

עד אחד יוכיח שישנו בהכחשה¹ ובהזמה² –

An א"ע will prove; for he is included in the rule of הכחשה והזמה

OVERVIEW

In the process of deriving that העדאית עדים are מחייב a שבועה; the גמרא states that even though עדים cannot be derived from פיו directly, since פיו is stronger than עדים concerning הכחשה [meaning that an admission cannot be contradicted by witnesses; however עדים can be contradicted by other עדים and it will invalidate their testimony], nevertheless we can dismiss this refutation by pointing to an א"ע who can be contradicted and invalidated (through other עדים) and nevertheless is מחייב a שבועה. Therefore, עדים also, even though they can be contradicted, nevertheless they should be capable of obligating a שבועה. In our texts the word הזמה does not appear (either concerning the strength of פיו [that there can be no הזמה on פיו], nor in the refutation of א"ע [that there can be a הזמה by an א"ע]). The reason for this omission is because concerning an א"ע there is no difference whether there was a הכחשה of two עדים or a הזמה of two עדים. In both instances the עדות is בטל and the א"ע is considered a false witness, and nevertheless there is no rule of זמם; we do not obligate the א"ע to pay the monies as in the הזמה of two עדים. Our תוספות maintains that we may include the word הזמה.

שפיר גרס הכא ובהזמה כיון שעל ידי הזמה דבורו בטל³ –

The inclusion of the word 'הזמה' in the text is proper; since through the הזמה of the א"ע, his testimony is voided so it is similar to the הזמה of עדים שני.

anticipates a question:

ואין להקשות מה לפיו שכן אינו משלם בהזמה⁴ תאמר בעדים שמשלמין בהזמה⁵ –

And the גמרא could not have asked, 'why does פיו obligate a שבועה, since פיו is stronger than עדים in the sense that פיו does not pay if there was a

¹ הכחשה is when a second pair of עדים contradict the story of the original עדים (or עד); while הזמה is when the second pair of עדים testify that the original עדים could not have seen this incident take place. By הכחשה of two עדים, the testimony of both is invalidated, and by הזמה we believe the latter עדים. The original עדים become פסולי עדות and have to pay any damage the defendant would have incurred by their testimony.

² Our texts do not contain the word הזמה.

³ In this sense א"ע is as 'weak' as עדים; by א"ע and עדים, their testimony is refuted by הזמה (as opposed to פיו which is 'stronger' than א"ע, for עדות הודאית cannot be refuted by [הכחשה]). Since א"ע is as 'weak' as עדים concerning [הכחשה] הזמה we can use א"ע as a יוכיח that עדים also can be מחייב a שבועה just as א"ע can.

⁴ See 'Thinking it over' # 2.

⁵ Therefore we cannot derive עדים (directly) from פיו. (See 'Thinking it over' # 4.)

הזמה; can you say that concerning the testimony of עדים, where they do pay if there was a הזמה. The advantage of this question is -

ואז לא יכול לומר עד אחד יוכיח שמשלם⁶ -

That then the גמרא could not respond, an ע"א will prove you wrong for he too pays by הזמה. The גמרא could not respond in this manner for indeed an ע"א (just like פ"ו) does not pay if there was הזמה. There is no יוכיח or a ק"ו, for both פ"ו and ע"א are (similarly) stronger than עדים with regard to הזמה in the sense that עדים pay and ע"א do not pay. Why did not the גמרא ask this question?!

replies: תוספות

כי מה שהעד אינו משלם כשהוא מוזם אינו חומרא -

Because the reason why the עד does not pay if he was מוזם is not due to the strength of an ע"א -

אלא לפי שבעדותו אינו מחייבו ממון -

But rather on the contrary, there is no payment by the הזמה of an ע"א, since his testimony initially does not obligate monetary payments.

לכך הואיל ודיבורו בטל חשיב ישנו בהזמה -

Therefore since his testimony is invalidated (as opposed to the testimony of פ"ו) **the ע"א is considered ישנו בהזמה** (that he is as weak as עדים), despite the fact that he does not pay by הזמה, it is all part of his 'weakness'. He does not pay because he cannot obligate payment (only a שבועה). If we would ask מה לפ"ו שכן אינו משלם בהזמה (a strength of פ"ו), we would be able to answer that an ע"א does not have this strength of פ"ו (which is that he does not pay and his testimony is upheld), but rather an ע"א is (at least) as weak as עדים in the sense that his testimony is invalidated.

anticipates a question: תוספות

ובסמוך על מה הצד פרכינן ליה⁷ -

And shortly the גמרא does ask this refutation of מה שאין משלמין בהזמה on the מה הצד. Seemingly how can we ask that the צד השהו is stronger since it does not pay by הזמה; for we just concluded that the reason an ע"א does not pay is a weakness not a strength!

answers. The reason the גמרא later asks this question is -

משום דעל מה הצד פרכינן פירכא כל דהו⁸ -

⁶ Others amend this to read 'שאין משלם' [This would explain why we cannot say יוכיח.]

⁷ The גמרא concludes that we derive עדים from מה הצד of ע"א. The גמרא challenges this מה הצד arguing that ע"א do not pay by הזמה (they are not הזמה), while עדים do pay. ר"ה rejects this פירכא claiming that תורת הזמה לא פריך.

⁸ When we are using ע"א as a יוכיח (that ע"א should teach us concerning עדים), then to negate this יוכיח we need to show that ע"א is stronger than עדים and this cannot be done by arguing that ע"א does not pay בהזמה (for this is a weakness, not a strength of ע"א). However when deriving from מה הצד (of two מלמדים) which

Because we can ask any type of refutation on a מה הצד, as long as there is a practical difference, even though it is not necessarily 'stronger or weaker'.

ורבי חייא אפילו על מה הצד לא פריך ליה –

However ר"ה does not consider this a refutation even on a מה הצד –

משום דמה שאינו משלם העד כשמוזם זהו גריעותו⁹ –

Because this which the עד does not pay when he was מוזם, this is his weakness –

לפי שלא היה כח בעדותו לחייב ממון:

for he had no power in his testimony to impose a monetary obligation.

SUMMARY

There is no הזמה by an ע"א because of the weakness of an ע"א that he is not מחייב ממון. Therefore we consider that an ע"א is בהזמה. However concerning a פירכא on the מה הצד of וע"א (that they are not הזמה), there is a dispute whether this is considered a valid דהו or not; since an ע"א is not משלם on account of his weakness.

THINKING IT OVER

1. Why is תוספות (so) insistent that we include the word 'הזמה'?

2, מה לפיו שכן אינו משלם בהזמה גמרא asks why did not the תוספות¹⁰. What is meant that פיו does not pay by הזמה. Let us assume that he admitted to borrowing money from a מלוה at a certain time and place. The עדים claim it cannot be true because עמנו היית. If there could be a הזמה, דין הזמה, who would have to pay whom, will the 'לוה' have to pay himself?!

3. In a case where the defendant against the ע"א cannot swear, the rule is he is required to pay. If בי"ד ruled that he had to pay and the ע"א was הוזם will there be a דין of זמם on this ע"א to require him to pay?¹¹

4. Is the question of להקשות¹² dependent whether we are גורם הזמה or not?

is not as strong as deriving from one מלמד (since each of the two individually could not teach us עדים), then it is sufficient to refute the מה הצד even with a דהו.

⁹ ר"ה agrees that a מה הצד can be refuted with a דהו. פירכא כל דהו. That means, if the פירכא expresses a difference that is neither stronger nor weaker, but merely different. However if we are asking a פירכא which shows the weakness of an ע"א, then that is no reason that the מה הצד is refuted. On the contrary if even the weak ע"א can be מחייב שבועה, then certainly the strong עדים can be מחייב שבועה.

¹⁰ See footnote # 4.

¹¹ See אמ"ה # 16.

¹² See footnote # 5.