**ואם כתב ידם יוצא ממקום אחר אין נאמנים – And if their handwriting**

**is verifiable from elsewhere, they are not believed.**

Overview

The ברייתא stated that if (current) עדים testify on a שטר מקוים that the עדי השטר are פסולין, etc. they are not believed. תוספות will discuss whether this means that they are testifying that the עדי השטר are still פסולים now, or that they were פסולים when they signed the שטר, but now they are כשרים.

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**ופסולי עדות דקתני לא שאומרים שעדיין פסולים דאם כן אמאי אין נאמנים -**

**And** concerning the testimony regarding **unqualified witnesses which the ברייתא mentions;** it stated that עדים currently claim that the עדי השטר [were] (are) פסולין, **it does not** mean **that the** current עדים **are testifying that the** עדי השטר **are still פסול** (they are relatives or רשעים)**;** even after the שטר was signed until (immediately preceding their death[[1]](#footnote-1)) now, **for if that were the case**; that they are testifying that the עדי השטר are still פסולים **why are** the current עדים **not believed**, If the עדי השטר were present and the current עדים would testify that they are פסולים לעדות, they would be believed[[2]](#footnote-2) and the שטר would be nullified. The signatures on the שטר cannot be stronger than the עדי השטר themselves.[[3]](#footnote-3)

**אלא פסולי עדות הוו אז ועתה מודים שהם כשרים -**

**But rather** the current עדים are testifying that the עדי השטר **were פסול then** when they signed the שטר **but as of now,** the current עדים **admit that** the עדי השטר **are כשרים** (the relationship was severed; they did תשובה, etc.)**.** Therefore they are not believed.[[4]](#footnote-4)

תוספות asks:

**ואם תאמר ומכל מקום אמאי אין נאמנים להימנו במגו -**

**And if you will say; that notwithstanding** the fact that they are testifying that the עדי השטר were פסול (only) initially (and not that they are פסול now)**, why are they not believed** that the שטר is פסול, **let us believe** the current עדים **with a מגו –**

**דאי בעו אומרים עדיין הם פסולים -**

**For the** current עדים **could have said** that the עדי השטר **are still** currently **פסול.** If the current עדים would testify that the עדי השטר are currently עדים פסולים they would be believed, as תוספות stated previously, and the שטר would be פסול. Let us believe them with this מגו that they were עדים פסולים when they signed, and the שטר should be פסול.

תוספות asks an additional question in the same vein:

**[וכן בכל] שתי כתי עדים המכחישות[[5]](#footnote-5) זו את זו[[6]](#footnote-6) -**

**[And similarly by all** cases**] of two groups of עדים that contradict each other -**

**אמאי לא מהימני בתראי במגו דאי בעי פסלי לקמאי בגזלנותא -**

**Why is the last** group to testify, **not believed with a מגו that they could have disqualified the first** group of עדים **by** accusing them of (currently) being **robbers!?** If the latter group would testify that the former group are גזלנים (instead of contradicting their testimony)[[7]](#footnote-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 מגו, and the testimony of the former group should be discarded.

תוספות answers:

**ואומר רבינו יצחק דבשני עדים לא שייך מגו דאין אחד יודע מה בלב חבירו:**

**And the ר"י says that** (the concept of) **מגו is not applicable by two עדים 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 two עדים however we cannot say that we should believe each עד because he could have claimed the 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]](#footnote-8)

Summary

If עדים claim that the עדי השטר (of a שטר מקוים) are currently פסולים, they are believed. However if they claim they were פסולים, they are not believed, even though there is a מגו of גזלנותא; because a מגו is not effective by two עדים.

Thinking it over

1. תוספות is discussing whether the current עדים intend to be פוסל the עדי השטר now, or at the time of the signing.[[9]](#footnote-9) Seemingly it cannot mean that they wish to be פוסל them now, for the ברייתא clearly states 'ומתו'![[10]](#footnote-10)

2. If a מגו is not effective by two עדים, then why are they believed in the רישא (of the משנה and the ברייתא)?[[11]](#footnote-11)

1. See ‘Thinking it over’ # 1. [↑](#footnote-ref-1)
2. If the current עדים testify that the עדי השטר are currently פסולים, the עדי השטר cannot defend themselves (by claiming they are כשרים) since the testimony is concerning the עדי השטר themselves; they are the defendants (the בעלי דבר). A בעל דבר cannot testify as a witness. [↑](#footnote-ref-2)
3. See תוספות הרא"ש. [↑](#footnote-ref-3)
4. The testimony of the current עדים is not directed towards the עדי השטר per se; for the עדי השטר are currently עדים כשרים in all respects. Rather the intent of the current עדים is to be פוסל the שטר through their testimony. They are not believed, since there is also a contradictory testimony from the עדי השטר who claim (by virtue of their signatures on the שטר) that it is a שטר כשר. In this case the עדי השטר are not viewed as בעלי דבר since the testimony of the current עדים is not directed towards them. [↑](#footnote-ref-4)
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 הזמה 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. [↑](#footnote-ref-5)
6. The rule by שתי כתי עדים המכחישות זו את זה is that neither כת is believed, so the matter remains unresolved (or we follow the חזקה). This is in contrast to עדי הזמה, where the last כת is believed. [↑](#footnote-ref-6)
7. In a sense the second group of עדים is already testifying that the first group is גזלנים; they claim that the first group is causing someone to lose money unjustly. [↑](#footnote-ref-7)
8. See תוספות יח,ב ד"ה אין [footnote # 7]. The גליון (in the margin) offers two additional answers why there is no מגו of גזלנותא. One that it is a מגו במקום עדים (their claim that the שטר is פסול contradicts the עדי השטר). And two, that the idea that the latter עדים are believed [to be פוסל 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 גזלנותא is actually made, but as a מגו it is ineffective. עיי"ש ועי' עוד תוס' ב"ב לא,ב ד"ה וזו. [↑](#footnote-ref-8)
9. See footnote # 1. [↑](#footnote-ref-9)
10. See ח"ב אות רע"ט. [↑](#footnote-ref-10)
11. See תוספות יח,ב ד"ה אין and the גליון here in the margin. [↑](#footnote-ref-11)