

חזקה אין אדם מעיז פניו –

There is a presumption that a person is not brazen faced

OVERVIEW

states that there is a חזקה (בפני בעל חובו) that a person is not brazen faced. It is not clear what this חזקה is based on. Why do we indeed assume that א"מ? Our first cites רש"י's explanation, refutes it, and then offers his explanation(s).

לא כמו שפירש הקונטרס בהגוזל¹ (בבא קמא דף קז,א) דאין אדם מעיז -

– מעיז a person is not brazen faced explained it in פרק הגוזל רש"י

לפי שעשה לו טובה שהלוהו אבל בפקדון מעיז -

since the מלוה did him a favor, that he lent him money; however by a deposit the watchman is מעיז. The depositor did no favor to the watchman; on the contrary the watchman is doing the depositor a favor, therefore the watchman can be מעיז without reservations.

רש"י disagrees with תוספות:

דאם כן בפקדון מודה מקצת נמי יהא פטור במגו דאי בעי כופר הכל -

For if this is true (that by a פקדון the שומר is מעיז) then it should follow that a מגו that he could have been a כופר הכל. If the שומר would be כופר הכל he would be פטור from a שבועה, for he has a מגו that he could have been a כופר הכל. If the שומר would be כופר הכל he would be פטור from a שבועה (according to תוספות, even if he is מעיז);² he should therefore also be פטור משבועה when he is a מוב"מ by a פקדון. In the case of a מלוה, the לווה has no מגו of כ"כ, since א"מ (he could not have [as easily] been a כ"כ); however by a פקדון, where the שומר can be מעיז (according to רש"י), he should be פטור משבועה with the מגו of כ"כ.

מחוייב שבועה is פקדון a מוב"מ will now prove that a תוספות:

ובכל דוכתא משמע דמודה מקצת חייב בפקדון -

And in all places it seems that a מוב"מ in a פקדון is חייב a שבועה. תוספות offers some examples –

גבי עשר גפנות טעונות מסרתי לך כולי³ (שבועות דף מב,ב) דמשמע דאירי בפקדון -

¹ בד"ה כדרבה וד"ה אבל.

² See previous מפני ד"ה תוספות that a כופר הכל is always פטור משבועה even when he is מעיז. [However רש"י maintains in ב"ק that by a פקדון where he is not מעיז, a שבועה is required (even) for a כופר הכל. See אות 10] כה ואילך בשיטות רש"י ותוספות

³ The נפקד claimed that he received only five. There is a מחלוקת whether the נפקד is required to swear; depending whether the grapes are considered לקרקע מחובר (which is פטור משבועה). However if it would not be considered לקרקע מחובר then the נפקד would be מחוייב שבועה even though it is a פקדון; not a הלואה.

Concerning the case where the plaintiff claimed ‘I have delivered to you ten laden grapevines, etc. It seems⁴ there that the משנה is discussing a situation and there is a חיוב שבועה –

offers an additional example –

וגבי סלע הלוייתי עליו ושתים היה שוה (שם מג,א) -

And concerning the case where the לווה claims to the מלוה ‘you lent me a סלע for the collateral that I deposited by you which you subsequently lost, and the collateral was worth two סלעים, and therefore you owe me a סלע’, etc.⁵ The מלוה is required to swear a שבועת מוב"מ to the לווה; even though the לווה did him no favor.

gives one final example:

וגבי מציאה נמי אמרינן בהניזקין⁶ (גיטין נא,א ושם) דמודה מקצת חייב ולא מהימן במגו -

And concerning the finding of a lost article, the גמרא also states in פרק מגו of the מ"מ that a מוב"מ is obligated to swear and he is not believed with a מגו of כוה"כ, even though that by a מציאה the owner did no favor to the finder.

cited three examples of מוב"מ where there is a חיוב שבועה even though no favor was done to the נשבע. According to רש"י, they should have been משבועה; since they have a מגו of הכל is כופר. The reason a מוב"מ is not believed with the מגו of כוה"כ is because אא"מ is not believed with the מגו of כוה"כ; the מעיז of חזקה is not dependent whether a favor was granted, and in all cases a person is to be מעיז. Therefore, a מוב"מ does not have the מגו that he could have been כוה"כ.

will now give his explanation why אא"מ:

אלא אומר רבינו תם דהיינו כגון החזקה שאין האשה מעיזה פניה בפני בעלה⁷ -

Rather, the ר"ת says that the חזקה of אא"מ is similar to the חזקה that a

⁴ is dismissing the possibility that the משנה is discussing a loan situation where the מלוה lent the לווה ten [five] גפנים טעונות to harvest, which the לווה will be obligated to repay at a later date.

⁵ The מלוה claimed that the משכון was worth a סלע and a half; thereby admitting that he owes the לווה (only) half a סלע which makes the מלוה a מוב"מ.

⁶ is referring to the [בריייתא] (גמרא) which states that if the owner claims that I saw you pick up the two wallets which were tied together, and the finder claims that he picked up only one, the finder is obligated to swear a שבועת מוב"מ. See previous תוספות ד"ה וראב"י (footnotes # 9 & 10). The previous is based on the מקום given. However it may be that תוספות is referring to the משנה that המוציא מציאה לא ישבע מפני העולם. According to רש"י, there should be no שבועה at all since there is a מגו of כוה"כ, for by מציאה the finder is definitely מעיז; the owner did no favor to the finder.

⁷ This חזקה is utilized in a case where the woman claims in the presence of her husband that he divorced her. The woman is believed, for if she were still married she would not have the העזה to claim that she is divorced, since אין האשה מעיזה פניה בפני בעלה.

woman can not brazenly lie in the presence of her husband. It is not because the husband bestowed favors on her; but rather this is the nature of things –

שאין לאדם פנים לכפור הכל -

That a person cannot put up ‘a face’ to deny everything. The חזקה of אא"מ, therefore, applies in all situations (even) including פקדון and מציאה.

תוספות offers a (slightly) different explanation:

ורבינו יצחק בן אשר⁸ פירש אין אדם מעיז היכא שחבירו מכיר בשקרו ואין להאריך:

And the ריב"א explained that a person is not מעיז when his litigant is aware of his lie. And it is not necessary to elaborate.⁹

SUMMARY

רש"י maintains that אא"מ since he received a favor. תוספות rejects this; for it would follow that a מוב"מ בפקדון should be פטור משבועה. The גמרא states that a מחוייב לישבע is מוב"מ בפקדון.

תוספות explains that אא"מ either because he does not have the פנים to be כופר הכל; or he is not מעיז when the other realizes that he is lying.

THINKING IT OVER

1. What is the difference between the explanations¹⁰ of the ר"ת and the ריב"א?¹¹

2. It would seem that according to the ר"ת the idea of חבירו מכיר בשקרו is not relevant to the סברא of אא"מ;¹² why therefore do the רבנן maintain that בבנו מעיז,¹³ since לאדם פנים לכפור הכל?

⁸ See footnote # 6. תוספות יד, א ד"ה אלמנת.

⁹ See 'Thinking it over'.

¹⁰ See footnote # 9.

¹¹ See סוכ"ד אות לב וח"ב אות רטז.

¹² That is the סברא of the ריב"א.

¹³ See (also) משכנות הרועים אות קכח.