

A בס"ד
Intro
Today we will learn of מ"ג of בבא בתרא of דף מ"ג
Some of the topics we will learn about include.

The discussion in שמואל's Halachah of השותפין
השותפין
מעידין זה על זה
If a third party presents a claim against one partner while he occupies the field, the second partner can testify for the first partner to help him retain the field.

The Gemara's explanation in שמואל to avoid the issue of נוגעין בעדותן
The partner's testimony ought to be disqualified because he gains from his testimony, as follows:
If he still is a partner in the field, he clearly gains if the claimant does not confiscate the field.
And even if he no longer is a partner, he gains in that שמעמידה בפני בעל חובו
He makes it available to his debtor for collection in the following case:
The testifying partner took out a personal loan while they were still partners. The loan came due after he had granted his part of the field to his partner, and he has no money and no other fields from which his חוב, the debtor, can collect. Now, it depends: אם יעיד
If he testifies for his partner, the מחזיק, and he is successful in retaining the field, it turns out that he was a partner in this field at the time of the loan and the בעל חוב has a lien on half the field, which he can now collect as payment; and the testifying partner would not be considered a לוח רשע ולא ישלם
A wicked person who borrows and does not pay back;
However, אם לא יעיד
If he does not testify for his partner and the מערער is successful in confiscating the field, it turns out that he was not a partner in this field at the time of the loan and the בעל חוב does not have a lien on half the field, and cannot collect at all; and the testifying partner would be considered a לוח רשע ולא ישלם

The Braisa's Halachah of מכר לו בית
אין מעיד לו עליה
If a person sold someone a house, and a third party presents a claim on the house the seller may not testify on behalf of the buyer.
מכר לו פרה
מעיד לו עליה
If a he sold someone מטלטלין, a moveable item such as a cow, and a third party presents a claim on the item, the seller may testify on behalf of the buyer.

B ה"ב explains of the distinction between the רישא and סיפא in a case of גזל ומכר
גזל ומכר
לוי, and שמעון and then sold it to לוי, and now יהודה wants to claim it from לוי.
יאוש ושינוי רשות
are acquired by the buyer after the owner despairs of ever recovering the item together with the item's transfer from the גזלן to the new owner.
However, קרקע אינה נגזלת
Land cannot be stolen, in that the field always belongs to the owner even after יאוש ושינוי רשות

A

השותפין
מעידין זה על זה

נוגעין בעדותן

מכר לו בית
אין מעיד לו עליה

מכר לו פרה
מעיד לו עליה

B

The distinction between the רישא and סיפא in a case of גזל ומכר

יאוש ושינוי רשות

קרקע אינה נגזלת

1 So let's review ...

The Gemara in the previous Daf mentioned a statement of שמואל in which he taught three Halachos:

1.

השותפין

מחזיקין זה על זה

If two people were partners in a field and one partner worked and ate the produce for three years, the חזקה is proof that he bought out his partner, and now owns the entire field.

This was explained in the previous Daf.

2.

השותפין

מעידין זה על זה

If the previous owner presents a claim against one partner while he occupies the field, the second partner can testify for the first partner to help him retain the field.

3.

השותפין

נעשים שומרי שכר זה לזה

If two partners take turns in guarding their shared item; if it was stolen while in the possession of one, he must reimburse the other for his share as a שומר שכר, because as the Rashbam there explains;

זהו שכרו

שגם חבירו ישמור הכל

כשיעור זמן שמשמר זה עכשיו

He is considered a paid guardian by virtue of the benefit he receives from that which the other partner will also guard it for him for the same amount of time.

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1

שמואל

1

השותפין
מחזיקין זה על זה

If two people were partners in a field and one partner worked and ate the produce for 3 years, the חזקה is proof that he bought out his partner, and now owns the entire field.

2

השותפין
מעידין זה על זה

If the previous owner presents a claim against one partner while he occupies the field, the second partner can testify for the first partner to help him retain the field.

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השותפין
נעשים שומרי שכר זה לזה

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He is considered a paid guardian by virtue of the benefit he receives from that which the other partner will also guard it for him for the same amount of time.

- 2 Regarding the second Halachah
 השותפין
 מעידין זה על זה
 The Gemara asks
 אמאי
 נוגעין בעדותן הן
 Partners should be disqualified to testify for one another,
 because he gains from his testimony?
 As the רשב"ם explains
 כל זמן שלא חלקו לגמרי
 אם יטול שום מערער כלום מן השדה
 יפסידו שניהם
 As long as they did not divide up the field permanently, if
 the claimant confiscates any portion of the field, both
 partners share in the loss?

2

**השותפין
 מעידין זה על זה**

?

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 נוגעין בעדותן הן**

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 יפסידו שניהם

*As long as they did not divide up the field permanently,
 if the claimant confiscates any portion of the field,
 both partners share in the loss.*

3 The Gemara answers that שמואל refers to a case of דכתב ליה דין ודברים אין לי על שדה זו AND כשקנו מידו The testifying partner wrote a declaration that he relinquishes his part in the field; and he also finalized it with a קנין. Therefore, מעידין זה לזה His testimony is accepted, because he has no gain since he no longer owns the field.

However, the Gemara continues to ask that he still is a נוגע בעדות, because הרי מעמידה בפני בעל חובו He makes it available to his debtor for collection. As the Rashbam explains in the following case; The testifying partner took out a personal loan while they were still partners. The loan came due after he had granted his part of the field to his partner and he has no money and no other fields from which his בעל חוב, the debtor, can collect. Now, it depends:

אם יעיד If he testifies for his partner, the מחזיק, and he is successful in retaining the field, it turns out that he was a partner in this field at the time of the loan and the בעל חוב has a lien on half the field, which he can now collect as payment. Since the loan is satisfied, the testifying partner would not be considered a לוח רשע ולא ישלם A wicked person who borrows and does not pay back; However, אם לא יעיד If he does not testify for his partner and the מערער is successful in confiscating the field, it turns out that he was not a partner in this field at the time of the loan and the בעל חוב does not have a lien on half the field, and cannot collect at all. Since the loan is not satisfied, the testifying partner would be considered a לוח רשע ולא ישלם

Therefore, the Gemara asks that שותפין should be disqualified to testify for one another, because he gains from his testimony?

3 דכתב ליה דין ודברים אין לי על שדה זו AND כשקנו מידו The testifying partner wrote a declaration that he relinquishes his part in the field; and he also finalized it with a קנין. Therefore, מעידין זה לזה His testimony is accepted, because he has no gain since he no longer owns the field.

But he still is a נוגע בעדות, because הרי מעמידה בפני בעל חובו He makes it available to his debtor for collection.

As the Rashbam explains:
The testifying partner took out a personal loan while they were still partners. The loan came due after he had granted his part of the field to his partner and he has no money and no other fields from which his בעל חוב can collect. Now, it depends:

אם יעיד If he testifies for his partner - the מחזיק, and he is successful in retaining the field, it turns out that he was a partner in this field at the time of the loan and the בעל חוב has a lien on half the field, which he can now collect as payment. Since the loan is satisfied, the testifying partner would not be considered a לוח רשע ולא ישלם.

However, אם לא יעיד If he does not testify for his partner and the מערער is successful in confiscating the field, it turns out that he was not a partner in this field at the time of the loan and the בעל חוב does not have a lien on half the field, and cannot collect at all. Since the loan is not satisfied, the testifying partner would be considered a לוח רשע ולא ישלם

Therefore, the Gemara asks that שותפין should be disqualified to testify for one another, because he gains from his testimony?

4 The Gemara answers that שמואל's ruling of השותפין מעידין זה על זה Must be referring to a case of דקביל עליה אחריות The testifying partner accepted responsibility for the part he granted his partner, in that he will reimburse him in the event it is confiscated. However, as the Gemara qualifies; He only accepted responsibility for אחריות דאתיא ליה מחמתיה If it is confiscated by his personal חוב בעל, for which only he is responsible; But not for אחריות דעלמא If it is confiscated by the מרא קמא, for which they are both equally responsible;

Under these circumstances he does not gain from his testimony, because as the רשב"ם explains מומה נפשו בין יעיד בין לא יעיד בעל חוב אחד כנגדו Either way, whether or not he testifies, he will be obligated to pay one debtor, either the שותף, or the חוב, as follows: אם יעיד If he does testify and his partner retains the field, and his בעל then confiscates his part of the field from his partner, he is obligated to reimburse the partner, as per the אחריות. And אם לא יעיד If he does not testify and the מערער confiscates the field, although he is not obligated to reimburse his שותף because he did not accept אחריות for that, he is still obligated to pay his חוב בעל for the loan.

In other words, he will owe either the שותף, or the בעל חוב, and if he doesn't pay that person, he will be considered a לווה רשע ולא ישלם.

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4

referred to a case of שמואל

דקביל עליה אחריות

The testifying partner accepted responsibility for the part he granted his partner, in that he will reimburse him in the event it is confiscated.

However, as the Gemara qualifies...

<p><i>He only accepted responsibility for</i> אחריות דאתיא ליה מחמתיה <i>If it is confiscated by his personal חוב בעל, for which only he is responsible.</i></p>	<p><i>But did not accepted responsibility for</i> אחריות דעלמא <i>If it is confiscated by the מרא קמא, for which they are both equally responsible.</i></p>
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Therefore, in this case, he does not gain from his testimony,

As the רשב"ם explains
מומה נפשו
בין יעיד בין לא יעיד – בעל חוב אחד כנגדו
Either way, whether or not he testifies, he will be obligated to pay either the שותף or the חוב.

<p>אם לא יעיד <i>If he does not testify and the מערער confiscates the field, although he is not obligated to reimburse his שותף because he did not accept אחריות for that, he is still obligated to pay his חוב בעל for the loan.</i></p>	<p>אם יעיד <i>If he does testify and his partner retains the field, and his בעל then confiscates his part of the field from his partner, he is obligated to reimburse the partner, as per the אחריות.</i></p>
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In other words, he will owe either the שותף, or the חוב בעל, and if he doesn't pay that person, he will be considered a לווה רשע ולא ישלם.

5 In continuation of the discussion regarding נוגע בעדות the Gemara cites the following Braisa.

תנו רבנן מכר לו בית
מכר לו שדה
אין מעיד לו עליה
מפני שאחריותו עליו

If a person sold someone a house or a field and a third party presents a claim on the house or field, the seller cannot testify on behalf of the buyer, because he gains from his testimony, as he is responsible for the house or field.

מכר לו פרה
מכר לו טלית
מעיד לו עליה
מפני שאין אחריותו עליו

If a he sold someone מטלטלין, a moveable item such as a cow or a garment, and a third party presents a claim on the item, the seller can testify on behalf of the buyer, because he does not gain from his testimony, since he is not responsible for the item.

The Gemara asks

ומאי שנא רישא

ומאי שנא סיפא

What is the difference between the רישא and סיפא?

Regarding both;

If he did accept responsibility,

אין מעיד לו עליה

And if he did not accepted responsibility,

מעיד לו עליה

5

בריתא

מנו יבנו
מכר לו בית – מכר לו שדה
אין מעיד לו עליה
מפני שאחריותו עליו

If a person sold someone a house or a field and a third party presents a claim on the house or field, the seller cannot testify on behalf of the buyer, because he gains from his testimony, as he is responsible for the house or field.

מכר לו פרה – מכר לו טלית
מעיד לו עליה
מפני שאין אחריותו עליו

If a he sold someone מטלטלין, such as a cow or a garment, and a third party presents a claim on the item, the seller can testify on behalf of the buyer, because he does not gain from his testimony, since he is not responsible for the item.

?

ומאי שנא רישא – ומאי שנא סיפא

What is the difference between the רישא and סיפא?

Regarding both;

If he did accept responsibility,

אין מעיד לו עליה

And if he did not accepted responsibility,

מעיד לו עליה

6 רב ששט explains as follows:
 In both cases the seller was not מקבל אחריות, and the Braisa is a case of גזל ומכר
 גזל ומכר stole a field from שמעון, then sold it to לוי, and now לוי יהודה wants to claim the field from לוי;
 אין מעיד לו עליה אין מעיד לו עליה, because לוי, the לוקח, because דניחא ליה דהדרא
 He gains from his testimony, because if יהודה confiscates the field, שמעון cannot reclaim it from him, but if לוי retains the field, Shimon CAN reclaim it from him, as we will soon explain.
 And the רשב"ם adds that even if שמעון was מייאש, gave up hope of recovering the field, לוי does not acquire the field, because קרקע אינה נגזלת
 Land cannot be stolen, and the field belongs to שמעון despite his יאוש. ®

However, in the corresponding case in the סיפא regarding מטלטלין;
 מעיד לו עליה שמעון can testify for לוי, because he does not gain from his testimony, since if לוי retains the item שמעון cannot reclaim it, because לוי acquires the item through ® יאוש ושינוי רשות
 The יאוש of שמעון the owner, together with the item's transfer from ראובן the גזלן to לוי the buyer.
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6 רב ללל
 In both cases the seller was not מקבל אחריות, and the Braisa is a case of גזל ומכר
 שמעון stole a field from ראובן, then sold it to לוי, and now לוי יהודה wants to claim the field from לוי;
 אין מעיד לו עליה לוקח, לוי, cannot testify for לוי, the לוקח, because דניחא ליה דהדרא
 He gains from his testimony,
 Because if יהודה confiscates the field, שמעון cannot reclaim it from him. But if לוי retains the field, שמעון can reclaim it from him.

And the רב"ק adds:
 Even if שמעון is מייאש of recovering the field, לוי does not acquire the field, because קרקע אינה נגזלת
 Land cannot be stolen, and the field belongs to שמעון despite his יאוש.

However, in the סיפא - regarding מטלטלין;
 מעיד לו עליה לוי, שמעון can testify for לוי, because he does not gain from his testimony, since if לוי retains the item שמעון cannot reclaim it, because לוי acquires the item through יאוש ושינוי רשות
 The יאוש of שמעון the owner, together with the item's transfer from ראובן the גזלן to לוי the buyer.

7 The Gemara elaborates on the רישא as to what Shimon's testimony would be and what he would gain:
 Regarding Shimon's testimony;
 We cannot say
 דאסהיד ליה דלוי היא
 That לוי will testify that he knows that it belongs to לוי,
 because, if so,
 היכי מצי מפיק לה מיניה
 He cannot reclaim it from לוי later, because ®
 הודאת בעל דין כמאה עדים דמי
 He already admitted that it belongs to לוי. And so he gains nothing.

Therefore, we must say
 דאמר ידענא דהאי ארעא דלאו דיהודה היא
 As the רשב"ם explains
 דפסיל לעדי יהודה בגולנותא
 או דמכחיש לטענותיו בשום ענין
 He weakens Yehuda's case;
 וממילא מתוקמא השדה ביד לוי
 ואע"ג דלא קאמר דלוי הוא
 And as a result Levi retains the field. But Shimon never said that it belongs to Levi; and therefore, with proof, he can still reclaim it from Levi.

7
 Regarding Shimon's testimony;
 We cannot say
דאסהיד ליה דלוי היא
 That לוי will testify that he knows that it belongs to לוי,
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היכי מצי מפיק לה מיניה
 He cannot reclaim it from לוי later,
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 He already admitted that it belongs to לוי.
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דאמר ידענא
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 ואע"ג דלא קאמר דלוי הוא
 And as a result Levi retains the field.
 But Shimon never said that it belongs to Levi;
 therefore, with proof, he can still reclaim it from Levi.



8 Regarding Shimon's gain in לוי retaining the field rather than יהודה confiscating it; After all, if שמעון has proof that it's his, what difference does it make who has the field?

The Gemara offers two explanations:

1. דאמר השני נוח לי הראשון קשה הימנו

It will be easier to get his field back from לוי an easy person, rather than from יהודה a difficult person.

2. כגון דאית ליה סהדי למר ואית ליה סהדי למר

Both שמעון and יהודה each have a set of supporting עדים while לוי does not. Therefore, if לוי retains the field, שמעון can reclaim it, because he has עדים while לוי does not. But if יהודה confiscates the field, שמעון cannot reclaim it, because they both have עדים, and in a situation of תרי ותרי, two sets of עדים that contradict each other

אמור רבנן ארעא היכא דקיימא תיקום The field remains with the one who is currently in possession, in this case יהודה, but not with שמעון who seeks to extract the field.

This discussion continues in the next Daf.

8 Regarding Shimon's gain in לוי retaining the field rather than יהודה confiscating it;

?

If שמעון has proof that it's his, what difference does it make who has the field?

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דאמר השני נוח לי הראשון קשה הימנו

It will be easier to get his field back from לוי an easy person, rather than from יהודה a difficult person.

2

כגון דאית ליה סהדי למר ואית ליה סהדי למר

Both שמעון and יהודה each have a set of supporting עדים while לוי does not. Therefore, if לוי retains the field, שמעון can reclaim it, because he has עדים while לוי does not.

But if יהודה confiscates the field, שמעון cannot reclaim it, because they both have עדים, and in a situation of תרי ותרי, two sets of עדים that contradict each other

אמור רבנן

ארעא היכא דקיימא תיקום

The field remains with

the one who is currently in possession, in this case יהודה, but not with שמעון who seeks to extract the field.