

עד אחד נאמן באיסורין –

One witness is believed concerning prohibitive acts.

OVERVIEW

An עד אחד is believed to testify on matters of איסור והיתר. He can testify that this piece of meat is כשר and not נבילה, or whether this מקוה has the proper חזקת איסור or not, etc. There is a qualification to this rule. If there is a חזקת איסור, then (it is questionable¹ if) an ע"א is [not] believed to contradict the חזקת איסור. Were he to testify regarding a woman, whom we know that she was married, that she is now divorced, we may not accept his testimony. This qualification itself is subsequently qualified. An ע"א can be believed even when he contradicts a חזקת איסור, if he is capable of rectifying and removing the איסור. He can say that he was מפריש תרומה from this grain, even though there is a חזקת איסור טבל on it, nevertheless he is believed to say that he was מפריש תרומה since it is בידו to be מפריש תרומה. In regards to a שליח הגט who says ע"א בפ"נ that it was written לשמה, this seems to be the regular case of ע"א גט – איתחזק איסורא – we do not assume the גט was written לשמה, and it is not בידו of the שליח\עד to write the גט לשמה.

פירוש הקונטרס שהרי האמינה התורה כל אחד ואחד –

ע"א נאמן באיסורין for the תורה believes every individual - explains; where do we see that רש"י

על הפרשת תרומה ושחיטה וניקור הגיד וחלב –

Concerning separating תרומה, ritual slaughtering of an animal, removal of forbidden sinews (גיד הנשה) and veins, and forbidden fats of an animal. A person, who is invited to a friend's house to eat, may do so on the say so of the host that the food is kosher, and none of the abovementioned items presents any problem. Even though there are no two witnesses that the host was מפריש תרומה or the meat was נשחט properly etc. We believe the testimony of the single host. This proves that ע"א נאמן באיסורין.

comments on רש"י's explanation: תוספות

ולא היה לו להזכיר הפרשת תרומה ושחיטה דבהנהו נאמן אף על גב דאיתחזק איסורא –
However, רש"י should not have mentioned תרומה ושחיטה among the items

¹ See Tosfos on ד"ה עד אחד, quoting the גמרא יבמות פח,א. We will assume that he is not believed.

he listed to prove באיסורין ע"א, **for in** these two items **he is believed even though there is a איסור** originally² on the food³. This is highly unusual that an ע"א should be believed when איתחזק איסורא. Therefore we must say the reason why an ע"א is באמן by איתחזק איסורא even though that it is איסורא, is –

משום דבידו לתקנם –

Because the ע"א has the capability to correct this איסור, by being מפריש תרומה and being שוחט the בהמה the –

כמו שפירש הקונטרס בסמוך והכי אמר בהאשה רבה (יבמות פח,א) –

as רש"י will shortly comment⁴. And similarly this is said in פרק האשה רבה. Therefore, this type of באיסורין ע"א where it is בידו לתקנם has no bearing⁵ on our case of the שליח testifying that it was written לשמה, where he does not have⁶ any capability at all to change the לשמה status of the גט.

בידו לתקן is שחיטה challenges his own assumption that תוספות

ושחיטה אף על גב דהשתא אין בידו לתקנו –

and concerning שחיטה, which תוספות claimed that רש"י should not have included it since it is בידו, תוספות asks, **even though that presently,** when he is serving the meat, **he is no longer capable to correct** the problem of נבילה⁷, so why is he באמן, since it is איסורא איתחזק?

תוספות answers, that nevertheless since –

מעיקרא היה בידו לשחוט –

Originally he was capable of שחיטה (either by himself or arranging for someone else to be שוחט), that is sufficient to be considered בידו לתקנו. תוספות offers proof for his contention –

² In the case of תרומה; all grains are originally טבל and forbidden to be eaten unless one is מפריש תרומה. In the case of שחיטה, every animal had an איסור אכילה on it while it was alive. The נאמנות of the ע"א in these cases can seemingly outweigh even a איסור. חזקת איסור. When the גמרא said באיסורין ע"א concerning הגט שליח, we meant only where there is no איסור, as in the case of לשמה, where we cannot say the גט is בחזקת שלא נכתב ונחתם לשמה.

³ Concerning גיד however, there is no חזקת איסור on the meat we intend to eat, that it was ever גיד. Therefore the עד is believed. חלב or הנשה.

⁴ See רש"י ד"ה הכא איתחזק. See 'Thinking it over' # 1.

⁵ One may ask that ניקור הגיד is also בידו לתקן, so it too should not be mentioned. See et al. נה"מ, סו"ד, בל"י. The consensus is that the מנקה is testifying that: a) he was מנקה, which is בידו, and b) that the meat he is serving does not contain a mixture of גיד הנשה. Concerning 'b', there is no איתחזק איסורא that this meat is גיד הנשה, and it is not בידו to transform the גיד into כשר, therefore as far as concept 'b' is concerned it is not באמן באיסורין, עיי"ש, and also not בידו, which is our case of איתחזק איסורא.

⁶ Nor did he ever have. See Footnote # 8

⁷ As opposed to תרומה where he can be מפריש the תרומה presently as he is serving the meal.

דאם לא כן אמאי מהימן כיון דאיתחזק איסורא –

For if you will not agree that this is considered בידו, but rather insist that it must be בידו now, then **why indeed is anyone solely believed** that this is בשר שחוטא, since it was איסורא איתחזק. One cannot say that indeed the only way that one is permitted to eat meat is only if two people will testify that it was נשחט properly -

דלא מצינו בשום מקום שיצטרך בגדול אחד עומד על גביו –

For we do not find it mentioned anywhere that there is a requirement that another adult should be standing together with the שוחט, so that we can have two witnesses testifying that it is בשר שחוטא. Therefore that proves that we do not require that it be בידו now, rather it is sufficient that originally it was בידו.

תוספות continues to prove his point, indicating a possible rebuttal to this logic:

One may challenge תוספות proof by saying that the נאמנות of בידו is only if it is בידו now, and not if it was only previously בידו, and the reason why we may eat on the testimony of the שוחט, is because there is a רוב (a 'majority') that tells us it was נשחט properly, namely that the רוב people that are שוחט are competent שוחטים. Therefore it has nothing to do with the נאמנות of an ע"א, but rather on account of רוב. תוספות responds that this is not so, for there is a נאמנות of an ע"א by שחיטה even when we cannot utilize this רוב –

ומעשים בכל יום דמהימן –

And it is an everyday occurrence that the שוחט alone **is believed** (on account that it was previously בידו).

ואף על גב דלא שייך רוב מצויין אצל שחיטה מומחין הן –

Even in a situation where this rule that **'most people who frequent at places of שחיטה are competent שוחטים'** **does not apply** -

כגון שנחתך כל הראש ואין בית השחיטה ניכר –

If for instance the entire head was cut off and the place of שחיטה cannot be discerned, nevertheless if someone claims that he was שוחט it properly, he is believed. In this case we cannot say that the reason he is believed is because רוב מצויין אצל שחיטה מומחין הן; for we do not know that this animal was נשחט, since its head was severed and we cannot tell if it was נשחט or not. This proves that the only נאמנות is because he is an ע"א, and regardless that there was a איסור מחיים on this animal nevertheless he is now נאמן to say that it was נשחט properly, since previously it was בידו that he could be שוחט the animal properly.

תוספות asks an additional question:

ומה שאנו סומכין על הנשים בשחיטה אף על פי שאין יודעות הלכות שחיטה –

And the reason why we depend on women concerning שחיטה, i.e. if a

woman serves meat we trust her that it is בשר שחוטה, **even though they do not know the laws of שחיטה**, therefore seemingly it is not בידה, not now and not previously, for they do not know how to be שוחט. The question is how can we depend on them, for they are only an ע"א, and it is איתחזק איסורא?

תוספות replies:

כיון שבידה ללמוד לשחוט או להשכיר אחרים שישחטו לה כבידה דמי –

Since she is capable of learning how to be שוחט (the שחיטה of a woman is a כשרה) **or she is capable of hiring others** (valid שוחטים) **that they do the שחיטה for her, this is considered as if it is בידה**. It is not necessary that the persons themselves do the שחיטה. If, for instance, (s)he can see to it that the food is prepared in a כשר manner it is considered בידו.⁸

תוספות asks:

ואם תאמר ומנלן דעד אחד נאמן באיסורין –

ע"א נאמן דין that **And if you will say; from where do we derive this** באיסורין. We have proof that ע"א נאמן באיסורין וחלב, however what is the source ע"א נאמן באיסורין מן התורה that

תוספות answers:

ויש לומר דגמרינן מנדה דדרשינן בפרק המדיר (כתובות עב,א) וספרה לה לעצמה –

And one can say; that we derive it from נדה⁹, הלכות נדה, for we have a דרשה in פרק המדיר that when the תורה states, concerning a זבה; 'and¹⁰ she shall count for her(self)' the דרשה of the word לה is to be understood, that she may count it by herself, and she will be believed to say that the required seven days have passed and she was טובלת and is טהורה. We see that we believe an ע"א, that she is טהורה.

תוספות poses a question:

ואם תאמר אם כן אפילו איתחזק איסורא –

And if you will say; if we are deriving the דין of נאמן באיסורין from נדה, then an ע"א should be believed even in a case where it is איתחזק איסורא. When the אשה sees דם she becomes a נדה (or זבה), and is בחזקת איסור, and nevertheless she is believed to say that she is טהורה against a איסור.

⁸ The שליח הגט, however, is not empowered to write the גט. It is up to the husband to direct a סופר to write the גט. Therefore it is not בידו of the שליח הגט, and he can be believed only if it is איתחזק איסורא.

⁹ The פסוק וספרה לה is actually discussing a זבה not a נדה, however the same rule applies to נדה.

¹⁰ ויקרא (מצורע) טו, כה

responds: תוספות

ויש לומר דאינה בחזקת שתהא רואה כל שעה –

And one can say; that there is no חזקה by this woman that she will continually see דם, on the contrary, she will see דם naturally only for a limited period and then cease seeing דם -

וכשעברה שבעה טהורה ממילא ולא איתחזק איסורא –

And once the seven days pass¹¹ and she is not seeing דם, as is the natural state of affairs, that דם נדה does not last seven days, **she becomes טהורה automatically¹²** and therefore **there is no real חזקת איסור**, as opposed to טבל for instance, where the איסור טבל will not go away on its own, only if you are מ"מ תרו"מ, here however the איסור will automatically disappear in the allotted time when she will not see דם. Therefore when she says that her seven days of נדה have passed, she is not testifying against any חזקת איסור, for we expect the seven days to pass at one point or another; she is merely informing us that the time is now.

There is still a question remaining: After the seven days passed she is still בחזקת איסור נדה, since she was not טובלת. How can we believe her that she is completely טהורה¹³, against this חזקת איסור?! To which תוספות responds in his conclusion:

וגם ביזה לטבול –

And concerning the completion of her טהרה – she is certainly capable of being טובלת in a מקוה, and as was stated earlier, that when it is בידו, then an ע"א is believed even against a חזקת איסור.

SUMMARY

The proof that באיסורין נאמן ע"א, in a situation similar to a שליח הגט who is testifying that it was written לשמה, can be derived from the fact that people are נאמן on חלב and ניקור הגיד. For in those two instances there is no חזקת איסור on this meat that it is either חלב or גיד הנשה. The fact that people are believed for הפרשת תרומה and שחיטה is irrelevant to our discussion here, since in both those cases there is a חזקת איסור, and the reason the ע"א is נאמן, is only

¹¹ נדה is טמא for only seven days after the onset of seeing דם, provided she stopped seeing דם before the seventh day passed.

¹² תוספות does not mean that after she ceases seeing דם she is a טהרה after the seven days; for she does not become טהורה unless she is טובלת in a מקוה. Rather, the intent of תוספות is, that this limitation that seeing דם places upon her, namely that during this time that she sees דם, she cannot do anything (טבילה) to become טהורה (she is בחזקת איסור), this limitation ceases to exist automatically, without her having to do anything, once she stops seeing דם after seven days, and she has no more this חזקת איסור.

¹³ We believe her that she is not seeing דם and seven days passed, because that is not in contradiction to any חזקה, but that does not make her completely טהורה, until she is טובלת.

because it is בידו. This cannot apply to our case of שליח הגט, where it is definitely not בידו to write the גט לשמה.

The נאמנות of בידו is not limited to a situation where it is only presently בידו; it applies even if it was בידו in the past. This explains why people are נאמן to state that this meat is שחוטתה, since in the past they were capable of either themselves being שוחט the animal properly or hiring others to be שוחט properly.

We derive the rule of נאמן באיסורין ע"א נדה, from the פסוק concerning a [זבה] (נדה), which says וספרה לה, that the woman can count by herself and tell us when she is a טהורה, we see from here that even one person is believed to testify that there is no איסור.

We cannot assume that since by a נדה she was בחזקת איסור once she saw דם, therefore the fact that she is believed to say she is a טהורה, proves that an ע"א is נאמן even against a חזקת איסור. This is incorrect for the חזקת איסור by a נדה is a חזקה that will automatically become nullified as soon as she ceases to see דם, which is the natural state of affairs, therefore her testimony that she is no longer seeing דם, is not contradicting any חזקה; and we subsequently believe her that she was טובל, even though she is still בחזקת איסור נדה (even after seven days), because in regards to טבילה, it is obviously בידה.

THINKING IT OVER

1. Why is בידו believed even if איתחזק איסורא?¹⁴ Is it because בידו removes the נאמנות איסורא?¹⁵ or because בידו is a special נאמנות איסורא?
2. How shall we explain the difference between the בידו of a שוחט in the past, to the בידה of a woman concerning שחיטה?¹⁶
3. How can we derive נאמן באיסורין ע"א נדה, perhaps by נדה she is believed because it is הפה שאסר הפה שהתיר (she had the option of not informing anyone that she is a נדה)?¹⁷

¹⁴ See footnote # 4.

¹⁵ See נה"מ

¹⁶ See אמ"ה # 152.

¹⁷ See נה"מ # 166 and אמ"ה.