רב אמר יחלוקו - רב maintains; you divide

Overview

Our גמרא contrasts the case of ארבא, where the ruling is כל דאלים גבר, with the case of ב' שטרות היוצאין ביום אחד where there is a dispute between רב, who maintains יחלוקו, and שמואל, who maintains שודא דדיינא. Superficially it would seem that we are contrasting ארבא (and כדא"ג) with both רב ושמואל (regarding ב' שטרות), for neither maintain כדא"ג by ב' שטרות. The גמרא in כתובות explains the dispute between רב ושמואל in two ways; either רב maintains עדי חתימה כרתי and שמואל maintains עדי מסירה כרתי, or both maintain ע"מ כרתי, and their argument is whether יחלוקו עדיף or שודא עדיף. Our תוספות discusses this issue.

להה"א לישנא דמפרש בפרק מי שהיה נשוי (כתובות דף צד,א ושם דיבור המתחיל לימא) –

According to that opinion in פרק מי שהיה נשוי, which explains -

דטעמא דרב משום דסבר כרבי מאיר דאמר עדי חתימה כרתי –

That the reason רב rules יחלוקו is **because he agrees with ר"מ who maintains עדי חתימה כרתי -**

ולכך יחלוקו אפילו איכא עדי מסירה שנמסר לאחד קודם[1] –

And therefore the rule is **יחלוקו even if there are עדי מסירה that one** שטר **was delivered to one party before** the second שטר was delivered to the second party, nevertheless the ruling will still be יחלוקו -

כיון דמתוך החתימה אין ניכר מי קודם[2] **כדמוכח ברישׁ כל הגט** (גיטין דף כד,ב) –

Since it is not evident from the signatures (of the ע"ח) **who preceded** whom**; as is evident in the beginning of כל הגט** פרק**,** that if we maintain ע"ח כרתי, then all the rulings must be based on the ע"ח and not on the ע"מ.

תוספות will now prove that we must rely on the ע"ח exclusively, if we maintain ע"ח כרתי:

דתנן כתב לגרש בו את הגדולה לא יגרש בו את הקטנה –

For we learnt in a משנה; 'he wrote a גט with the intention of divorcing **the older** wife, **he should not** use this גט instead **to divorce the younger wife',** even if they have the same names (since it was not written [and signed לשמה] for the younger wife) -

ודייק הא גדולה מצי מגרש ביה ומוקי לה בעדי מסירה ורבי אלעזר –

And the גמרא **infers** from this משנה, that he cannot divorce the קטנה, **but he can**

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[1] תוספות will shortly conclude that according to this view (that רב maintains ע"ח כרתי), there is no question on רב נחמן from רב as to why we do not rule יחלוקו by ארבא; the question is only from שמואל.

[2] See footnote # 4 & 8 (for a more detailed explanation).

divorce the גדולה with this גט (since it was written for her sake), **and** the גמרא **establishes** this משנה (from which we inferred that he can divorce the גדולה), that there are **ע"מ** and the משנה follows the view of **ר"א** who maintains ע"מ כרתי -

אבל לרבי מאיר אפילו גדולה לא מצי מגרש אף על גב דאיכא עדי מסירה –

However, according to ר"מ (who maintains ע"ח כרתי) **he will not be able to divorce even the גדולה** with this גט, **even though there are ע"מ present,** who will vouch that it was indeed given to the גדולה. The reason it is not valid is -

כיון דאין ניכר מתוך עדי החתימה[3] –

Since it is not apparent from the ע"ח who is being divorced.[4]

תוספות qualifies this ruling:

ומיירי במתנה או במכר שקונה בשטר[5] –

And the case of ב' שטרות (where רב rules יחלוקו) **is discussing a gift or a sale in which** the means of **acquisition was with a שטר -**

אבל אם קונה בכסף או בחזקה או בחליפין דאין השטר עומד אלא לראיה –

However if he acquired the property **through money or חזקה or חליפין,** where the purpose of the **שטר is merely for proof** of ownership (but it does not create the acquisition; this was already accomplished by the קנין כסף וכו') -

מודה רב דאמרינן שודא דאין צריך שיהא ניכר מתוך עדי החתימה כיון דאין[6] אלא לראיה –

רב agrees that we rule שודא like שמואל (and we do not rule יחלוקו), **since it is not necessary that it should be evident from the ע"ח** who was first, **since** this שטר **is only for proof.[7]**

Now that תוספות clarified the reasoning of רב, he concludes what he began to say:

לאותו לשון לא פריך מרב הכא דהתם בדין הוא של שניהם[8] כיון דביום אחד נחתמו –

According to this view (of ע"ח כרתי) the גמרא **here is not challenging** רב נחמן

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[3] When we read this גט that יעקב divorced לאה, we do not know whether it was it the older לאה or the younger לאה; even though we know (through the ע"מ) that in fact it was the older לאה, nevertheless since it is not evident from the ע"ח, it is not a valid גט. This is one of the consequences of ע"ח כרתי.

[4] Similarly here by the ב' שטרות, since it is not evident from the ע"ח on the שטר who was first, it is considered as if they both received it at the same time (at the end of the day), even though the ע"מ testify that this one preceded the other.

[5] It is only then that רב rules יחלוקו, since it needs to be evident from the ע"ח as to when the קנין took place.

[6] The הגהות הב"ח amends this to read דאינן instead of דאין. [See 'Thinking it over' # 2.]

[7] In this case, the one who acquired it first (through כסף, חזקה or חליפין) is the rightful owner, and since we do not know who it is, we rule שודא (but we do not rule יחלוקו; which is not true, for it belongs to only one of them).

[8] The ruling of רב that יחלוקו by ב' שטרות is not because we do not know to whom it belongs, so therefore we divide it, but on the contrary we know that it belongs to both of them, since the קנין for both of them becomes effective at the same moment (at the very end of the day). However by ארבא where we do not know to whom it belongs to, רב may agree that כדא"ג.

from רב, for there by שטרות ב' **it legally belongs to both of them since they were signed on the same day -**

אלא משמואל פריך–

Rather the question is from שמואל,[9] why does not רב נחמן rule שודא by ארבא –

תוספות clarifies this question on ר"נ from שמואל:

ולפירוש רבינו תם דפירש[10] **שודא דדייני מה שירצה הדיין יעשה אתי שפיר –**

And according to the explanation of the ר"ת, who explained שודא דדיינא to mean, **whatever the דיין wants to do he can do, then** the question on ר"נ from שמואל **is understandable -**

דהכא נמי בזה אומר של אבותי שייך שודא דדייני –

For here too in the case of **זה אומר של אבותי,** the ruling of **שודא דדיינא is applicable**; the דיין can grant the ארבא to whomever he decides **-**

אבל לפירוש הקונטרס שמפרש[11] **שודא למי שנראה לדיין שהיה אוהבו יותר קשה –**

However according to the explanation of [the רשב"ם] **who explains that שודא** means **to whomever it appears to the דיין that he liked him more, it is difficult** to understand the s'גמרא question -

דבזה אומר של אבותי לא שייך שודא[12] **–**

For by זה אומר של אבותי the idea of **שודא is not applicable.**[13]

תוספות attempts to justify the פי' הרשב"ם:

ויש לדחוק ולפרש שיתנו הדיינים למי שנראה אמיתי בדברים יותר –

And it is possible to explain [with difficulty] that שודא by ארבא means **that the דיינים should give** the ארבא **to the one who is more convincing in his claim.**

תוספות concluded explaining the גמרא according to the לישנא that רב maintains כרתי ע"ח:

ועוד[14] **דלההוא לישנא דמי שהיה נשוי (כתובות דף צד,ב ושם) –**

And (also for) according to the opinion in פרק **מי שהיה נשוי -**

דמוקי פלוגתא דרב ושמואל אליבא דרבי אלעזר וסבירא ליה לרב דחלוקה עדיפא אתי שפיר –

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[9] שמואל maintains כרתי ע"מ, therefore it belongs to the one who received the שטר first, and since we do not know who it is, we rule שודא, the same ruling of שודא should be by ארבא where we also do not know to whom it belongs.

[10] See תוס' ד"ה שודא on this עמוד.

[11] See רשב"ם ד"ה שודא דדייני.

[12] When we are discussing a שטר מתנה (or perhaps even a שטר מכר) we can speculate to whom would he likely give the present (or sell the field) and that would be the שודא דדייני; but by זה אומר של אבותי how can we speculate to whom it belongs?

[13] The difficulty according to the פי' רשב"ם is on whom is the גמרא asking; it cannot be from רב as תוספות explained previously (for he maintains כרתי ע"ח and there is no ספק); it cannot be from שמואל for שודא is not applicable by ארבא!

[14] The הגהות הב"ח deletes the word ועוד and reads ולההוא instead of דלההוא.

That establishes the dispute between רב ושמואל according to ר"א (that both רב ושמואל maintain ע"מ כרתי), **and רב maintains that dividing is preferable over שודא, then** the גמרא here **is properly understood -**

דפריך[15] מרב[16] ואותו לשון הוא עיקר[17] כדמוכח התם מברייתא:

That the question is [also] from the ruling of רב that יחלוקו, **and that view** (that רב ושמאול maintain ע"מ כרתי) **is the main view as is evident there in the ברייתא.**

Summary

The question from ב' שטרות (according to רב) can only be if we maintain ע"מ כרתי.

Thinking it over

1. If we maintain ע"ח כרתי, what would be the ruling if someone gave a שטר מתנה to his friend and before the day ended he retracted the gift?[18]

2. תוספות writes that in a case where the קנין was not made with a שטר (so ע"ח כרתי is irrelevant) than רב would agree that we rule שודא.[19] תוספות continues to say that the question on ר"נ is only from שמואל, and not from רב. However if רב also agrees that where ע"ח כרתי is irrelevant we rule שודא and not כדא"ג, the question is from רב just as it is from שמואל! Seemingly תוספות should have written that when the קנין is not with a שטר, the ruling according to רב will not be יחלוקו, but it could be (either) כדא"ג (or שודא).

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[15] The הגהות הב"ח amends this to read מרב **אפילו** דפריך.

[16] If we were to ignore the two previous הגהות הב"ח (in footnotes #14 & 15) we could say that תוספות is offering another answer to his question on the רשב"ם, namely that the גמרא's question is not from שמואל (because of the difficulty with שודא), but rather (only) from רב, according to the לישנא that רב also maintains ע"מ כרתי.

[17] This assertion of תוספות seems difficult since the גמרא there after saying that רב ושמואל agree with ר"א, refutes it and concludes אלא מחוורתא דרב כר"מ ושמואל כר"א! See נח"מ.

[18] See רמב"ן ורשב"א.

[19] See footnote # 6.