

ומודו נהרדעי היכא דאמר שלקחתי כולי - And the נהרדעי admit in a case where he claimed that my parents bought it, etc.

OVERVIEW

All agree in the case of עדי חזקה and עדי אבהתא if the litigants retain their original claim of אבותי של that we award the property to עדי אבהתא. If the מחזיק changes his claim to חוזר וטוען maintains עולא, there is a dispute. מינך זבינתה, אינו חוזר וטוען maintain¹. If the מחזיק left the בי"ד, עולא admits that he cannot subsequently claim זבינתה for we are concerned that he was coached. נהרדעי admit that he can be מאבותיך שלקחו. חוזר וטוען אבותי שלקחו מאבותיך. The claim is more implied in his original claim of אבותי של, than זבינתה. The general rule is that a person may interpret and qualify his claim; he may not, however, change his claim.

מספקא לרבינו יצחק היכא דנפיק לבראי וחזר ואתא לבית דין אי מצי למימר הכי:

The בי"ד is in doubt in a case where the מחזיק went outside of בי"ד and then returned and came back to בי"ד if he can still claim this; i.e. that אבותי שלקחו. מאבותיך. Do we say that since he went outside we are concerned that someone taught him this new claim (as the דין is if he wants to claim now וכו' מינך זבינתה); or perhaps the claim of אבותי שלקחו is so inherent in the original claim of אבותי של that he may claim it even after he left בי"ד and subsequently returned.

SUMMARY

של אבותי is in doubt what is the דין if he left בי"ד and now wants to claim אבותי שלקחו. תוספות.

THINKING IT OVER

1. The original claim of אבותי של is not acceptable. There is seemingly an equal probability of טענתיה אגמריה, whether it is מינך זבינתה or מאבותיך שלקחו. Why should there be a ספק? The two cases should be the same!

2. Is עולא² (only) according to the נהרדעי, or (also) according to עולא?

¹ Their dispute is whether מינך זבינתה is implied in אבותי של or not.

² It seems from the structure (sequential order) of the גמרא, that the problem with 'ואתא מאבראי וטען', is by (the case of) עולא (and not by the case of נהרדעי).