה regarding a שפחה; that is not believed, however if she is even believed. מישיה לפי תומה will differentiate between who is believed by מישיה לפי תומה and herself and her husband who are not believed even if they were.

ואפילו כי היא ובולה אין נאמני –

But nevertheless (even though that [who is generally not believed] is believed by, however), **the שבואה and her husband are not believed** even to say that she was not defiled.

תוספות anticipates a difficulty:

אף על גב דיווחן אוכל חלות (עליל זך וכו') היה נאמן על עצמו¹ במשיח לפי תומו –

Even though במל"ת was believed regarding himself regarding his status, so why by the captive and her husband are not believed – במל"ת כהונה

תוספות replies:

הני מיili לתרומה² אבל הכא מעלה עשו ביוחסין –

When is the subject believed, only regarding תרומה, however here by יוחסין, **they raised** the bar and were more stringent regarding שבואה, that by even is not sufficient for the captive and her husband.

[אומר רבינו יצחק דמשיח לפי תומו אינו قادر אלא לעדות אשא³ דברנן כדאמר ביבמות⁴ –]

The says that is only accepted for testifying for a woman that her husband died (to permit her to remarry) [or for a rabbinic law] as the states גمرا in – מס' יבמות –

והכא בשבואה הקילו:

מל"ת they were lenient and also accepted (except for her or her husband).

SUMMARY

¹ recounted how as a child they would take him from school and immerse him and a mikva and feed him. This was an accepted testimony since he said it himself.

² See that the תרומה for the child for the extra תרומה, was (only) for ב"ק קידב.

³ The amends this to read; אשא אנ דברנן רשות ש**בשבואה** רבנן הקילו. מהרי' לנדא.

⁴ מיל"ת עדות אשא by קכאב.

⁵ See footnote #3. A woman is only אסור להן if she was נבעלה and became a שבואה.

The subject is believed **במל"ת שפחה** for her mistress but not the subject or her husband. By **דרבןן תרומה** the subject is believed **מל"ת מל"ת**. Generally **מל"ת** is believed by a **דרבןן** or **עדות אשה שבוייה** and also by **שבוייה**.

THINKING IT OVER

Previously⁶ we learnt that according to ר"י we do not believe the testimony of an א"ע regarding כהונה (for eating); however an א"ע is believed regarding תרומה; indicating that תרומה is stricter than **שבוייה**. However here there are rules that by **מל"ת** the subject is believed by תרומה (the case of יוחנן וכוי), but not by **שבוייה**; indicating that **שבוייה** is stricter than **תרומה**. How can we reconcile these seemingly opposing rulings?⁷

⁶ כג, ב.

⁷ See כד, א ד"ה וכן מהרש"א here and).

**ואם היה כהן לא תדור עמו בمبוי –
And if he was a Kohain,
she should not live in the same street with him**

OVERVIEW

The teaches that if a **ישראל** divorces his wife they should not live in the same **ברייתא**; however if a **כהן** divorces his wife they should not live in the same street (even if it is a different **חוטפות**).¹ Our **שכונה** qualifies this ruling.

דכיוו³ פנואה היא קיל ליה -

For since she is (only) a אשת איש of איסור פנואה (there is no איסור of פנואה), he does not take seriously the prohibition of פנואה, and we are concerned that they will be intimate -

אבל אם נישאת אין צריך להרחק אלא כדי שכונה -

However if she remarried, the must only distance himself from her from being in the same – שכונה -

זהינו ג' בתים כדאמרין בסוף פרק קמא דעבודה זורה (ז' כא,א) –

Which is within three houses as the states in the end of the first מסקנת פרק ג'; the reason they may live in the same is –

דכיוו דニישאת חמירה ליה⁴ אפילו⁵ לכהן:

That since she remarried it is a severe prohibition even for the כהן.

SUMMARY

A **ישראל** may live in the same **שכונה** as his former unmarried wife. If she remarried they may live in the same **מבוי**, this applies to an **אשת כהן** as well. However by a **כהן** if she is still single he may not live even in the same **מבוי**.

¹ See that the prohibition is only if she remarried, however if she is still single they may both live (even) in the same (since she is still eligible to remarry him).

² This would apply by a **פנואה** for she is forbidden to the **כהן** since she is a **גרושה**.

³ **חויב מיתה ב"ד** (**ישראל**) is (a) **א"א** (regarding the **חוטפות** which is) more severe than the prohibition of **גרושה** (which is 'merely' a **ללא**); why therefore are we more strict by the **כהן** (to forbid him even in the same **מבוי**) than by the **ישראל** (who is only prohibited in the same **שכונה**). replies that indeed the leniency is the cause for the strictness.

⁴ The **ישראל** may live in the same **מבוי** as his remarried former wife, since there is the **איסור** of **א"א**; it follows that by a **כהן** where in addition to the **איסור** of **א"א** there is also the **איסור** of **גרושה**, he may also live in the same **מבוי** as his former remarried wife (but not in the same **שכונה**).

⁵ The '**א'**, may mean that even though that regarding a **פנואה** we are very strict regarding a **כהן** (that they cannot live even in the same **מבוי** while a **ישראל** may live even in the same **שכונה**), nevertheless if she is remarried even a **כהן** may live in the same **מבוי**. Alternately, one may think that since there are two **איסורים** by a **כהן** and a **גרושה** perhaps we should be stricter by a **כהן** than for a **ישראל**, therefore **תוס' חותם** writes that the **איסור** of **א"א** is so severe that there is no concern even for the **כהן**.

as his former unmarried wife.

THINKING IT OVER

How can we justify (according to **ברייתא רישא**) that the **חוספות** of the **סיפה** (regarding a **ברית** [and (also) a **כהן**]), is discussing a remarried woman, while the **סיפה** of the same **ברית** (**כהן**) is discussing a single woman?

A small village is treated as a *Shchuna*

כפר קטן נידון כשכונה¹ -

OVERVIEW

The ברייתא mentions that a small village is treated as a [מביי or שכונה] meaning that the restrictions that apply to a מביי, apply to a שכונה/מביי. Our תוספות explains why.

וטעמא² לפי שאין בני אדם מצוין שם ורגיל יותר לבא אצלה -

And the reason why a נידון כשכונה/מביי is כפר קטן is because people do not frequent a שכונה so it is very common that he will visit her since no one is watching -

וזווקא כפר קטן אבל כפר בינוי לא:

And this stringency is **only** regarding a כפר קטן but not to an average size, כפר בינוי which is considered like a city.

SUMMARY

A small village is like a (the lack of people make it easier for him to be with her), but an average village is like a city.

THINKING IT OVER

If we are כפר בינוי but מביי (not גורס שכונה). What will be the ruling by a גורס עיר? ³ or מביי?

¹ The ב"ח amends this to read כהן והחותם הב"ח (instead of שכונה). This would prevent the כהן from living there with his former (single) wife. According to our גירסא of שכונה this would prevent both the כהן and the יישראלי from living there with their former (remarried) wives. See previous ה"ה ואמ"ת. The ב"ח amends the גירסא for it is difficult to assume that a כפר קטן is smaller than a קיבוץ and דיוינה. See מביי שלמה.

² Presumably a כפר קטן is bigger than a מביי (see footnote # 1), a reason is required why it is treated as a מביי.

³ See ספר האגדה.

said, we surely smite them

רב הונא¹ אמר נגדי מנגדין להו –

OVERVIEW

The rules that a **כהן** cannot collect a debt from his divorced wife only through a third party. **רב ששת** said if they appear together in **ב"ד**, we do not pay attention to them. **רב פפא** said we excommunicate (**שmeta**) them. **רב הונא בדר"י** (**שmeta**) said we punish them with lashes. **תוספות** explains that according to **ר' הדר"י** we give them lashes in addition to the **שmeta**.

נראה לרביינו תם דלrob הונא נמי משmetaינו וגם מנגדין שכל אחד מחמיר מחייבו² –

It is the view of the ר' ה that according to ר' ה as well, we place a **שmeta on them (as stated), and we also excommunicate them, for each of these three **אמוראים** are more stringent than the previous colleague –**

ואם הוא אומר דנגדין ליה بلا שmeta הוה מיקל טפי³ –

For if meant that we (only) smite them (but) without a **שmeta, then he would be more lenient than the previous **ר' פ** (who requires that a **שmeta** be placed on them), because a **שmeta** alone is more severe than lashes alone.**

proves that **שmeta** is more severe than lashes:

כదאמרין במועד קטן (ז' ז,א) ובפרק מקום שנגגו (פסחים נב,א) –

פרק מקום שנגגו and in מסכת מו"ק גمرا states in –

במערבה כי מחייב צורבא מרבען מימנו אנגידא ולא מימנו אשmeta:

In Israel, when a student scholar is liable for a disciplinary action the ר' ה will form a quorum to smite him, but they will not assemble to place a **שmeta on him; for that is too severe a punishment for a **צורבא** ⁴ מרבען.**

SUMMARY

ר' ה requires **מלךות** besides the **שmeta**. A **שmeta** is more severe than **מלךות**.

THINKING IT OVER

Why does the word **נמי** ב"ח omit the word from our text?

¹ In our it reads **רב הונא בריה דבר יהושע אמר גמרות**.

² **רב ששת** said we do not pay them attention, and **רב פפא** added that we (also) place them in a **שmeta** (which is obviously more severe than not paying attention to them), and (presumably) **ר' ה** adds (an additional severity) that we smite them (however smiting alone is not more severe than [as points out shortly]), therefore we must say that **ר' ה** adds lashes to the **שmeta** (of **ר' פ**).

³ **ר' פ** assumption is that each one is more strict than the previous one; **ר' ש** and **ר' פ** more than **ר' ש** and **ר' פ** more than **ר' ש**.

⁴ See there that **מו"ק** means either **משmeta** or **שmeta ייה**. See also that **משmeta** in **פסחים ר"ש** ד"ה מימנו **מו"ק** there that **משmeta** means either **משmeta** or **שmeta ייה**.

אלו נאמנים להעיד בגודלן מה שראו בקטונן –

These are believed to testify as adults what they saw in their childhood

OVERVIEW

The משנה mentions various cases where an adult is believed to testify regarding something that he saw while he was still a child (before תוספות. בר מצוה discusses whether he can be believed (even) if he gives this testimony as a קטן.

משמעות דבקותן לא מהימן אפילו בדרבן זה הוא מוקד לה בגמרא¹ בתרומה דרבנן² –

It appears from the gemara that as children they are not believed even regarding a issue, for the gemara establishes the testimony (in the mishna regarding that it means he is believed, as an adult, (only) regarding תרומה דרבנן; proving that even by a רבען they are believed only later when they become adults, גודלים, but not when they are still קטנים.

תוספות asks:

קשה לרביינו יצחק בן אשר דאמר בפרק קמא דפסחים (ז"ז,ב³ ושם) –

And the states – מסכת פסחים of פרק קמא דפסחים ריב"א – דנאמים על בדיקת חמץ אפילו נשים ועבדים וקטנים –

That even women, slaves or children are believed regarding searching for חמץ מיד משא אית בהו⁴ ומ שני הויל ובדיקת חמץ דרבנן הימנוו רבנן בדרבן –

And the asks; is there any substance to what the gemara says; and the answers that since רבען is only בדיקת חמץ, so the believed them regarding a issue, i.e. בדיקת חמץ רבנן. It is evident from that that when it comes to a תרומה חמץ we do believe, why does our mishna imply that even by a רבען we do not believe?!⁵

תוספות answers:

יש לומר דהתרם היינו טעונה ממש בדיקת חמץ הוא בידו לכן נאמנו אפילו קטן בדרבן –
And one can say that there (by the reason why we believe even a קטן because it is a hand' [power]; he is capable to be בודק חמץ on his own, therefore if he testifies that he was בודק he is believed.⁵ However here by תרומה חמץ it is not to make him a כהן, therefore a קטן is not believed.

¹ כח,ב. See ‘Thinking it over’ # 1.

² See ‘Thinking it over’ # 2.

³ The בריתא is on ז,ב; the concluding gemara is on ז,ב.

⁴ נשים ועבדים וקטנים are not acceptable witnesses.

⁵ The same would be if he testifies that the master was בודק חמץ he is believed because it is בידו.

תוספות asks:

אבל קשה דהיכא דביזו אפילו בדאוריתא אשה מהימנא⁶ -

However there is a difficulty (with this distinction); **for whenever it is a woman is believed even if it is a** דאוריתא issue -

דברך המדייר (לקמן דר' עב, אושט) **תנו וקוצה⁷ לה חלה** -

For in the teaches regarding the status of a woman who **is [not] separating** (that the husband can divorce her without paying her; (כתובה חלה); indicating that otherwise the man trusts his wife that she is separating (which is a חלה) so he can eat from her baking -

ובnikor⁸ מעשים בכל יום שאנו סומכין עליו⁹ -

And similarly regarding it is a daily occurrence that we trust the women to do it properly even though it is a דאוריתא (ביזו גمرا) which is also the finds it necessary to say that they are believed (only) because it is a דרבנן!

תוספות answers:

ויש לומר דברי שלמי¹⁰ מפרש בדיקת חמץ הוא טורח ונשים¹¹ עצניות הן¹² -

And one can say; that in תלמוד ירושלמי he explains that there is a bother to perform בדיקת חמץ, and women are too lazy to do this chore -

ולחייב אי לאו בדיקת חמץ דרבנן לא הו מהימני:

So therefore where it not for the fact that **רבנן** is בדיקת חמץ obligation (but it would be a דאוריתא the women **would not be believed** even though that by other נשים they are believed when it is a ביזו; here it is different since there is a טרחה and נשים are believed because it is a דרבנן (and also דרבנן therefore are believed. However since it is only a נשים ועבדים וקטנים (ביזו because they are believed.

SUMMARY

tosposot ביזו בדיקת חמץ answer that נשים וכו' פסחים in גمرا are believed because it is somewhat believed even if it were the women would be believed. See 'Thinking it over' # 3.

ואינה קוצה לה amends this to read, **הגהות הב"ח**.

⁸ refers to the process of removing (from a slaughtered animal) all the sinews and veins that are forbidden (either because of חלב or גיד הנשה, דם).

⁹ The reason why we trust them for בידם and חלה is because it is to do it properly.

¹⁰ פסחים פ"א ה"א (in the popular editions of the it is on ב, ב).

¹¹ Presumably this refers (certainly) to עבדים [וקטנים]. See 'Thinking it over' # 3.

¹² This makes it like a partial (not a complete) ביזו; a partial is believed only (because it is a דאוריתא like by חלה וניקור) however a complete (like by ביזו) is believed even by a דאוריתא.

THINKING IT OVER

1. Tosfos writes that it is that קטנים are not believed, etc.¹³ Why is it just, seemingly מוכח (evident)?!¹⁴
2. Tosfos infers that a קטן is not believed even by a גمرا since the establishes that the נאמנות by תרומה is only by גمرا. The establishes the other cases also by a גרבנן (for instance בית הפרס, קיום שטרות, etc.) Why does only mention תרומה?!¹⁶
3. Can a קטן be believed if it is completely in a דורייתא בידו situation?¹⁷

¹³ See footnote # 1.

¹⁴ See בתרא (מ"ת) אות שפכו.

¹⁵ See footnote # 2.

¹⁶ See האריך"א (האריך).

¹⁷ See footnote # 6 & 11.

Provided that there is an adult with him

— והוא שיש גדול עמו —

OVERVIEW

רב הונא qualified the ruling of the משנה that in various cases an adult may testify what he saw as a child; that it is limited to where another adult, who saw it as an adult, testifies together with him. רב הונא limits the statement of the Tosafot.

לא קאי אתרומה¹ דבתרומה סגי בא'² כיון שאין מעליין מתרומה דרבנן ליוחסין³ -
תרומה, משנה **is not referring to** the ruling regarding **תרומה** in our, **for by** **is** **רב הונא**
one (current) **adult is sufficient, since we do not elevate from** **תרומה** **דרבנן** **to**
יוחסין -

דלהכי⁴ מוקי לה בתרומה דרבנן⁵ -
For that (since we maintain that **אין מעליין מתרומה דרבנן ליהחסין** established the case of **תרומה** in the **גمرا**)

תרומה דרבנן תנא דיבר תנא דמעליין ממנה ליוחסין כדאמרינו לךנו⁶ -
For (we cannot establish our **תרומה דאריותא** by (משנה **תרומה דאריותא** maintains that we are from **מעלה** states later, therefore this who is testifying what he saw - בקטנותו)

איןנו נאמנו אפילו יש גדול עמו⁷ -

Will not be believed (by **תרומה דאריותא even if there is a** **with him**; however by **תרומה דרבנן** he will be believed (with the **גדול עמו** -

הלכך בתרומה סגי באיתו לחודיה⁸ -

Therefore by **תרומה דרבנן** where there is no concern of **יוחסין**, it is sufficient

¹ The משנה stated that an adult may testify the he remembers as a **קטן**, that a certain person ate. **תרומה** is believed even if there is no other adult to substantiate his claim.

² There is a dispute whether we require one or two to be **עדים**. The previously explained (**כד,ב**) that this depends on whether **אין מעליין מתרומה ליהחסין** (two are required) or **אחד** (one is sufficient). If our maintains [תרומה דרבנן **ליוחסין**] **משנה** **דרבנן** **ליוחסין** is sufficient, there is no need to have him and the **גדול עמו**, for the **גדול עמו** alone is sufficient.

³ See the **מסקין** **תרומה דאריותא** **בתרומה דרבנן לא מסקין**; כה,א on which states;

⁴ **אין מעליין מתרומה דרבנן ליוחסין** **גمرا** **תוספות** intends to prove that our **maintains** **יוחסין**.

⁵ If our will maintain by **תרומה דרבנן** **ליוחסין** **תנא** **גדול עמו**, why do we need to establish our **תנא** **תרומה דרבנן** **ליוחסין**? we can establish it even by **תנא** (in any event) will need to maintain that he and a **גדול עמו** are sufficient (if he maintains **מעליין מתרומה דרבנן ליוחסין** and is not concerned that through their testimony we will be **מעלה ליוחסין** (for the will contend that **הוא** and **גדול עמו** are sufficient even for **יוחסין**). See 'Thinking it over'.

⁶ See the **גمرا** on the **ב'**.

⁷ By we require two proper **עדים** (not **עדים** that are **בקטנותו**), therefore since we are **תרומה דאריותא** **ליוחסין**, we also require the same level of **עדות** by **יוחסין**.

⁸ We cannot say that we need them both, because since **גדול עמו** and **ein meulan v'co**, the proper alone will be enough! See footnote # 2.

that he alone testify what he saw – בקטנותו

explains the difference between תרומה and the other cases of the mishnah:

וכל היכא דבעינו תרי מדרבן⁹ סגי בהוא ואחר:

But whenever two are required for a דברנן issue, **it is sufficient for him** (the one that is testifying בקטנותו **and another proper** עד רבן to testify for this issue; however by מדרבן there is no need for two even עדים).

SUMMARY

By תרומה, one person is sufficient to testify what he saw. בקטנותו

THINKING IT OVER

proves that our תנא maintains תרומה דברנן ליוחסין for otherwise why cannot we establish the by mishnah ¹⁰ Seemingly could have brought a simpler proof, that the cannot maintain mishnah for by we יוחסין ועלין וכו' !¹¹ הוא וגadol עמו and not עדים כשרים!

⁹ This refers to the other issues in the mishnah, for instance קיום שטרות in תוספות עירובין נט, א ד"ה אפילו that (also) by two are not required (according to the second answer there).

¹⁰ See footnote # 5.

¹¹ See footnotes [here](#).

Verification of notes is a *Derabonon*

קיום שטרות דרבנן –

OVERVIEW

The states here that קיומ שטרות (seemingly) meaning that if a presents a he is entitled to collect with it and does not require any (even if the claims it is a forged document). קיומ is puzzled by this ruling.

תוספות asks:

תימה כיון מדאוריתא אףיאו אין עדים שיכירו חתימת העדים השטר כשר¹ –

It is astounding! Since even if there are no witnesses who recognize the signatures of the witnesses –

אם כן כל אדם שירצה יזיף ויכתוב ויחתום מה שירצה ויגבה ממנו² –

If indeed this is true, anyone who so desires will forge a document and write whatever he desires and sign (fake signatures) and will be able to collect with this document!!

תוספות attempts to modify the meaning of קיומ שטרות דרבנן³:

והכא⁴ אומר רבינו יצחק דאייא למיימר כגוון שלוה מודה שכתבו וטוען שהוא פרוע –

And the ר"י explains that when the states here, **that can be explained** to mean in a specific case, **for instance where the** admits that the **was written** with his consent (he borrowed the money) **but the** claims that the loan was paid up -

וקסביר האי תנא דМОודה בשטר שכתבו צריך לקיימו⁵ והאי קיומ חי זראי מזרבנן⁶ –

МОודה בשטר שכתבו maintains that **תנא** maintains that **רבען a** is certainly requirement, for **מוודה בשטר שכתבו צרייך לקיימו** (מוודה בשטר שכתבו צרייך לקיימו) would be required and the holder of the note would collect his debt.

¹ We are discussing a case where the claims the note is forged (otherwise if he admits that it is a proper note, there is no need (generally) for קיומ [see later in this Tosafot], and nevertheless can collect without קיומ).

² cannot understand how is it possible that even if the (or) claims that the note (of sale) is forged, he will have no recourse at all, and the holder of the note will collect with it. We can imagine the chaos that will result from such a ruling!

³ The ר"י attempts to answer that [obviously] if the (or) claims that the note is forged, it will require even קיומ, and when the states here that קיומ it is referring to a specific case.

⁴ This refers to the which states that a can be the. See 'Thinking it over'.

⁵ means that if the admits that the was written on his say so (i.e. he admits to borrowing the money) however he claims that the debt was paid, the rule is (according to this מ"ד) that the cannot collect unless he is first the; otherwise the has a of מזוייף. This requirement (according to the מ"ד) is only מדרבן. Another מ"ד maintains that no קיומ is required even מדרבן.

⁶ We know for sure that the note is valid, since the admits to borrowing; the purpose of the קיומ is to remove the of the to claim מזוייף. This can be understood to be only מדרבן, since the holder is holding a valid note.

offers another example where קיומ שטרות could be (only): מדרבן

אי נמי כגוון שנתקיים משדה אחת⁷ או משתי שדות וווצא מתחת ידי עצמו⁸

Or you may also say where **for instance the was from only one field, or from two fields but the is holding those** - **שטרות**

דאמר לעיל (דף,א) דחכימין שמא זיין -

Where the previously said that it is not a sufficient because we are concerned perhaps he forged the signature; in such a case we can also understand that the requirement to be מזוייף that claims then (seemingly) should be. This is how we could have explained it based on our גمرا.

תוספות has a difficulty:

ומיהו בראש גיטין (דף,ג. ושם) מוכח דאפיקו היכא דין מכירין החתימה כלל¹⁰ -

However in the beginning of it is evident that even when we do not recognize the signatures at all -

הוי מדורייתא כמי שנחקרה עדותן בבית דין:

תוספות; ב"ד It is considered as if their testimony has been verified by finds it very difficult to justify this concept.

SUMMARY

It is understandable that מודה בשטר שכחטו in the case of קיומ is or if it was an inferior קיומ, but not that קיומ in general is.

THINKING IT OVER

explains that here we can understand that קיומ is in a case where it is מודה בשטר שכחטו. Seemingly the reason why requires a קיומ is because he has a שטר if there is a גдол שעמו who is מזוייף.¹¹ In our case if there is a גдол שעמו who is מזוייף is thwarted since he will be required to swear. He is considered a מהוויב שבועה where we rule that he has to pay,¹² so the גдол שעמו alone makes him pay there is no need for the קטן שנתגדל!¹³

⁷ A קיומ מדרבן is not a valid [and קיומ משדה אחת] (we require two שדות).

⁸ The גם of the שטר in question has other שטרות which he is holding that the same were signed on them as well.

⁹ In this case too we have a קיומ already, except that the רבנן were not satisfied and wanted a better קיומ.

¹⁰ The there asked how is one believed to testify that the שטר was signed properly, and answered that since therefore by גט where there is the concern of העונה, the הכלמים were lenient allowed one to be believed. It is evident that in general קיומ is only מדרבן.

¹¹ See footnote # 5.

¹² See ב"ב לד, א.

¹³ See משכנות הרועים אוות תקומה and אילית אהובים.

But perhaps he is the slave of a Kohain**ודלא עבד כהן הוא –****OVERVIEW**

The asks how can we give to a person based on the testimony that this individual ate in the past; perhaps he was the slave of a כהן. Our תוספות examines this issue.

פירוש¹ ועכשו נשתחרר ונוטל שלא כדין –

The explanation of this concern is **that** perhaps **now he is freed and will be receiving illegally**.

asks:²

וקשה לרביינו יצחק דברך נושאין על האנושה (יבמות ז' צט, ב' ושם) מפרש הש"ס –

And the **has a difficulty, for** **explains** – **גمرا** **פרק נושאין על האנושה** **in** **R"Y** –

הא דין חולקין תרומה לעבד משומם דלא עבד אתי לאסוקיה ליווחסין³ –

That which the there⁴ rules that we **do not distribute** **because** of the concern that **perhaps we will elevate him to** **asks** –

מה צריך להאי טעונה היה לומר דין חולקין אפילו אין מעליין –

Why is this reason, the **should have said** that we **do not distribute** to an even if we maintain the reason is for we are concerned that –

שמעא ישאל גם אחר שישתחרר כדפרק הכא הש"ס –

Perhaps he will request even after he was freed, as the asks here!

bolsters his point that this is a valid concern:

וכו מפרש התם⁵ הש"ס דין חולקין לאשה ולא בעלה⁶ משומם גירושה⁷ –

And indeed the **explains there** that the reason we **do not distribute** **to a woman without her husband** is because she may become divorced –

¹ עבד כהן is responding to the anticipated question; what is the problem if he is an עבד כהן; an עבד כהן is entitled to eat תרומה [The תורה! This is only discussing תרומה.] להללו ליווחסין (not תרומה).

² We have just established that wherever there is a concern that the may be freed, we cannot distribute to that עבד. This is seemingly a valid reason why דין חולקין לעבד תרומה ולא רבו because perhaps he was freed already.

³ We will mistakenly allow him to marry under the impression that he is a כהן.

⁴ מהרש"א ופנ"י. The states on גمرا העשא לאשה בבית הגנות וכו' והעבד והאשה. (See ק,ג.)

⁵ ק,ג according to one opinion.

⁶ We are discussing a who married a כהן and eats as long as she is married.

⁷ We see that the concern of גירושה is sufficient not to give her by herself; the same should apply to the concern of שחרור by an עבד. There is no need for the שיש of ייחסן.

תוספות has an additional question:

ומאי טעמא נמי דמאן דאמר חולקין -

תרומה to an; there is the concern of **שחרור** (even though there may not be the concern of **יוחסין**!)

תוספות answers:

ויש לומר דלא שכחא כולי הא שישאל תרומה אחר שיתחרור -

And one can say; that it is not that common that the should ask to receive **תרומה after he was freed;** he will not ask for it -

לא בתורת עבד⁸ ולא בתורת כהן -

Neither as an עבד nor as a כהן (who is currently a slave to a **כהן**) (he will not masquerade himself as a **כהן**). The reason (why he will not claim it as a **כהן**) is -

כי ירא פון בדיקוהו⁹ ויתברר שהוא עבד¹⁰ עבד¹¹ ויוציאו עליו קול עבדות¹² -

Because the is afraid lest they should investigate him and it will become apparent that he was an עבד and people will publicize that he is still an עבד. Therefore the concern of the asking for **תרומה** after he is freed is negligible.¹³

תוספות rejects an additional concern why (and therefore avoid the concern of **יוחסין**):

ולא חישין נמי פון ימברנו רבו לישראל וישאל תרומה¹⁴ -

And we are also not concerned that perhaps his master (who is a **כהן**) **will sell him to a person** and the **עבד** will continue to request **תרומה**; there is no concern -

שהרי מזונתו על רבו ואין אדם חוטא ולא לו -

Because his master is obligated to feed him, and person does not sin unless he

⁸ He certainly will not claim it as an **עבד**, since he is free now and does not want to be considered an **עבד**.

⁹ Generally one who was an **עבד** will not ask for **תרומה** after he is freed, because of this concern (since everyone knows he was an **עבד**); however in our where the person in question was not known to be an **עבד**, so he will not be afraid to ask for **תרומה** (people will presume he is a **כהן**), therefore the **גמורה** asks perhaps he is a [freed] (see **מהרש"א** [האריך]). Alternately; by a known **עבד** **כהן** we will distribute **תרומה** to him alone since he is eligible to eat **תרומה** and we assume he will not ask for it when he is freed, however in our where we want to give him **תשומת** initially; the concern that perhaps he was an **עבד** is sufficient to prevent him from receiving **תרומה** (see **הרואה"ש**).

¹⁰ Others amend this to read **שהיה**.

¹¹ However by a woman there is the concern that she will ask for **תרומה** after her divorce from the **כהן**. She is not concerned that people will find out and say that she is a divorcee, for indeed she is one

¹² People will say he is still an **עבד** of the **כהן** (and therefore he is claiming the **תרומה**). The freed certainly does not want to be considered an **עבד** (and **אסור בבת ישראל**, etc.).

¹³ We must therefore say that the reason why **אין חולקין לעבד** (according to that **מ"ד**) is (only) because of the concern that we may be **מעלה** to him to **יוחסין**.

¹⁴ In this concern (he is similar to a **גירושה**) there is no fear that people will proclaim him an **עבד**; for he is indeed an **עבד**.

gains from it; in this case the **עבד** has no concern for food since his master feeds him. Why would he trouble himself to collect **תרומה** illegally –

rejects an (even) more extreme possibility:

וכoli hai la chiyusin shma yamru lo rbo yisrael zai¹⁵ m'shah yidz b'mazonotayim:¹⁶

And we are definitely **nor concerned for this outside possibility that perhaps the master will tell him, ‘feed yourself with your handiwork’** and therefore he may go and request **תרומה**. This concern is too farfetched.¹⁷

SUMMARY

We are not concerned that an **עבד שנשתחרר** will request **תרומה**.

THINKING IT OVER

עליה מתרומה לייחסן There seems to be two interdependent issues; a. whether we are and b. whether the cause why אין מועלין מתרומה לייחסן Is חולקין לעבד תרומה بلا רבו (and vice versa), or is חולקין לעבד וכוי' (and vice versa)?¹⁸

¹⁵ Others amend this to read זא (in the masculine) instead of צאי (in the feminine).

¹⁶ If the master were to tell him **עבד צא מעשה יידז למזונותיך** then the would have proper cause to collect **תרומה**. However it is highly unlikely that (the will sell him to a and) the tells this to his slave, since the master may lose much of the benefits of the slave's handiwork.

¹⁷ The only reason why אין חולקין וכוי' is because we are concerned that if we give him we will be **תרומה بلا רבו** and we will also give him **יוחסין** as well.

¹⁸ See [הארוך] אמרש"א.

תנן כמוון אמר אין חולקין לעבד כולי – – one who maintains we do not distribute to the slave, etc.

OVERVIEW

Our states that the משנה, which believes the testimony of one who claims that a certain individual received together with us (when I was a child), [this ruling] supports the view of ר' יהודה who maintains that if we maintain (and is now freed). challenges and explains this proof.

תוספות asks:

ואם תאמר והא לא קאמר רבי יהודה דין חולקין אלא בתרומה דאוריתא –

And if you will say; but, אין חולקין לעבד בלי רבו, perhaps this person was an עבד כהן (and is now freed). challenges and explains this proof.

דמעלין ממנה ליוחסין¹ –

From which we elevate to, ייחסין, therefore in order to insure that we are not to עבד an מעלה we do not distribute to him without his master -

אבל מתניתין דאוקמין² בתרומה דרבנן אין מעlein ממנה ליוחסין³ –

However our which we already established that the testimony is only valid for, ר' יהודה, even, מעלה ליוחסין –

מודה דחולקין לעבד بلا רבו⁴ ואם כן אכתי תקשי ודלא עבד כהן הו –

Agrees that so therefore the question remains, but perhaps he is an עבד כהן and received תרומה דרבנן so why do we feed him, perhaps he is an עבד שנשתחרר –

תוספות answers:

ולאו מלטא היא דמתניתין איירי שפיר שמעיד שחליך לו תרומה דאוריתא⁵ –

And this is a non-issue; for our is discussing a case where indeed the

¹ If someone is receiving תרומה דאוריתא we are assured that he is a כהן and may marry (according to those who maintain אין חולקין בלי רבו, since we know that he is not an עבד). Since we give the recipient תרומה דרבנן.

² Previously on this עמוד.

³ If one receives תרומה דרבנן we do not elevate him to ייחסין.

⁴ There there is no concern of being מעלה לכاهנה since it is only תרומה דרבנן.

⁵ The difficulty the gmarah had (if we disagree with ר' יהודה) is even if the קطن שנתגדל is believed, nevertheless he might have been an עבד (and now he is freed). The answer is that if the קטן שנתגדל is believed, the recipient is certainly not an עבד since the testimony is regarding תרומה דאוריתא (which we do not distribute to the עבד). The only issue is perhaps the קטן שנתגדל is mistaken (since he is not a עבד), therefore we give the recipient only תרומה דרבנן (so even if he is not a עבד it is only a כהן). See ‘Thinking it over’.

testimony was that he received תרומה דאוריתיתא and therefore there is no concern that he is an עבד, since by ר"י according to חולק לעבוד בלא רבו we are not worried about תרומה דאוריתיתא.

אלא שאינו נאמן להאכילו אלא בתרומה דרבנן:

However, the גمرا established previously that this testimony **is believed only to feed him תרומה דרבנן** since we do not have two proper עדים.

SUMMARY

The testimony in our משנה is regarding תרומה דאוריתיתא; he is believed only regarding תרומה דרבנן.

THINKING IT OVER

מה שראה בקטנותו עד (משנה) is testifying properly (it is possible he never received תרומה דרבנן), therefore we only give him תרומה דרבנן.⁶ What is the גمرا asking, perhaps he is an עבד; indeed he may be an עבד שנשתחרר, and in fact he may have never received תרומה, therefore we only give him תרומה דרבנן. Why is giving to an עבד [שנשתחרר] different from giving to someone who may not even be a עבד [כהן]??!

⁶ See footnote # 5.

ומה בהמתן של צדיקים –

And what if regarding the animals of the righteous

OVERVIEW

The taught that they were once ר' אלעזר ב"ר יוסי בריתא based on his testimony (ראב"י) challenged this; how is it possible, for we know that Hashem prevents even the animals of צדיקים from causing a תקלת, so certainly he will prevent the קדש from creating a תקלת. A succinct comment from Tosfos indicates that the question of the גمرا is not that simple.

מפורש במקום אחר¹ (גיטין ז,א²):

It is explained elsewhere in, when we apply this rule of תוספות לא, and when not .

SUMMARY

The of ק"ו is qualified elsewhere.

THINKING IT OVER

(elsewhere) distinguishes between eating a (טבל מאכל אסור like where we apply the ק"ו, and eating a מאכל המותר in a time where it is (like eating before or eating on ק"ו where the ק"ו does not apply (since it is not such a גנאי). In which category is זר; is it considered a מאכל אסור because the can never eat it, or is it considered a מאכל המותר (since כהנים may eat it) so it is not such a גנאי (especially since it is a קדש)??!

¹ איסוריהם explains (elsewhere) that this protection applies only to eating a forbidden food (but not for other things), since it is shameful that a ingest a קדש. In our case however, even though he caused an קדש to eat (דבר האסור שונשנה ר' ה' השתה), nevertheless the קדש did not eat a קדש. The קדש (in ר' ה' השתה) is therefore not here this קדש, and when not here this קדש.

² The marginal note indicates that explains this in other places as well. (שבת יב,ב; חולין ה,ב; פסחים קו,ב).

And that this place is a *Bais Hapras*

ושהמקום הזה בית הפרס –

OVERVIEW

The חכמים enacted that if a grave was plowed over; an area of one hundred amot from the grave is called טמא because the plow may have dragged the bones that far. This entire area is called בית הפרס.¹ Our משנה is discussing a case where we do not know the exact area of this; we only know that a grave was plowed over in this field. תוספות explains what the testimony was regarding this.²

תוספות explains that he testified that the בית הפרס extended only to a certain point -

ולא יותר ובא לטהר:³

And no more; and he came to testify in order **to purify** an extended area which was in doubt.

SUMMARY

The testimony of בית הפרס was **לקולא**.

THINKING IT OVER

1. What would be if the testimony was **לחווארא**; would he be believed?⁴

2. Is it possible to explain the **משנה** that the testimony was **לחווארא**?⁵

¹ It is called either because of the broken bones (פרס meaning broken; ר"ש"י), or because the feet of people cannot walk there (תוס' פרסא), or because the 토מאה spreads out (פריסה) over the area (רמב"ם).

² It is possible that he is testifying that a certain area is a (which was unknown to us), or he could be testifying **לקולא** that this large area which was considered a specific area.

³ The גמרא states that we believe his testimony regarding the בית הפרס, since it is only a **טומאה מדרבנן** (but not **לחווארא**) and nevertheless he is believed. If he was testifying **לחווארא דאוריתא** surely be believed if it is true. See 'Thinking it over' # 2.

⁴ See מהרש"א.

⁵ See ראה and **משכנות הרועים** אות תתקנוב.

He blows

OVERVIEW

ר' יהודה אמר שמואל ruled that one may enter a **בית הפרש** by blowing before him so that any small bone will be blown away and he will not touch it. **תוספות** qualifies this ruling.

תוספות qualifies that this method of checking by blowing is valid only -

בדיעבד אם עשה כבר טהרונות -

After the fact; if he already touched טהרונות while in this area and wants to be sure that they did not become טמא; it is sufficient to check it by blowing -

אבל בדיקה דlatentally מפרש במשנה¹ (אהלות פרק י"ח משנה ז) כיצד בודקין:

However regarding **checking** this **initially** to allow one to walk through the **בית הפרש** (in order to bring a **פסח**), **the משנה משלמה** clarifies how to check a **הפרש**.

SUMMARY

The method of checking a **בית הפרש** through blowing is only **בדיעבד**.

THINKING IT OVER

ומודים ביה שמאי ובית הלל שבודקים which mentions **תוספות** **משניות אהילות** there states; How can we write here that this is for one who was permitted (even the more stringent) **בדיקה** only for one who is going to bring his **פסח**??!

¹ The משנה there states: **כיצד הוא בודק, מביא את העפר שהוא יכול להסיטו ונותן לתוכו כבירה שנקביה דקים, וממה, אם נמצא שם עצם** **טמא**. How does he check (a **הפרש**), he brings the earth that he can move and puts it into a sieve with narrow holes and crumbles the earth (so that it can pass through the sieve); if a bone the size of a barely is found there, he is **טמא**.

בית הפרס¹ דרבנן –**OVERVIEW**

The explained that (the reason a גдол is believed to testify what he remembers regarding a grave is because) the place of a טומאה is only in the place of the initial grave area that was plowed over; is this also only a טומאה, or since we knew the grave was there initially it retains its טומאה status (and is טומאה באוהל).

נראה דאפיקו במקום הקבר מקלין כמו בשאר שדה ואין לומר דמקום הקבר מטמא באهل² –
It is the view of that we are lenient even regarding the place of the initial grave, and it too is dealt with as a just like the rest of the field (which has a טומאת בית הפרס (דרבן); meaning that we do not say that the place of the קבר is מטמא באهل (but rather it is like the rest of the field) –

proves his point:

ומביא רבינו יצחק ראייה מדתנית בפרק קמא דמועד קטן (ז"ה,ב) מצא שדה מצוינות³ –
And the offers a proof from the first of which states, ‘he found a marked field –

ואינו יודע מה טיבה⁴ יש בה אילנות בידוע שנתחרש בה קבר⁵ –
But he does not know what the meaning of this mark is; the rule is if there are trees in this field, it means that a grave was plowed over here in this field (and it is considered a טומאה באוהל). If however –

אין בה אילנות בידוע שאבד בה קבר⁶ –

There are no trees in this field, it means that a קבר was ‘lost’ in this field (and it is not considered a טומאה באוהל and the entire field is מטמא באוהל). This concludes the proof –

ומאי נפקא מינה כיון שעטה אינו יודע מקום הקבר בין נהරש בין אבד –

¹ See previous (in the ‘Overview’ and footnote # 1 there).

² One of the differences between the place of a טומאה and a regular (of a קבר) is that a קבר is not in the place of a טומאה. The reason is that for we require that there be a certain quantity of the bones, for instance רוב מנין or רוב מנין etc. This since it was plowed over we assume that the bones of the body were scattered over the entire field and there is no required amount of bones in one place to be a קבר.

³ They would ‘mark’ with lime any area where there was a ספק טומאה, so that the (or others) would avoid it.

⁴ We do not know whether it was a קבר or whether it was a שדה שנתחרש בה קבר; in any event we do not know the place of the original קבר.

⁵ When there are trees in the field it was customary to plow around the trees in order to improve the irrigation.

⁶ We knew there was once a קבר in this field but we cannot identify where it was.

But what is the difference whether קבר or נתרש in the case since now he does not know⁷ the place of the - קבר

אלא שמע מינה דמקום הקבר טהור שנחרש -

But rather we can derive from this the in a case of קבר, נחרש that the place of the קבר is טהור if only it is like a house; however if it is only טומאת אוול then the whole area is טומא באויל.⁸

בית הפרס discusses the topic of טומאה:

ובית הפרס להבי הוידרבנן משום זהוי ספק טומאה ברשות הרבים -

And the reason a in a ספק טומאה is because it is a only מדרבן is טמא because it is טמא. מהמיר here the חכמים were טומאה ברה"ר רה"ר.

ה Tosfos anticipates a difficulty:

אף על גב דעתם טיהרו חכמים ספק טומאה ברשות הרבים -

Even though that generally that ספק טומאה ברה"ר a מטהר were חכמים by a why were they by a ?!

מתהר responds; when are they -

הינו היכא שהטומאה מבורת ולא נולד הספק אלא באקראי -

That is only when the ספק טומאה occurred by chance - ופעס אחרת לא יטמא כיון שמקומו הטומאה יזוע⁹ -

And this will not occur another time since the place of the טומאה is known -

אבל הבא שלulos השדה בספק לא רצוי לטהר¹⁰ אף על גב דעתו ריאת טהור :

However here by the where the status of the field is always in doubt, the did not want to be it, even though that it is טהור מדורייתא since it is a ספק טומאה ברה"ר.

SUMMARY

⁷ See footnote # 4. If the rule would be that by a קבר would be in this case where we do not know the location, the entire field should be קבר, regardless whether it was or not. (The location of the קבר would be only when we know the location.) See 'Thinking it over' # 1.

⁸ There is a complete קבר somewhere, we are just not sure where it is; therefore the entire area is טומא באויל.

⁹ For instance there is a point in the רה"ר and there is a ספק whether one touched or was over this or not. The point is טומאה (we know where the point is) the ספק happened by chance (the person does not know whether he touched the point or not), this will not (necessarily) occur again since we know where the point is and can take appropriate steps to avoid it from happening again.

¹⁰ If we were to rule that the טהור is in the case then people would go there continually and inevitably one would become טמא, because we do not know where the point is.

ספק ספק מטמא באוהל if it is known (if it is known) is not מטמא באוהל, the initial place is not מטמא באוהל even though it is continual.

THINKING IT OVER

1. rules that the (initially known) is not מטמא באוהל, and proves it from the the place מטמא באוהל in ברייתא.¹¹ However we can differentiate; in the entire place is not known therefore the entire place is not מטמא באוהל;¹² however in a case where the place is known perhaps it is!¹³

2. could have brought proof from our testimony, where the place is not known, and we believe him since it is. However if the place is מטמא באוהל ([seemingly] indicating that it is a טומאה דאוריתא), how can we believe him; there is a ספיקא דאוריתא! This seemingly proves that the place is not מטמא באוהל and therefore not מטמא באוהל.

הדרן עלך האשה שנתארמלה

פרק האשה שנתארמלה

**נודה בתודה וקול זמרה
לגמרה פרק האשה שנתארמלה
ונבקש מנורא על כל תהלה
להתחילה עוד פרק ועוד פרק ולסיימה**

¹¹ See footnote # 7.

¹² It is a שיעור מהיל קבר perhaps he was not on the קבר and even if he was perhaps there is no שיעור מהיל קבר ספיקא. However here where he is on the קבר there is only שיעור טומאה ספק באוהל.

¹³ See רשות.