

## אי דאית ליה ארעא אחריתי עליה<sup>1</sup> הדר –

**If he has other land, he will go after it**

### Overview

ruled that if **ראובן** sold **שמעון** a field without **אחריות**, he cannot testify on behalf of **שמעון** (against **לוי**, who claims it is his), because perhaps **ראובן** wants this field to remain by **שמעון**, so that **יהודה** creditor **ראובן**'s, will be able to collect it as payment for his loan to **ראובן**.<sup>2</sup> Therefore **ראובן** is a **נוגע בעדות**. The **גמרא** asks; if **ראובן** has other property, then **יהודה** must collect from **ראובן** (and not from **שמעון**), so why is **ראובן** a **נוגע בעדות**.<sup>3</sup> And if **ראובן** has no other assets, what difference does it make to **ראובן** whether **יהודה** will or will not be able to collect from **שמעון**?<sup>4</sup> In either case **ראובן** does not have to pay,<sup>5</sup> so why is he a **נוגע בעדות**?<sup>6</sup> Our **תוספות** offers an alternate solution.

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offers an alternate solution:

**הוה מצי לשנויי כגון שעשאה אפותיקי<sup>7</sup> דאז לא הדר ארעא אחריתי דאית ליה<sup>8</sup> -**

The **ראובן** **could have answered** that the case here is where **for instance** **ראובן** made this field (before he sold it to **שמעון**) as an **אפותיקי**, so then **יהודה** cannot go after the other land that **ראובן** has -

**ואם תפול ביד המערער יפרע לו אחרת ומשום הכי אינו מעיד עליה דנוגע בעדות הוא:**

**So if the field will fall into the hands of the protester לוי, then** **ראובן** will need to pay **יהודה** another field,<sup>9</sup> so therefore he cannot testify on behalf of **שמעון**, **for** **ראובן** is a **נוגע בעדות**.

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<sup>1</sup> In the **גמרא** the text reads **עליה ידידה הדר**.

<sup>2</sup> Superficially (and mistakenly) this means that **ראובן** thinks that **יהודה** will collect his debt from the field **שמעון** bought, and since it was sold without **אחריות**, so **ראובן** will not have to pay anything (back to **שמעון**).

<sup>3</sup> **יהודה** cannot collect from this sold field in any case, since **ראובן** has other assets.

<sup>4</sup> See following **מאי** **תוספות** ד"ה **מאי** for clarification of this question.

<sup>5</sup> If **שמעון** wins so **יהודה** will collect from **שמעון** (and **ראובן** will not have to pay back **שמעון**, since it was sold without **אחריות**), and if **לוי** wins, **ראובן** will still not pay **יהודה**, since he has no assets.

<sup>6</sup> The **גמרא** answers that **ראובן** is a **נוגע בעדות** for he wants that **יהודה** should collect his debt from **שמעון**'s field. For if **לוי** takes away the field from **שמעון**, so that **יהודה** cannot collect his debt, **ראובן** will be considered a **ישלם ולא רשע**, which is very denigrating for him.

<sup>7</sup> **אפותיקי** means that the borrower **ראובן** tells the lender **יהודה** that if I do not pay you with money, you may collect the debt from this field specifically. The **אפותיקי** overrides the general rule of **בני חורין** שיש **מקום** שיש **בני חורין** (which was the **גמרא**'s question, **הדר**, rather the **מלוה** can collect his debt from the **אפותיקי**, which was sold, even though the **לוה** has other fields which were not sold (**בני חורין**)).

<sup>8</sup> The ruling of **שמואל** is in a case where the seller **ראובן** has other fields, but nevertheless he is a **נוגע בעדות**, since the sold field was an **אפותיקי**.

<sup>9</sup> If **לוי** wins the **תורה** **דין** against **שמעון**, the **אפותיקי** is meaningless, for now we assume that this field never belonged to **ראובן** (rather it belonged to **לוי**). It is obvious that **ראובן** has a vested interest that **לוי** lose the case and the field remain

## **Summary**

We can justify s' שמואל's ruling in the case of an אפותיקי. One may collect מנכסים if it is an אפותיקי, even though there are בני חורין.

## **Thinking it over**

Is there an advantage in תוספות's proposed solution over the s' גמרא's answer,<sup>10</sup> and if yes, why did not the גמרא utilize it?!<sup>11</sup>

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by שמעון, so יהודה can collect his debt from שמעון, and ראובן is free from paying. However if לוי wins the case, ראובן has to pay יהודה out of pocket from the other assets that he has.

<sup>10</sup> See footnote # 6. The advantage of תוספות's answer may be that the נגיעה בעדות is much more obvious.

<sup>11</sup> See נחלת משה.