

But rather,
אלא הכא בדבריה קא מיפלגי -
here they are in a dispute concerning s'רבה reasoning.

OVERVIEW

The גמרא is discussing the ruling of רב"י that טענת עצמו על שבועה נשבע על טענת עצמו. It is not clear what is meant by טענת עצמו. It cannot mean actually עצמו without a תובע, for then he would be פטור from a שבועה since he is a משיב אבידה. Originally רב answered that טענת עצמו refers to קטן. The גמרא argued that by טוענו קטן there is no שבועה. The גמרא answered that when רב said טוענו קטן he meant a גדול who is considered a קטן. The גמרא challenged this interpretation as well; if it is טוענו גדול then why is it considered a טענת עצמו; there is a תובע. At this point the גמרא answered אלא בדבריה קא מיפלגי. It is not yet clear, however, what is meant by טענת עצמו. Is it a תוספות and רש"י מחלוקת between רש"י and רש"י? This is the מחלוקת between רש"י and רש"י, as our תוספות will explain.

The אין נשבעין על טענת ח"ש וקטן וכו' אבל נשבעין לקטן states in משנה¹ that טענת עצמו resolves² the apparent contradiction in the משנה; that אין נשבעין לקטן refers to a קטן who is בטענת אביו. Here too there is the same מחלוקת between רש"י and רש"י, what is the meaning of בטענת אביו.

פירש בקונטרס³ לעולם בטוענו קטן ודקא קשיא לך הא אין נשבעין על טענת קטן -
explained: indeed the claimant was a minor; and that which you had difficulty with, namely that if the claimant is a minor how can there be an oath; for there is no requirement to take an oath against a minor's claim;⁴ the answer to that difficulty is –

הני מילי בבא בטענת עצמו אבל בבא בטענת אביו טענה חשובה היא -
This rule that אין נשבעין על טענת קטן applies (only) when the קטן is coming with his own claim; however when the קטן is coming with his father's claim, then it is considered a respectable claim and a שבועה is required⁵ in order to rebut it. It is nevertheless considered טענת עצמו, since the תובע is (merely) a קטן.

anticipates a possible difficulty with this interpretation. Once we assume that we are discussing a קטן הבא בטענת אביו, why does the גמרא continue? It seems we understand

¹ לח,ב (בסוף המשנה).

² שם מ"ב,א.

³ בד"ה אלא.

⁴ See (end of) לח,ב (משנה שבועות לח,ב).

⁵ שבועה מחייב קטן is then the בא בטענת אביו קטן (see 'Overview') that רש"י understands s'רבה's explanation.

explains (according to רש"י) that it is necessary for the גמרא to continue; otherwise a question remains:

וכי תימא מאי טעמייהו דרבנן -

And if you will ask; what is the reason of the רבנן who maintain that he is not required to swear –

דאין סברא לומר דסברי דאף בבא בטענת אביו לית ביה ממשא -

For it is not logical to assume that the רבנן maintain that (even) when the comes with his father's claim, his claim is worthless. It is assumed that the רבנן also agree that קטן הבא בטענת אביו is considered a טענה חשובה, and should require a שבועה if necessary.⁶ Why do the חכמים argue and maintain that a שבועה is not required? Therefore the גמרא concludes (according to רש"י) –

אלא בדרכה קמיפלגי -

But rather the רבנן and ראב"י disagree in the ramification of רבה's explanation.⁷ This concludes citation and interpretation of רש"י's explanation.

The apparent difficulty with רש"י's explanation is that the גמרא originally refuted the idea that טענת עצמו is referring to טענת קטן and maintained that טענת עצמו is גדול (which was subsequently challenged). If the גמרא intends to restore the original interpretation of טענת עצמו, the גמרא should have said 'אלא לעולם דטענו קטן'; and go on to explain that since he is בא בטענת אביו, therefore it is a טענה חשובה. However the גמרא makes no mention of it. רש"י, nevertheless, interpreted the גמרא in this manner, despite the apparent difficulty with this explanation.

ונראה דמשום דקרי ליה טענת עצמו דחקו להעמיד בטוענו קטן -

And it appears that ראב"י was forced to interpret the מחלוקת between ראב"י and the רבנן by a טוענו קטן since the ברייתא refers to it as a טענת עצמו. A טענת עצמו cannot mean an actual טענת עצמו for then he is a משיב אבידה. It cannot refer to a טוענו גדול, since that is not טענת עצמו. The only option left open is טוענו קטן in a case where he is בא בטענת אביו.

רש"י's interpretation, however, rejects רש"י's interpretation:

אבל קשה דעיקר התירוץ חסר מן הספר -

However it is difficult to accept this interpretation; for the essence of the answer (that it is a case of טוענו קטן, and since he is בא בטענת אביו it is a טענה חשובה) is lacking in the text. The גמרא makes no mention of these ideas which רש"י is inserting into the תירוץ.

בא who is טוענו קטן asserts רש"י's (which challenges the גמרא's) additional question:

⁶ See 'Thinking it over' # 1.

⁷ The רבנן maintain that even though קטן בבא בטענת אביו, generally (שבועת השומרים); however here (by a מודה במקצת) the ליה is a משיב אבידה; for he has a מיגו of הכל, since מעיז בבנו מעיז.

(שבועה a מחייב can be בטענת אביו):

ועוד דבהגוזל קמא (בבא קמא דף קו, ב ושם) ממעטינן נתנו כשהוא קטן ותבעו כשהוא גדול -
And furthermore in בבא קמא דף קו, ב ושם there is a ברייתא which excludes the
requirement for שבועה השומרים in a case where the object was given to the
owner when the owner was a minor, and the owner demanded it back when
the owner was an adult.⁸ In this situation the שומר is not liable to take the oath of the
 שומרים (if he claims נאנסה, etc.) -

עד שתהא תביעה ונתינה שוין בגדלות -

Unless the claim and the giving are equal that it was done by adults. This
 concludes the citation from the גמרא in ב"ק in תוספות continues –

והוא הדין דמהאי קרא ממעט נתנו כשהוא גדול ותבעו כשהוא קטן -

And the same ruling applies; that from this פסוק we exclude the
שומר from a שבועה in a case where the owner gave it to the שומר when the
owner was a גדול and claimed it when the owner was a קטן.⁹ קטן will now
 explain what is meant by נתנו כשהוא גדול ותבעו כשהוא קטן –

דהיינו כגון שנתן לו אביו ותבעו בקטנות -

This is for instance in a case where the father gave the object to the שומר
(ותבעו כשהוא) קטן (נתנו כשהוא גדול) and the claim was made by the son who is a
קטן. In this case the same מיעוט should apply; there is no חיוב שבועה since there is no גדול,
 both by the נתינה and the תביעה. This repudiates רש"י's position that if he is a
 קטן הבא בטענת אביו a שבועה is required. From the גמרא in ב"ק it seems that even in this case, a שבועה is not
 required.¹⁰

ונראה דהכי פירושא לעולם בגדול מיירי -

And it appears to תוספות that this is the explanation of the גמרא. Indeed we
are discussing a case where the תובע is a גדול; as we were discussing until now –

אלא לא תימא דקרי ליה טענת עצמו משום דהודאת עצמו היא -

However, you should not assume that it is called 'his own claim',
because it is based on his own admission; that is not so, as the גמרא previously
 stated. Every שבועה of חיוב שבועה is based on הודאת עצמו.

אלא בדרכה קמיפלגי ולרבנן דבבנו מעיז טענת עצמו היא -

But rather the reason it is considered טענת עצמו even though there is a claim
(from an adult) against him, is because רבנן are arguing about רבה.

⁸ The ברייתא there derives it from the two פסוקים of כי יתן איש (in כב, ו ושם), which excludes a קטן,
 and יבא דבר שניהם (פסוק ה) which indicates (as רש"י explains there) that the giving and claiming are
 compared that in both instances the owner must be a עי"ש גדול.

⁹ The same דיקא (mentioned in the previous footnote # 8) which requires that the נתינה (and תביעה) be as a
 גדול (seemingly) requires that both the נתינה and the תביעה be as a גדול. (See מהר"ם שי"ף.)

¹⁰ שבועה a מחייב he is בבא בטענת אביו that (שבועות) answer of רב"ש will explain shortly his interpretation of תוספות.

Therefore **according to the רבנן** who maintain that **when the son** is making the claim, then the defendant **is brazen** enough to entirely deny the claim; that is why it is considered a **טענת עצמו**. The claim of the son is very weak since the לוי can (easily) deny it and would be פטור. The fact that the לוי admits (partially) to the claim of the son, renders it a **טענת עצמו**. The טענה of the son has no strength without the admission of the לוי.

anticipates a difficulty. The reason it is considered a **טענת עצמו** (לרבנן) is because the רבנן maintain that בבנו מעיז. However according to ר"א that (even) בבנו אינו מעיז, it is not considered a **טענת עצמו**. Why then does ר"א state in the ברייתא that פעמים שאדם נשבע? responds: תוספות! **טענת עצמו** it is not a **טענת עצמו** when according to ר"א, על טענת עצמו

והכי קאמר רבי אלעזר בן יעקב פעמים שאדם נשבע -

And this is what ר"א stated; that occasionally a person will swear –

על מה שאתם מחשיבים טענת עצמו -

on a case which you (the רבנן) consider a טענת עצמו (since you maintain that בבנו מעיז) –

אבל לדידי דאינו מעיז טענת אחרים היא -

However according to me that a person is not מעיז (even) by a son, this type of claim is considered a **claim** made by **others** and not a **טענת עצמו**; therefore I maintain that in such a case he is obligated to swear.¹¹

anticipates a difficulty and forewarns it.

ובסוף שבועת הדיינין (שבועות מב,א ושם) דתנן אבל נשבעין לקטן -

And in the end of שבועת הדיינין פרק משנה stated, 'however there is a requirement to swear against a claim of a קטן –

ומפרש בבא בטענת אביו ורבי אלעזר בן יעקב היא -

And רב explains the משנה that it is a case where the קטן is **בא בטענת אביו** and that **משנה follows** the view of **ר"א**. This concludes the citation from שבועות. It would seem from that גמרא that ר"א is discussing a case of a קטן (as רש"י interprets it) and he is מחייב a שבועה if he is **בא בטענת אביו**. This contradicts what תוספות maintains that ר"א is discussing the case of a גדול; however by a קטן even if he is **בא בטענת אביו**, he is not מחייב a שבועה (as the גמרא in ב"ק indicates).

explains:

ההוא קטן נמי לאו דווקא אלא גדול וקרי ליה קטן משום דלגבי מילי דאבונה קטן הוא -

The גדול of that משנה is also not specifically a regular קטן, but rather a גדול.

¹¹ According to רש"י both ר"א and the רבנן agree that טוענו קטן is considered **טענת עצמו**. The גמרא cites in order to explain that the חכמים disagree with ר"א, since the לוי has a מגו. However according to תוספות the argument between ר"א and רבנן is whether this case (of בנו גדול) is considered a **טענת עצמו**; depending if בבנו מעיז or not. The purpose of citing כדרכה is to explain why it is a **טענת עצמו** (according to the חכמים). All would seemingly agree, however, that בטענת עצמו there is no חיוב שבועה.

The משנה refers to him as a קטן because concerning the affairs of his father he is considered a קטן –

כדמפרש הכא -

As the גמרא explained here previously when we stated that טענת עצמו is not בטוענו קטן but rather בטוענו גדול.

תוספות points to a difficulty with his interpretation:

וקשה קצת דהוה ליה לאקשוייה ולשנויי אמתניתין דהתם כמו שמקשה על רב -

And there is a slight difficulty, for the גמרא should have asked on that משנה and answered in the same manner as it asked on רב ([t]here). The משנה there stated אין נשבעין לקטן. The גמרא asks that the משנה stated previously על נשבעין לקטן. The simple explanation of רב is that בבא בטענת אביו וראב"י היא answered that רב. טענת ח"ש וקטן [as רש"י maintains]. (ראב"י) according to טענת קטן we are נשבע on a טענת אביו. However according to תוספות who argues and maintains that we are never נשבע על טענת אביו, we are forced to interpret what רב said בבא בטענת אביו means a גדול. The question arises, that the משנה stated נשבעין לקטן, not לגדול הבא בטענת אביו. The גמרא there should have asked this question on the משנה; and answered that the משנה really meant a גדול, however, ¹² When רב interpreted רב"י to mean a גדול, ואמאי קרי ליה קטן דלגבי מילי דאביו קטן הוא, the גמרא challenged his statement until we answered that when רב said קטן he meant גדול. Why was not the same discussion centered on the משנה?! One cannot answer that the גמרא there does ask the question and gives the answer -

דבהיה שמעתא גופה לא מקשה על המשנה אלא על רב:

For in that גמרא itself it does not ask the question on the משנה (how can the משנה state נשבעין לקטן); **but rather** the question was addressed (only) **to רב**. The גמרא there only challenged רב's interpretation of רב"י; but not the interpretation of the משנה. ¹³ The question remains why did not the גמרא ask directly on the משנה?!

SUMMARY

תוספות disagrees. שבועה a מחייב is קטן הבא בטענת אביו רש"י maintains that a רש"י therefore maintains that טענת עצמו is a קטן and it is considered טענת עצמו since he is a קטן, while תוספות maintains that טענת עצמו is a גדול and it is considered a (לרבנן) בטענת אביו.

THINKING IT OVER

¹² See מהרש"ל (see, however, אליהו רבה).

¹³ It may be possible that it is only a קשה, since it is רב who interprets the משנה בבא בטענת אביו. It is also רב who interprets רב"י. The גמרא may have regarded it as a duplicity to repeat the questions twice; once on טענת רב's interpretation of the משנה and again on his interpretation of רב"י. Once we asked and explained טענת רב's interpretation of רב"י it is self understood that it applies to the משנה as well.

1. אין סברא לומר דסברי דאף בבא בטענת אביו לית ביה ממשא¹⁴ says that seemingly תוספות could have said that if the רבנן maintain that לית טענת קטן לית ביה משא, then why do they say that he is not required to swear for he is a משיב אבידה, they could have simply said קטן על טענת קטן?!

2. What are the relative advantages (and disadvantages) of רש"י's and תוספות interpretations?

¹⁴ See footnote #6.