

**ומאי שנא משני שטרות כולי –**

**And why is this different from two notes, etc.**

**OVERVIEW**

The גמרא asks why do we not say כל דאלימ גבר regarding ב' שטרות היוצאים ביום אחד. There is a dispute between רב and ר' שמואל regarding the ruling by שטרות ב'; where רב maintains יחלוקו and ר' שמואל maintains דדיינא. Our תוספות clarifies the meaning of שטרות ב' and the ruling of ר' שמואל.

**בשטרות מכר או מתנה איירי –**

**We are discussing notes of sales or of gifts (but not notes of loans or debts) -**

**ולכך לשמואל דאמר שודא לא דמיא להא דתנן בפרק מי שהיה נשוי (כתובות דף צג,ב)<sup>1</sup> –**

**And therefore שמואל who rules here 'שודא', this case is not comparable to that which we learnt in a משנה in פרק מי שהיה נשוי -**

**היו כולן יוצאות ביום אחד<sup>2</sup> ואין שם אלא מנה אחד כולן חולקות בשוה –**

**'All the כתובות were issued on the same date and there was only one מנה in the estate, all the wives divide the estate equally' (and we do not rule שודא -**

**דהתם בשעבוד איירי<sup>3</sup> –**

**For there in that משנה we are discussing a lien on his assets, therefore we rule יחלוקו -**

**דאין שעבוד חל אלא מאותה שעה שמוכיח מתוך שטר שמתחיל השעבוד –**

**Since a lien is not effective only from the time that it is evident from the note that the lien is in effect -**

**דהיינו ממחרת יום שנכתבו –**

**Which is on the morrow of the day it was written -**

**דביום שנכתבו אין מוכיח מתוך השטר מתי התחיל אם בבקר אם בערב<sup>4</sup> –**

<sup>1</sup> The משנה there is regarding a man, who had a number of wives and he died, and their כתובות were all dated on the same date, and there was only one מנה in the estate, which was insufficient to satisfy all their claims.

<sup>2</sup> In the משנה there the גירסא is אחת בשעה אחת (because it is discussing a place where שעות).

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

<sup>4</sup> See that this distinction between שטר מכר ומתנה (where the rule is that it belongs to whomever receives the שטר first) and שעבוד (where it becomes effective on the next day) is only when the שעבוד is on the משועבדים (the buyers or the heirs [as in the case in כתובות where he died and the wives are collecting from the heirs]), however when the שעבוד is against the defendant's property (the ליה for instance) then there too whoever received the שטר first collects first [and if we are not certain, who lent first, שמואל would rule שודא as well]. The reason is that just as by שטר מתנה as soon as one party receives the שטר, the property belongs to him (regardless that later in the day another שטר was transferred to another party [since שמואל maintains כרתי עדי מסירה (see לה, ד"ה ושמואל)], similarly as soon as the loan (for instance) was made, this מלוה has the first claim against [the assets of] the ליה personally (regardless if he borrowed from someone else later that day). However as far as the שעבוד on the נכסים

**For on the day it was written it is not evident from the note when the שעבוד began; if it is in the morning or if it is in the evening;** this is regarding a שעבוד, where we cannot rule שודא (since the שעבוד is effective simultaneously on the next day for all the parties) but must rule יחלוקו -

**אבל מתנה או מכר כל הקודם באותו יום עצמו זכה:**

**However, regarding a gift or sale, whoever receives the note earlier on that very same date, acquires** the item and in a case where we do not know who received it first, we rule שודא.

## **SUMMARY**

שטר שעבוד by יחלוקו we say שטר מכר ומתנה by שודא who rules שמואל.

## **THINKING IT OVER**

1. שטר מתנה ומכר משנה, by reconciling שמואל with the משנה, distinguishing between שטר מתנה ומכר and שעבוד.<sup>5</sup> Seemingly we do not need this distinction, since שמואל obviously maintains<sup>6</sup> עדי מסירה כרתי and the משנה in כתובות can follow the view of ר"מ that עדי חתימה כרתי!<sup>7</sup>

2. Why does תוספות maintain that by שעבוד it is effective only from the next day;<sup>8</sup> since it is the עדי חתימה who are מוציא the קול, why should not the שעבוד begin immediately after the עדים signed the שטר?<sup>9</sup>

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משועבדים, which takes effect (only) through the שטר, this שעבוד on the לקוחות or יתומים who were not personally liable, takes effect only from the זמן שמוכח מהשטר, which is the next day. See 'Thinking it over' # 2.

<sup>5</sup> See footnote # 3.

<sup>6</sup> See תוס' לה, א ד"ה ושמואל.

<sup>7</sup> See בל"י אות רלז.

<sup>8</sup> See footnote # 4.

<sup>9</sup> See נח"מ.