

אי נמי דפסלינהו בגזלנותא

Perhaps also that they disqualified them as robbers

Overview

The גמרא stated that in the case where the latter עדים disqualified the former עדים, by declaring them to be גזלנים, there will be a difference whether the reason why ע"ז is because of חידוש (so in the case of גזלנותא where there is no חידוש they will be למפרע), or whether the reason for נפסל is because of דלקוחות, so by the פסול of גזלנותא where there is also דלקוחות, the rule will still be נפסל. מכאן ולהבא הוא נפסל. Our תוספות reconciles this גמרא with a seemingly contradictory גמרות.

anticipates a difficulty:

והא דאמרינן בפרק זה בורר (סנהדרין דף כו,ב) דההיא מתנה דהו חתים עליה תרי גזלני¹ -

And regarding this which the גמרא states in בורר זה, 'that there was this gift document upon which two robbers signed -

סבר רב פפא בר שמואל לאכשוריה משום דהא לא אכריזנא עלייהו² -

sought to certify it, because there was no announcement about these גזלנין -

ומסיק דגזלן דאורייתא לא בעי הכרזה³ ולא חיישינן לפסידא דמקבל מתנה⁴ -

And the גמרא there concluded that a גזלן who is מה"ת, does not require an announcement; and (continues תוספות) we are not concerned for the loss of the recipient of the gift; so why indeed aren't we concerned for this פסידא -

responds to an anticipated answer:⁵

אף על גב דפסידא דלקוחות לאו דוקא דהוא הדין דיש לחוש לפסידא דמקבל מתנה⁶ -

¹ Normally גזלנין are לעדות, so this שטר should seemingly be invalid.

² The גמרא there previously stated that all those listed in the משנה (on כד,ב) to be לעדות, they are not disqualified until there was a public announcement stating that they are disqualified. ר"פ בר שמואל assumed that the same ruling applies to גזלנין. The הכרזה is necessary since people do not know that they are לעדות, and may use them, and will subsequently suffer a loss when their שטרות will be invalidated (פסידא דלקוחות).

³ The פסולין of the משנה which require הכרזה are (presumably) only פסולין מדרבנן.

⁴ Seemingly the same reason that applies to דרבנן פסולין (see footnote # 2) should apply to דאורייתא, for how are the people to know that their עדים are גזלנים. This will cause (in this case) the מקבל מתנה to lose their מתנה.

⁵ Perhaps one can argue that we are only concerned for a פסידא דלקוחות (where the buyer laid out money), but not for פסידא דמתנה (where the recipient did not pay anything). תוספות negates this answer.

⁶ תוספות assumes that just as we are concerned for לקוחות we should be concerned for מתנות as well, as it is known that a person receives a gift only because he did something for the grantor of the gift.

Even though that the phrase, 'we are concerned for דלקוחות', is not precise, for the same law applies that we should be concerned for the loss of the מקבל, so seemingly the גזלנים should require הכרזה, and otherwise the שטר מתנה should be valid - מכל מקום פסלין להיהא מתנה -

Nevertheless, we disqualify that שטר מתנה, even though there was no הכרזה - דמיירי שכבר העידו עליהן בבית דין⁷ קודם שחתמו בשטר מתנה -
For that is in a case where they already testified in בי"ד regarding these עדים that they are גזלנים, before they signed on the שטר מתנה -

נפסל was שטר מתנה offers another scenario why תוספות

או לא נראית ההיא שטר מתנה עד אחר שנודע פסולן בבית דין⁸ -
Or it was a case where that שטר מתנה was never seen, until after the פסול of the עדים was known in בי"ד -
ואף על גב דזמנה קודם יש לחוש שמא הקדימו כדפרישית לעיל⁹ -

So even though it is dated before they were declared גזלנים in בי"ד, nevertheless the שטר is פסול, for there is the concern that they predated the שטר, as I explained previously, but really it was written after they were declared פסולים -

anticipates a difficulty: תוספות

ומיהו ההוא עובדא¹⁰ דפרק זה בורר (שם דף כז,א) דחד אמר קמאי דידי גנב¹¹ כולי -
However, regarding that story in פרק זה בורר, where one witness of חמא testified that one murder witness stole in my presence, etc.; why are they נפסל to testify on the murder, since their גזלנות of פסול took place now after they testified to the murder -

replies: תוספות

לדיני נפשות פשיטא שיש לפוסלו למפרע¹² -

⁷ Once they were testified against in בי"ד that they are גזלנים, no הכרזה is needed, since everyone knows that a גזלן is פסול לעדות. However, concerning the פסולין in the משנה (like משחק בקוביא [gambling]), even if it is known that they are כשר לעדות, nevertheless, unless there is a הכרזה that they are פסול, people assume that they are still גזלנים.

⁸ Therefore, there is no פסידא, for when they wrote the שטר, it was already known that they are גזלנים (so they should not have used them for עדים).

⁹ עב,ב ד"ה מכאן.

¹⁰ חמא was assumed to have killed someone, to which there were witnesses. חמא bought other witnesses who testified that the עדים were גזלנים.

¹¹ חמא wanted to disqualify them because they are גזלנים, however we just now concluded that (even) by the פסול of גזלנות it only takes effect after they were נפסל in בי"ד, but their murder testimony happened before they were נפסל, so how could חמא disqualify them?!

¹² The concern of דלקוחות (which is the reason why נפסל הוא) is merely a תקנת חכמים to protect the דיני ממונות (מכאן ולהבא הוא נפסל למפרע (as the גמרא stated explicitly); this תקנה is only for דיני ממונות, but in reality the עדים should be נפסל למפרע).

Regarding capital cases it is obvious that they are disqualified retroactively, from the time they stole, but not later when they were – בי"ד in נפסל

anticipates an additional difficulty: תוספות

והוי מצי למימר¹³ איכא בינייהו לענין דיני נפשות¹⁴ או לאסור אשה לבעלה¹⁵ –

So, the גמרא could have said, 'there is a difference' (whether the reason is because of חידוש, or because of דלקוחות (פסידא דלקוחות) regarding capital cases, or to forbid a woman to her husband, or -

לענין גיטין וקדושין¹⁶ ועדות החדש¹⁷ -

Regarding divorces and marriages and testimony for the new month, and in all these cases we found out later,¹⁸ through הזמה, that they were liars prior to the testimonies mentioned here -

דלטעמא דחידוש אין לפוסלן למפרע¹⁹ ולטעמא דפסידא דלקוחות פוסלן למפרע לכל אלו²⁰ -

That according to the reason of חידוש, we cannot disqualify the witnesses למפרע, however according to the reason of דלקוחות, פסידא דלקוחות, the עדים are למפרע, for all these abovementioned testimonies –

replies; the reason he does not mention any of these differences - תוספות

אלא דדחיק לאשכוחי דאיכא בינייהו לענין ממון:

It is rather because he is trying hard to find a difference regarding monetary matters.

Summary

There is no פסידא דלקוחות by the פסול of גזלנותא, provided that the פסול in בי"ד took place first. The ruling of מכאן ולהבא is only regarding cases where there can be פסידא דלקוחות, however in all other matters the rule is נפסל.

Thinking it over

however we cannot allow this תק"ח to cause someone's death. Therefore, regarding דיני נפשות all agree that למפרע הוא למפרע הוא נפסל. In fact, whenever the issue in question has no פסידא דלקוחות consequences, we will say למפרע הוא נפסל.

¹³ Since we are now saying that whenever there is no פסידא דלקוחות, we say למפרע הוא נפסל, we can have many differences between the two reasons.

¹⁴ They are testifying to a murder.

¹⁵ They are testifying that she was promiscuous, while she was married, and therefore forbidden to her husband.

¹⁶ Either a divorce a marriage took place.

¹⁷ They are testifying that they saw the new moon.

¹⁸ The הזמה took place on ר"ח טבת for testimony that was given on ר"ח חשוון, and on ר"ח כסלו (between the false testimony and the הזמה), they testified to one of the above (נפשות, גיטין וקידושין וכו').

¹⁹ Since ע"ז is a חידוש so אין לך בו אלא משעת חידושו ואילך.

²⁰ Since by rejecting their testimony there is no פסידא דלקוחות. No innocent people are being harmed.

According to the reason of פסידא דלקוחות, what would be the ruling regarding the time between their testimony (for which they were הוזם) and the time of the הזמה, where they testified regarding דיני נפשות (where there is no דלקוחות) and they signed שטרי מקה (where there is דלקוחות); would we say that their testimony is accepted regarding money matters (מכאן ולהבא הוא נפסל), but rejected regarding נפשות, etc. (למפרע הוא נפסל). This would seem like an inherent contradiction (especially if the case דיני נפשות case happened before the שטרי מקה case)?!