

קטנים נמי כדרכי שמעון בן לקיש –

They can **also** not claim to be **minors**, as רשב"ל stated

OVERVIEW

The גמרא states that (according to ר"מ) the עדים are not believed to claim פסולי עדות היינו, because the מלוה is מידק דייק. They are also not believed to claim that קטנים היינו, on account of ר"ל who maintains that there is a חזקה that only adults sign on שטרות, not קטנים.¹ It seems that the reason for קטנים is different than מלוה מידק דייק.² Our תוספות will discuss if this is indeed so.

anticipates a question:

הוה מצי למימר וקטנים נמי משום דמלוה גופיה מידק דייק -

The גמרא **could have explained** that the reason they cannot claim that they were קטנים is **also because the מלוה himself is very meticulous** to sign only proper witnesses. He will not permit minors to sign, just as he will not permit פסולי עדות to sign. The תוספות is asking that it was not necessary to give a different answer by קטנים. The גמרא could have given the same explanation by קטנים as it gave by פסולי עדות.

replies:

אלא דניחא ליה למינקט בכל חד טעמא אחרינא³ -

However it was preferable for the גמרא **to point out in each case a different reason** why they are not believed.

offers another answer:

אי נמי טעמא דריש לקיש גופא נמי משום דמלוה מידק דייק⁴ -

If you wish we can also answer, the reason for the חזקה of ר"ל itself, is also because the מלוה is very careful. There are no two reasons; it is the same reason.

¹ ר"ל actually states that the עדים do not sign on a שטר, unless the parties (i.e. מלוה ליה) are גדולים. We may also extend this logic that the עדים will not sign unless they are גדולים. See (however) footnote # 2. See רעק"א who questions this logic.

² Perhaps the חזקה concerning קטנים is based on the reality that children are not readily available in situations where שטרות are written. Usually only adults are present. See ר"י משכנות הרועים אות ר"י.

³ If the reason is the same in all cases, why mention all of the cases; one would be sufficient. This indicates that the תנא is teaching us that there are various different reasons for the different cases. It is possible that sometimes when one reason (מלוה מדיק דייק) is not applicable (if for instance they signed in the presence of the ליה only, and the מלוה was not there); then in that case we can employ the other reason (of רשב"ל).

⁴ According to this answer we will not accept the logic and arguments of footnotes # 2&3. [The reason the גמרא finds it necessary to cite ר"ל concerning קטנים, is perhaps it is more difficult to distinguish certain (mature) קטנים from גדולים, than to know who the פסולי עדות are. The גמרא therefore cites ר"ל as a support.]

The מלוה is מידק דייק; therefore no פסולי עדים and no קטנים sign on a שטר.

It would seem that according to this view ר"ל does not mean that only קטנים do not sign on a שטר, but rather that פסולי עדים and קטנים do not sign on a שטר. The question arises –

והא דלא מייתי דרבי שמעון בן לקיש אפסולי עדות -

What is the reason **that** the גמרא **does not cite** רשב"ל **concerning** פסולי עדות **as well**? Instead of making an anonymous assumption that מלוה גופיה מידק דייק, it would have been better to credit this assumption to an authority like רשב"ל.

תוספות responds:

משום דריש לקיש לא הזכיר אלא קטנים בדבריו:⁵

Because ר"ל **did not mention** פסולי עדים in his statement, **but rather** he only mentioned קטנים **in his statement**. Therefore the גמרא could not have cited that ר"ל maintains that פסולי עדות do not sign on a שטר. Even though ר"ל definitely agrees to it.

SUMMARY

The חזקה of ר"ל can either be based on the reason of מלוה מידק דייק, or it can be independently valid.

THINKING IT OVER

Is there a practical difference between the two interpretations of תוספות?⁶

⁵ קטנים רשב"ל made his statement in conjunction with a case concerning קטנים.

⁶ See footnote # 3.