

לִאֲפֻקִי מִדַּאֲבִי – To exclude what אבִי said.

Overview

The משנה stated that if both partners in the בקעה field agreed to build the wall together; they should make a חזית on both sides, indicating the dual ownership. The גמרא questions the need for the double חזית. It would seem that no חזית would function as well. The גמרא replies that the משנה is giving this advice in a case where one of the partners (wrongfully) built a חזית which identifies him as the sole owner. To which the גמרא challenges, does the משנה concern itself with swindlers¹! The conclusion of the גמרא is that the משנה is teaching us that (even) if the walls were made of הוצא, nevertheless a חזית is a sufficient marker to identify them both as owners. The משנה intends to discredit the idea of אבִי that by הוצא, nothing less than a שטר can identify the owner(s). The question arises, how אבִי will deal with this משנה. Why did the משנה teach us the דין of חזית in a case where שניהם רוצים?!

answers: תוספות

– ואבִי סבר דשפיר and אבִי maintains that it is proper –

– אית ליה למיתני תקנתא לרמאי – that the משנה offer a solution for a swindler.

In a situation where one of the partners (illegally) built a stone חזית on the wall, the משנה tells us that the other partner should make an additional חזית on the other side of the wall to indicate that it belongs to both of them. אבִי will disagree with the premise of the גמרא that a משנה should not be concerned (solely) about swindlers².

Summary

According to אבִי the reason that the משנה teaches us the last דין that they should both make a (stone) חזית is to protect people from swindlers.

Thinking it over

What would be the דין according to אבִי; in a case where the wall between two fields was made of הוצא, and the חזית indicated that there was one sole owner. The other partner however claimed that it belongs to both of them. Who would own the מקום and the fence?

¹ משניות definitely teach us laws about swindlers, etc. However it is not within the purview of the משניות to teach us how to protect oneself from a swindler. The משנה need not teach us to lock away our treasures.

² Perhaps אבִי generally agrees that the משנה does not offer a תקנתא לרמאי. Here however, once the רמאי built his חזית (perhaps even inadvertently), the משנה teaches us that the simplest way to rectify the situation is by building an additional חזית (not by destroying the original חזית and repairing the wall, etc.). רצע"ג.