

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

Overview

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

The ר"י is in doubt in a case – מספקא לרבינו יצחק

– בי"ד where the מחזיק went outside of – היכא דנפיק לבראי

– בי"ד and then returned and came back to דין – וחזר ואתא לבית דין

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' זבינתה וכו'); or perhaps the claim of אבותי שלקחו is so inherent in the original claim of של אבותי that he may claim it even after he left בי"ד and subsequently returned. – אי מצי למימר הכי

Summary

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

Thinking it over

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

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

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

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