

You do not have anything in it, except - איך לך בו אלא משעת חידושו ואילך - from the time of the novelty and onwards

Overview

רבי explained the reason why עד זומם מכאן ולהבא הוא נפסל is because ע"ז is a חידוש (for why do we believe that מזימים instead of the מוזמים), therefore this rule applies only from the time of the הזמה, but not from before. תוספות discusses and clarifies what exactly is the חידוש.

anticipates a difficulty:

אין להקשות מנא ליה דמהימני המזימין לפוסלן -

One cannot ask; how does רבי know that we believe the מזימין to disqualify the מוזמין from being able to testify again -

נימא דאין לך לרבוויי אלא חידושו ועשיתם¹ לו כאשר זמם² אבל אין נפסלין³ -

Let us say that we cannot include (in the law of הזמה) anything, except the novelty which the תורה writes explicitly, namely, 'and you should do to him as he plotted'; but they are not disqualified -

responds:

דודאי כיון דמשלמין ממון ונהרגים כל שכן נפסלין דלא המנינהו רחמנא לחצאין⁴ -

For it is certain that since the ע"ז have to pay, or they are killed, so certainly they are disqualified, for the תורה did not believe the מזימין halfway -

asks:

אבל קשה דלרב חסדא דאמר בחזקת הבתים (נבא בתרא שם, עמוד ב') -

However, there is a difficulty according to ר"ח who maintains in חזקת הבתים - שתי כיתי עדים המכחישות זו את זו⁵ בהדי סהדי שקרי למה לי -

¹ דברים (שפטים) יט, יט. This means that whatever the עדים plotted to do to the accused (whether to make him pay or to punish him with מלקות or מיתה), we do the same to the עדים.

² The תורה does not state that the עדים המוזמין (the עדים המוזמין) are disqualified from ever testifying again, rather the תורה (only) states explicitly the they are punished with זמם, כאשר זמם, so how do we know that they are נפסלין.

³ מכאן ולהבא הוא (seemingly) asking; how do we know that עדים המוזמין are נפסול; why does רבי maintain that מכאן ולהבא הוא, they should never be נפסול! See 'Thinking it over' # 1.

⁴ We believe the מזימין to punish the מוזמין; there can be no punishment unless there was a crime, meaning that the ע"ז lied (otherwise why punish them); if we assume they lied they are נפסול לעדות. If there is a doubt as to who is lying, we would not punish the ע"ז.

⁵ (כת ב') לוי ויהודה, and ירושלים in ר"ח ניסן on יצחק borrowed money from אברהם testified that אברהם was with them on ניסן in ר"ח ניסן, טבריה, and could not have possibly borrowed money from יצחק in ירושלים. According to ר"ח both כתי עדים (לוי ויהודה and ראובן שמעון) can no longer testify because one of these two sets

'Two sets of עדים who contradict each other; why be involved with these false witnesses', and both sets of עדים are disqualified from testifying elsewhere -

אם כן אין חידוש מה שנפסלין אדרבה מה שהמזימין כשרים הוי חידוש לרב חסדא -

So therefore, there is no novelty in the fact that the ע"ז are disqualified; on the contrary, according to ר"ה the novelty is that the המזימין are כשרים -

- והתם בעי למימר דרבא' כרב חסדא -

But the גמרא there initially wanted to say that רבא agrees with this ruling of ר"ה!

answers: תוספות

ויש לומר דלמאי דבעי למימר התם דרבא כרב חסדא -

And one can say that according to what the גמרא initially wanted to say there that רבא agrees with ר"ה (regarding כתי עדים), we will need to say -

לא הוי טעמא דרבא משום חידוש⁸ אלא משום פסידא דלקוחות⁹ -

That the reason of רבא why ע"ז is not because that ע"ז is a חידוש, but rather the reason is because of the loss to the customers -

ומסקנא דהתם דמוקי לה כרב הונא דאמר זו באה בפני עצמה כולי -

And according to the conclusion of the גמרא there, where it establishes that רבא can agree (even) with ר"ה who argues with ר"ה and maintains by ב' כתי עדים המכחישות ע"ז, that each set can come by itself, etc. and testify, so therefore -

הוי חידוש מה שנפסלין¹⁰ קמאי -

There is a novelty that the first עדים (the ע"ז) are disqualified –

responds to an anticipated difficulty: תוספות

והא דמשני רבא בפרק כל הנשבעין (שבועות דף מח,א ושם) אליבא דרב חסדא -

And regarding this that רבא in פרק כל הנשבעין answers, according to ר"ה -

מתניתין דראש השנה -

are certainly liars; we do not know which set, so they are both (מספק) פסול.

⁶ The ע"ז and the עדים המזימין are no less contradictory than ב' כתי עדים המכחישין ע"ז where both כתי עדות are נפסלין. This indicates that according to ר"ה, there is no חידוש that the ע"ז are פסול. This seems not to be in agreement with רבא, who maintains that the ע"ז of ע"ז is a חידוש.

⁷ This is referring to the view of רבא there in חזקת הבתים, which was cited in the beginning of the previous רבא (תוס' ד"ה רבא, חזקת הבתים, which was cited in the beginning of the previous רבא). The question is if רבא agrees with ר"ה that ע"ז are כתי עדים המכחישות ע"ז (and it is no חידוש), so it follows that the ע"ז of ע"ז is also no חידוש (for they are no different from עדים המכחישות ע"ז), so why does רבא claim that ע"ז is פסול, since ע"ז מכאן ולהבא הוא נפסל; when it is no חידוש at all, if רבא agrees with ר"ה. It may be true that punishing the ע"ז is a חידוש, however we are discussing the פסול of the ע"ז (not their punishment), and there is seemingly no חידוש in their פסול, so why does רבא maintain נפסל ע"ז מכאן ולהבא הוא נפסל.

⁸ Indeed, if רבא agrees with ר"ה there is no חידוש that ע"ז is נפסל.

⁹ See previous רבא תוס' ד"ה רבא TIE footnote # 12, for an explanation of פסידא דלקוחות.

¹⁰ The fact that they are contradicted by the עדים המזימים is no reason to disqualify them, just like by עדים המכחישות, ב' כתי עדים המכחישות, who are not disqualified (according to רב הונא), even though they are being contradicted.

– ר"ח disagrees with רבא, מסקנא just said that according to the תוספות, **in משנה A**

responds:

לאו משום דסבירא ליה כוותיה -

It is not because he agrees with ר"ח, but rather because (one of the ways) we can explain that ר"ח (is) according to משנה.

In summation; the view of רבא that ע"ז is a חידוש, follows the opinion of רב הונא, who maintains by חזקת כשרות and may testify; however, according to רב חסדא who considered them false עדים there is no חידוש that ע"ז are פסולין and therefore they would be למפרע.

¹¹ offers an alternate view:

ועוד יש לומר דלרב חסדא נמי הוי חידוש מה שנפסלין ודאי -

And additionally, one can say that even according to ר"ח there is a חידוש in the פסול of ע"ז (as opposed to המוכחשים), namely **that they are certainly disqualified -**

והאי דחשיב להו סהדי שקרי בשתי כיתי עדים אינו אלא מספיקא¹² -

However, when ר"ח considers the two sets of עדים who contradict each other as false witnesses, that is only out of doubt, but there is no certainty in their פסול -

ואם¹³ היו שנים מן השוק¹⁴ מעידין פלוני לזה מפלוני מנה -

And if two witnesses from the marketplace would testify that this one borrowed a מנה from that one -

ואחת משתי כיתי עדים הללו המכחישות זו את זו אומרת לא לזה -

And one set of witnesses from these two ע"ז would say, he did not borrow, so even though they are considered (מספק), פסול, and seemingly we should not pay attention to their claim that he owes no money, nevertheless -

לא הייתי מוציא ממון מספק¹⁵ -

We would no extract money based on a doubt -

ואלו המזימים פסולים לגמרי אפילו להחזיק הממון¹⁶ על פיהן הלכך חידוש הוא -

However, the ע"ז are completely פסול even to retain money by their testimony,

¹¹ Previously תוספות assumed that there is no חידוש in the פסול of ע"ז (according to רב חסדא). Now תוספות will maintain that even according to ר"ח there is a חידוש in the פסול of ע"ז.

¹² The חידוש is that by ע"ז they are פסול, however by המכחישים they are only מספק, not פסול.

¹³ תוספות will now show a practical difference between פסול ודאי and פסול מספק, so the ודאי פסול is indeed a חידוש.

¹⁴ These witnesses are not part of the כתי עדים הכחשים ע"ז.

¹⁵ We are not certain that this כתי is פסול; could be they are כשר, and they are contradicting the עדים that testify that there was a loan, therefore we cannot be מוציא ממון, since we are not sure.

¹⁶ In this very same case if the ע"ז would say that he did not borrow money, we would not heed their testimony (even though it is only להחזיק ממון that the לזה should keep his money), and the creditor would collect his money from the debtor.

therefore ע"ז is a חידוש -

ולגבי הכי¹⁷ אין לך בו אלא משעת חידוש ואילך לחושבם כודאי פסולין¹⁸ -

And regarding this (testifying ממון (להחזיק רבא), maintains that to consider them a
- משעת הגדה, but not retroactively, משעת חידוש ואילך we can only do that, ודאי פסולין

responds to an anticipated difficulty:

ולפי זה¹⁹ הוה מצי למימר דאיכא בינייהו כל שטרי מלוה ומקח הבאין להוציא²⁰ -

And according to this the גמרא (עג,א on) could have said that there is another
difference between the two versions of רבא, namely regarding all debt notes and
bills of sale which are להוציא -

דלטעמא דפסידא דלקוחות נאמנים להוציא -

מוציא מוציא, the ע"ז, פסידא דלקוחות, Since according to the reason of
(up to the time of the הזמה) for otherwise there will be a פסידא, however according to the reason of
- למפרע, since there is no חידוש in their פסול להוציא they will not be believed even חידוש

אלא דלא חשיב אלא מילתא דאיכא בינייהו בין לרב הונא²¹ בין לרב חסדא -

But the reason the גמרא does not mention this difference is because it only mentions
differences, which are valid both according to ר"ה and ר"ה -

In summation; according to this alternate view, רבא can agree with ר"ח, and therefore regarding to be מוציא ממונ, there is indeed no חידוש that ע"ז are פסול, and therefore they will be למפרע to be מוציא ממונ, (according to the version חידוש הוא), however regarding to be מחזיק ממונ, the פסול of ע"ז is a מכאן ולהבא (since עדים ממון ב' can testify (להחזיק ממון), therefore the פסול להחזיק ממון חידוש).

asks:

ואם תאמר ולמה הוי חידוש כלל -

And if you will say; but why is it a חידוש at all that we believe the מזימים, and disqualify
the ע"ז -

והלא מן הדין יש להאמין בתראי במיגו דאי בעו הו פסלי לקמאי בגזלנותא -

For it is justifiable to believe the latter (עדים המזימים) and disqualify the former

¹⁷ This means when the ע"ז are testifying ממון להחזיק (as in footnote # 16), they are פסול only מכאן ולהבא, since it is a חידוש, for עדים המכחישים would be accepted.

¹⁸ However, when they are testifying ממון להוציא they will be למפרע, since there is no חידוש, for the same rule applies to ע"ז that עדים המכחישים זא"ז.

¹⁹ Now that we are saying that the חידוש is only that they are not believed להחזיק, but that they are not believed להוציא, there could be a difficulty.

²⁰ A מלוה שטר is written to be מוציא from the מוכר, and שטר מקח is written to be מוציא from the שטר, so if the עדים on the שטר were found out to be ע"ז, the שטר will be invalidated according to the טעם of חידוש, since there is no חידוש that ע"ז cannot be מוציא, since the same rule applies by עדי החכשה as well (according to חסדא).

²¹ According to ר"ה that ע"ז are completely כשר for other cases, even להוציא, there is a חידוש by ע"ז that they are פסול even להחזיק, so therefore they will be למפרע נאמן even להוציא since it is a חידוש.

(the ע"ז), since the מזימים have a מיגו for if they wanted, they could have disqualified the former עדים by testifying that they are robbers²² -

ובשתי כיתי עדים המכחישות זו את זו ליהמני בתראי במיגו בין לרב הונא בין לרב חסדא²³ -

And similarly, there is a difficulty, whether according to ר"ה or ר"ה, by שתי כתי - מיגו - we should believe the latter set with this מיגו -

answers: תוספות

ואומר רבינו יצחק דלא שייך מיגו אלא באדם אחד²⁴ אבל בשני בני אדם לא שייך מיגו -

And the ר"י answers that מיגו is only applicable by a single person (who is making a claim), however by two people (like two עדים), מיגו is not applicable -

דאין דעת שניהם שוה ומה שירצה לטעון זה לא יטעון זה²⁵ -

For the minds of both of them are not the same, and what one wants to claim, the other will not claim it -

A second answer:

ועוד נראה דקצת דמי האי מיגו למיגו במקום עדים²⁶ -

And additionally, this מיגו appears somewhat like a מיגו which is contradicted by עדים -

שהרי יש עדים כנגד האי מיגו להכחישם²⁷ -

For there are witnesses that oppose the claim based on this מיגו, to contradict it -

ואף על פי שיש כמו כן עדים עם המיגו²⁸ אין בכך כלום -

²² If the second set of עדים would have testified that the first set of עדים are גזלנים, their testimony would be accepted and the former set would be נפסל (since a גזלן is גזול), and their testimony would not be accepted, so now that they are מזימים the first set, they should be believed to be פוסל the ע"ז with this מיגו, so it is no longer a חידוש that the second set is פסול. See 'Thinking it over' # 3.

²³ Both ר"ה and ר"ה agree by ב' כתי עדים וכו' that we do not accept their testimony at all of either set; the question is that we should accept the testimony of the latter set, since they have this מיגו of גזלנותא, and we should disqualify the former set (only).

²⁴ One person who makes a claim and he has the option of making a 'better' claim, which would vindicate him, we assume that he is stating the truth, for otherwise he could have made the other (מיגו) claim.

²⁵ When two people are stating something, we cannot say that it must be true for otherwise why are they not making the 'better' claim, because it is possible that each one is afraid to make the 'better' claim for perhaps his partner, will decide not to make that claim, and they will be contradicted internally. Alternately we will assume that they are false witnesses, and as to why (if they are liars) they did not make the better claim, the answer is that perhaps when they were plotting their lies, they could only agree on this claim, but could not agree on the 'better' claim (for whatever reason), since דעת שניהם שווים.

²⁶ If one has a claim and a מיגו to support his claim, however his claim is contradicted by עדים. The מיגו will not be effective because the proof of עדים is stronger than the proof of the מיגו.

²⁷ The second set of עדים have a 'good' מיגו, however their claim is challenged by the first set, their claim is against עדים, and we do not utilize a מיגו where the claim is opposed by עדים.

²⁸ Tosfos seems to be asking that our case is not like a regular במקום עדים (where the מיגו is ineffective), since here the מיגו has the additional factor that it is the עדים who have a מיגו; perhaps in such a case the מיגו is effective. Alternately

And even though there is also מייגו supporting the עדים, that does not matter at all²⁹ and they are not believed –

A (possible) third answer:

[ועוד³⁰] דלא עדיף מייגו מעדים שאם היו עדים מסייעים לאלו -

[and furthermore] a מייגו is not superior to עדים, meaning that even if there were other עדים supporting these latter two עדים -

לא היה להם כח להכחיש את אלו דהא תרי כמאה וכל שכן מייגו -

They would not have the power to completely contradict these first עדים, for the rule is two עדים are like one hundred עדים, and one is no more believed than the other, so certainly by a מייגו which is weaker than עדים, that it cannot make one set of עדים stronger than the other –

In summation; the latter עדים are not believed (both by הזמה and הכחשה) on account that they have a מייגו, for they could have accused the former עדים as גוזלים, because either לא אמרינן מייגו בי תרי, or it is a מייגו במקום עדים (and/or) a מייגו is no better than additional עדים.

anticipates a difficulty:

והא דאמר בפרק ב' דכתובות (דף יח,ב ושם) שנים החתומים על השטר -

And regarding this which the משנה states in the second פרק of כתובות, 'two people who are signed on a document -

ואמרו קטנים או אנוסים היינו³¹ כולי אם אין כתב ידם יוצא ממקום אחר הרי אלו נאמנים³² -

And the signers said, 'we were minors or we were forced, etc. when we signed', if their handwriting cannot be confirmed from another source, they are believed' and we void the document, but this is (seemingly) a מייגו במקום עדים –

perhaps the עדים cancel each other out, and only a מייגו remains.

²⁹ response (to footnote # 28) may be (according to those who are גורס the 'ועוד' [see footnote # 30]) is that by the עדים are not cancelled out (כמאן דליתא) but that they are both valid (כמאן דאיתא), therefore the עדים cannot 'help' the מייגו, since the other עדים oppose the עדים and the מייגו; ועצ"ע.

³⁰ There are differing opinions whether we are גורס 'ועוד' as a third (and separate) answer, or we are not 'ועוד' and the following is a continuation and explanation of the second answer. See 'Thinking it over' # 4.

³¹ The עדים are claiming even though we signed it, nevertheless the document is invalid, since we were either minors or we were forced to sign (under the threat of death), and we were not witnesses to anything.

³² Presumably the reason they are believed to void the שטר is because they have a מייגו, for they could have said, it is not our handwriting, and the שטר would be void, so believe them that they were אנוסים וקטנים. The question is how can this מייגו be effective, for since we have affirmed their signatures; that is considered as if there are two witnesses confirming the שטר (that is the meaning of a שטר), and their testimony of קטנים וכו' is contradicting the שטר, it is apparently a case of תרי ותרי and a מייגו supporting the claim of קטנים, however we just said that by תרי ותרי a מייגו is ineffective; how can we reconcile this apparent contradiction.

responds: תוספות

האי לאו מיגו הוא³³ שאין השטר מתקיים אלא על פיהם והפה שאסר הוא הפה שהתיר³⁴ -

This case of 'מיגו' is not an issue, for since the note cannot be authenticated only by their testimony, so we say 'the mouth that forbade is the mouth that permitted' -

כדאמרין התם בההוא פירקא (דף כב,ב) מנין להפה שאסר הוא הפה שהתיר -

As the Gemara states there in that same פרק, 'from where do we derive the rule of 'הפה שאסר הוא הפה שהתיר', etc.

ופריך הא למה לי קרא סברא הוא³⁵ -

And the Gemara asks, 'why do we need a פסוק, it is logical that 'הפה שאסר הוא הפה שהתיר' -

anticipates and resolves another difficulty: תוספות

ובשנים החתומים על השטר ומתו -

And in a case where two witnesses were signed on a שטר and the עדים died -

ובאו ב' מן השוק ואמרו קטנים או אנוסים או פסולי עדות היו -

And two people came from the market and said that 'these witnesses were minors or forced, or unqualified witnesses', where -

דאמר התם דאי כתב ידם יוצא ממקום אחר אין נאמנים אלא הו' תרי ותרי³⁶ -

The Gemara rules there that if their signatures could be authenticated from elsewhere, the disqualifying witnesses are not believed to testify 'היו קטנים וכו', rather it is two against two -

צריך לומר דפסולי עדות דקאמר היינו קרובים דאי גזלנים הו' אלו נאמנים אפילו היו בפנינו -

It will be necessary to say that when they testified that the עדי השטר were פסולי עדות, גזלנים, it means that they were relatives, for if פסולי עדות there means גזלנים, the disqualifying עדים would be believed even if the עדי השטר were before us,³⁷ as תוספות

³³ We do not believe them (only) because they could have said it is not our handwriting, but rather the note was never authenticated so there is no שטר and therefore no תרי ותרי.

³⁴ It is not really a case of תרי ותרי there, because the note was never authenticated, they initially stated that it is an invalid note since they were קטנים וכו'. However, in our case here, it is a real תרי ותרי, since the first set testified that (for instance) there was a loan.

³⁵ This shows that the סברא of הפה שאסר is so compelling that it does not require a פסוק. A case brought there is when a woman (whose marital status is unknown) states that she was married and divorced. We believe her because she basically is stating that she is not married, and we have no reason to believe otherwise; the fact that she said she was married cannot be held against her, since she immediately said that she is divorced. The same is here by the עדים that they were never מקיים the שטר, they really said the שטר is invalid.

³⁶ We look at the two עדים in the שטר as if they are testifying that the content of the שטר is correct and we assume them to be proper witnesses, and the two עדים who are coming before us now as two contradictory עדים so it is תרי ותרי, and we do not collect with this שטר, and we do not treat it up, and the money remains wherever it is.

³⁷ See 'Thinking it over' # 5

maintained all along that the latter עדים can disqualify the former עדים by claiming they are גזלנים - ועוד יש תירוצים אחרים ואין להאריך כאן:

And there are more answers that can be given but we will not elaborate here.

Summary

We know the ע"ז are פסול, since they are punished. רבא can certainly agree with רב הונא and possible also with רב חסדא (להחזיק ממון). There are various answers why the מזימים (מכחישים) are not believed with a מיגו. A פה שאסר is stronger than a מיגו.

Thinking it over

1. תוספות asks how do we know that the ע"ז are נפסלין?³⁸ Is this question only on רבא, or is it on אביי as well?

2. We know that ע"ז are פסול, since they are being punished with זמם ועשיתם לו כאשר זמם ועשיתם לו.³⁹ Is the fact that they are נפסל of ע"ז the fact that they are punished, or is it because they are punished?

3. Why is it that regarding the claim of גזלנות it is obvious that the latter set are believed (even though the first set deny and claim they are not גזלנים),⁴⁰ however regarding the claim of הזמה (where the first set denies this claim), it is a חידוש that the מזימים are believed. Why is there a difference in these two cases?!

4. How can we explain the two opinions whether we are גורם the 'ועוד',⁴¹ or not?⁴²

5. תוספות states that if the latter עדים would testify that the עדי השטר are גזלנים, they would be believed, however if the claim they are קרובים it is תרי ותרי.⁴³ Why is there this difference whether they claim גזלנים or קרובים; they seemingly should always be believed?!

³⁸ See footnote # 3.

³⁹ See footnote # 4.

⁴⁰ See footnote # 21.

⁴¹ See footnote # 30.

⁴² Is the 'proof' of עדים and the 'proof' of מיגו in the same category?

⁴³ See footnote # 37.

⁴⁴ See נחלת משה (ועוד).