### – ואין אדם משים עצמו רשע

# And a person cannot commit himself as being wicked.

#### **OVERVIEW**

עדים taught that (even in a case where רבי בר חמא (אין כת"י יוצא ממק"א they are not believed to be פוסל פוסל פוסל שטר they are not believed to be דוא אנוסים היינו מחמת ממון they are not believed to אנוסים אנוסים. The reason that we do not accept their testimony that they were אנוסים is because it is forbidden to sign on a שטר on account of an אונס ממון אונס ממון השער האונס ממון make him a אונס מחמת ממון השער. The fact that a person is considered a relative to himself prevents us from accepting any testimony affecting his status (except for an admission of owing money). We cannot therefore accept the testimony that they were אנוסים מחמת ממון אנוסים היינו מחמת נפשות אונס נפשות אנוסים היינו מחמת ונפשות where they are not testifying in regards to their status (there is no שבירה if one signed שטר), they are believed to be שטר they were שטר שטר (for there is a הפה שאסר).

The statement of אנוסים היינו מחמת ממון is (seemingly) composed of two parts; first, that they were forced to sign the שטר (meaning that they did not see any loan taking place, and therefore their signatures are meaningless [this alone can be an acceptable testimony (if it was מחמת נפשות)]), and second, that the coercion was monetary in nature [this is not an acceptable testimony for א"א [מע"ר].

There are other cases where an עד testifies in a manner that is seemingly (partially) unacceptable (similar to our case), however we divide this (unacceptable) testimony into two, and accept only the valid part, and reinterpret the invalid part to allow the testimony. The resultant testimony is then accepted. This is known as פּלגינן דיבורא. We divide the testimony. Seemingly in our situation the idea of פּלגינן דיבורא can (also) be applied. However it is not. חוספות will differentiate our case from those cases where we do say פּלגינן דיבורא.

asks: תוספות

- ואם תאמר והא קסבר רבא פלגינן דיבורא בפרק קמא דסנהדרין (דף ט,ב ושם) And if you will say; but רבא maintains in the first סנהדרין of טנהדרין that we divide his statement. This was said by רבא -

גבי פלוני רבעני לרצוני –

Regarding the cases where one testified 'that person sodomized me with my consent'; the law is that he can team up with another עם and have this perpetrator put to death for משכב זכר. We split his statement. We accept his testimony that sodomy was performed by the alleged perpetrator but not with the accuser. We cannot accept his testimony that he preformed sodomy willingly, for אין אדם משים עצמו רשע. A similar ruling applies when he testifies -

#### ופלוני בא על אשתי –

Or 'that person came upon my wife'. The ruling is that together with another supporting עד, the accused will be killed for איסור אשת איש; however the wife of the accuser will not be killed even if he testified that she consented. The reason is that he is a relative to his wife and a relative cannot testify. There too, we split his testimony. We accept his עדות concerning the adulterer, that the man committed adultery, but not concerning his wife. This is called פּלגינן דיבורא. We accept that part of the testimony which is acceptable. תוספות continues with the question:

אם כן הכא נהימנו דאנוסים היו אבל לא מחמת ממון אלא מחמת נפשות – If this is so that פלגינן דיבורא, then here too let us believe them that they were coerced to sign the שטר (which is an acceptable testimony), however it was not for monetary reasons as they testified (which is an unacceptable testimony since they are משים עצמם רשעים) but rather on account of saving their lives (which is an acceptable testimony).

We cannot argue that our גמרא does not subscribe to -3 דיבורא

#### - ⁴דאליבא דרבא קיימא

For we are following the view of אבר! He is the one who maintains פלגינן דיבורא. פלגינן דיבורא is asking why by פלוני רבעני לרצוני שאוch is an unacceptable testimony, for he is משים by saying פלוני רבע הפעני אוני אוני הפעני פלוני רבע פלוני רבע פלוני רבע לפלוני (and we reinterpret אנוסים היינו מחמת ממון to mean אנוסים היינו מחמת ממון משים עצמם רשעים. The same should be here where they testify (מחמת ממון מחמת ממון by saying משים עצמם רשעים by saying מחמת נפשות as we did by מחמת נפשות ממון מחמת ממון מחמת ממון מחמת ממון הפעני לרצוני אנוסים היינו שטר שור פלוני רבעני לרצוני שטר שטר . The שטר would then be

#### מוספות answers:

ויש לומר כיון דקיום שטרות מדרבנן לא פלגינן דיבורא כדי לפסול את השטר 5-

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<sup>&</sup>lt;sup>1</sup> If the accuser testifies that he was coerced into sodomy then all agree that he is believed. There is no need for פלגינן דיבורא. [A victim can be an ע.]

 $<sup>^2</sup>$  See תוספות there ד"ה ואין.

<sup>&</sup>lt;sup>3</sup> See 'Thinking it over' # 1.

 $<sup>^4</sup>$  רבא challenged the initial understanding of רבא; presumably רבא agrees with the conclusive understanding of that אין כת"י יוצא ממק"א is not believed even if אין כת"י יוצא ממק"א.

 $<sup>^{5}</sup>$  אנוסים אדאורייתא the עדים would not be believed to be פוסל the שטר even if they said אנוסים, because since there is no need for מדרבנן, there is no מיגו (it is as if ( ממק"א (כת"י יוצא ממק"א). It is only מדרבנן who require

And one can say since the necessity to authenticate documents is a rabbinic enactment; עדים החתומים על השטר נעשה כמי שנחקרה עדותן we assume that עדים החתומים על השטר נעשה כמי שנחקרה עדותן is required. Therefore, since this קיום מן התורה we do not divide their statement in order to invalidate the שטר. The testimony of these עדים, as given, is unacceptable since א"א מע"ר. The שטר is אווים מן התורה מן התורה מן התורה to invalidate this פלגינן דיבורא to invalidate this קיום.

חוספות offers another answer:

ועוד דאין לנו לומר מעצמינו דאנוסים היו מחמת נפשות –

And furthermore our case of אנוסים היינו is different than פלוני רבעני for we cannot claim on our own that they were forced under a death threat –

- אונס מחמת נפשות לא שכיח כדפרישית האונס

For it is uncommon to coerce witnesses to sign a loan document with a death threat, as I previously explained -

אבל התם שכיח שבא על אשת איש אחרת כמו שבא על אשתו או שרבעו<sup>8</sup> אדם אחר אבל התם שכיח שבא על אשתי איש אחרת כמו שבא על אשתי it is just as common that the alleged perpetrator came upon another man's wife just as he came upon his wife, or that he sodomized another person not the accuser. תוספות answer is that we can say לגינן דיבורא only when the reinterpreted version is as likely a the original (as in מס' סנהדרין). If however the reinterpreted version is highly unlikely (as in our פלגינן דיבורא we do not say אמרא) we do not say דיבורא אונון אונו

חוספות offers yet another solution:

- אי נמי שאני הכא דמחמת ממון או מחמת נפשות הוי פירושא דאנוסים היינו it is different than there אוסים אוסים דיינו

that they are believed if they say מחמת נפשות (because of the הפה שאסר); however the איום will not be effective if we require the additional פלגינן או מיינון as well.

<sup>&</sup>lt;sup>6</sup> This answer may be more readily understood if we assume that הרי אלו נאמנים means merely that the הרי is not מקוים [but not that it is destroyed, see חוד"ה הרי footnote # 1]. The הכמים did not institute a פ"ד since even if they are believed it will merely be a שטר without קיום, which is כשר מה"ת. See "כשר מה"ת.

<sup>&</sup>lt;sup>7</sup> See previous תוספות ד"ה מחמת (by footnote # 5).

<sup>&</sup>lt;sup>8</sup> The ש"ש is 'אונס' (not ושרבעו (not לרצוני). The פלגינן is not that it was לאונסי (instead of לרצוני), but rather that he was another person; not the עד אונסי. See footnote # 10.

 $<sup>^9</sup>$  The אמרא גמרא there infers from the משנה that if a person claims 'I killed him', the wife of the alleged victim is permitted to remarry. In that case there is also the issue of א"א מע"ר and nevertheless we permit her to marry only on the basis of פלגינן דיבורא

by 'פלוני רבעני וכו', for their statement of 'on account of money' or on account of a death threat'; these phrases are the explanation of 'we were forced'. It is not a separate statement; it is a necessary qualifier to explain how they were coerced –

הלכך לא פלגינן דיבורא –

Therefore we cannot divide their statement; for there is only one statement –
- ייבור בפני עצמויי

However, the addendum of 'willfully' (which makes him a פלוני רבעני by, or 'came upon his wife' by פלוני בא על אשתו, these phrases are considered a separate statement not intrinsically tied with the initial statements. Therefore (only) in those situations (do) we say פלגינן דיבורא.

חוספות offers a final distinction between the cases:

אי נמי<sup>12</sup> הכא עיקר עדות הוא במה שאומרים אנוסים היינו – If you wish you may also say that here the main testimony consists in their saying that –

היינו שבאו לומר שלא ראו המלוה –

Which means, that they came to testify that they did not see the loan take place –

אם כן מיד עושים עצמם רשעים כיון שחתמו אם לא יעשו פירוש לדבריהם – If this is so that they are testifying that we signed a document illegally they immediately commit themselves as being רשנים, since they signed on a document without knowing whether it is true, unless they interpret their actions (that they signed it because they were אנוסים מחמת נפשות) –

הלכך לא שייך הכא פלגינן דיבורא –

Therefore the concept of פלגינן דיבורא dos not apply here, since in the main thrust of their testimony they become רשעים -

אבל ההיא דהרגתיו<sup>13</sup> עיקר עדות הוא לומר שנהרג להשיא את אשתו - However, by that case of 'הרגתיו' the main thrust of the testimony is to testify that the husband was killed (not who killed him), in order to enable his wife to remarry –

וכן פלוני רבעו או בא על אשתו עיקר עדות להרוג פלוני –

And similarly in the cases of פלוני רבעו or בא על אשתו the main thrust of the

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<sup>&</sup>lt;sup>10</sup> According to the גירסא of the ש"ש (see footnote # 8) תוספות should not have said 'לרצונו', but rather 'שרבעו'.

<sup>&</sup>lt;sup>11</sup> The claim of אנוסים requires a qualifier intrinsically. How did the פלגינן take place? We are not פלגינן an intrinsic qualifier. The claim of בעילה does not require an intrinsic qualifier. The act of בעילה, or בעילה an א"א, is sufficient grounds for היוב מיתה. The qualifier is merely completing a statement.

<sup>&</sup>lt;sup>12</sup> See 'Thinking it over' # 2.

<sup>&</sup>lt;sup>13</sup> asks first from 'הרגחיו' for that seems most similar to אנוסים. He begins by saying 'I killed him'.

testimony is to kill him; in the main thrust there is no משים עצמו רשע –

:הלכך פלגינן דיבורא<sup>14</sup> ולגבי להשים עצמו רשע או לגבי אשתו לא יהא נאמן:
Therefore we divide his testimony; concerning making himself a רשע (through saying הרגתיו) or concerning his wife (that she was an adulteress) he will not be believed and we are פלגינן דיבורא.

## **SUMMARY**

תוספות offers four criteria for accepting or rejecting תוספות.

- a) If it does not go against a דאורייתא, but not if it is against a דאורייתא.
- b) If the שכיה is ישכיה, not if it is not שכיה.
- c) If the unacceptable statement is not integral, but not if it is integral
- d) If the thrust is acceptable, but not if it is unacceptable.

### **THINKING IT OVER**

- 1. תוספות asks that here too there should be a פלגינן דיבורא. Seemingly, there is a כת"י הוא זה אנוסים היינו של פלגינן דיבורא. We believe them that כת"י, but we do not believe them that אנוסים היינו $^{16}$
- 2. What is the difference between תוספות answer of 'א"נ שאני הכא דמחמת ממון וכו' answer of א"נ שאני הכא דמחמת ממון וכו' , and תוספות final answer עדות וכו'  $?^{18}$

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<sup>&</sup>lt;sup>14</sup> We accept his main testimony to kill the perpetrator or allow the woman to remarry; and in order that his testimony not be discredited since he also stated certain aspects which made him a ארנינן דיבורא we are פלגינן דיבורא.

<sup>&</sup>lt;sup>15</sup> See footnote # 3.

 $<sup>^{16}</sup>$  See סוכ"ד אות אות.

<sup>&</sup>lt;sup>17</sup> See footnote # 12.

<sup>&</sup>lt;sup>18</sup> See דרכי דוד.