ושמואל אמר שודא דדייני[1] – And שמואל said, שודא דדייני

OVERVIEW

שמואל ruled that if there are two (או מכר) שטרי מתנה which have the same date, so we do not know who is the valid owner; the rule is that the דיינים decide to whom the field belongs to. There is a (well known) dispute between ר"מ (who maintains עדי חתימה כרתי) and ר"א (who maintains ע"מ כרתי). The dispute between רב and שמואל hinges (to a certain extent) on this dispute between ר"מ ור"א.

היינו כרבי אלעזר דאמר עדי מסירה כרתי –

The ruling of שמואל is valid (only) **according to ר"א who maintains ע"מ כרתי -**

דלרבי מאיר לא הוה אמר שודא[2] –

For according to ר"מ (who maintains עדי חתימה כרתי), שמואל **would not have ruled שודא,** but rather יחלוקו, like רב.

ונראה דהא דאמר[3] בפרק מי שהיה נשוי (שם) כתב לאחד ומסר לאחר לזה שמסר לו קנה –

And it is the view of תוספות **regarding that which [ר"א] stated in פרק מי שהיה נשוי; 'he wrote** a שטר **to one** person **and** later **delivered** a שטר **to another** person, **the one to whom** the שטר **was delivered acquires'** the property -

אף על פי ששטר הא' נכתב קודם[4] –

Even though that the first שטר was written before the second שטר was delivered. This concludes the ruling from the גמרא. תוספות comments:

ונראה דהיינו דוקא שנכתבו ביום אחד הלכך הקודם במסירה זכה –

And it is the **view** of תוספות **that this** ruling is **only if** both שטרות **were written in the same day, therefore the one who received it first acquires** the property -

הואיל ואין ניכר מתוך השטר הא' שקדם –

Since it is not apparent from the first שטר that it was written **first -**

אבל נכתב בב' ימים לזה שנכתב תחלה קנה שניכר מתוך החתימה שזה נכתב קודם –

However if the two שטרות **were written on two separate days** (and it was delivered first to the one with the later date)**, the one for whom** the שטר **was**

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[1] See (previous רב תוס' ד"ה and) following שודא תוס' ד"ה, for an explanation of שודא דדייני.

[2] See previous רב תוס' ד"ה, that if we maintain ע"ח כרתי, the שטר becomes effective (only) from the time when it is clearly indicated in the שטר (which the עדים signed), which would mean at the end of that day (for both שטרות regardless when they were delivered).

[3] The הגהות הב"ח amends this to read, דאמר בפרק **ר' אלעזר**.

[4] He wrote שטר א' for ראובן, then he wrote שטר ב' for שמעון (on the same day). He delivered שטר ב' to שמעון before he delivered שטר א' to ראובן, the rule is it belongs to שמעון for כרתי ע"מ. This ruling would not be valid according to ר"מ who disregards the ע"מ and only recognizes the ע"ח. Since it is not apparent in the שטר who is first, they both share equally.

written first, acquires the property, **since it is apparent from the signature** of the עדים **that this** שטר **was written first;** it has an earlier date. This ruling is true -

אף על פי שמסר לזה מתחלה קנה דאחר כך כשמסר גם לזה זכה משעת חתימה[5] –

Even if he transferred the later שטר **first,** nevertheless the earlier dated שטר **acquires** the property, **since later when he also transferred** the earlier שטר **to the other** one, that earlier dated שטר **acquires** (for him) the property **from the date of the signature** which is before the date of the שטר that was delivered first (but signed second).

תוספות offers support for his view:

דהכי קאמר אביי בפרק קמא דבבא מציעא (דף יג,א) עדיו בחתומיו זכין לו[6] –

For this is what אביי ruled in the first פרק of ב"מ מסכת that **the witnesses by their signature acquire the right for him.**[7]

This understanding solves a difficulty:

והשתא אתי שפיר דהא שמואל סבר הכא כרבי אלעזר –

And now it is properly understood, for here שמואל agrees with ר"א that ע"מ כרתי -

ובפרק קמא דבבא מציעא דחיק גמרא לאוקומי שמואל כאביי[8] –

And in the first פרק of ב"מ מסכת **the גמרא endeavors to establish שמואל according to אביי,** regarding עדיו בחתומיו זכין לו.

תוספות offers an additional proof that עבחז"ל is valid even if ע"מ כרתי:

ועוד דבפרק זה בורר (סנהדרין דף כח,ב) גבי ההיא מתנתא דהוו חתימי עלה תרי גיסי[9] –

And furthermore in פרק זה בורר regarding that gift which two brothers-in-law

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[5] Even though we maintain ע"מ כרתי, nevertheless when the earlier dated שטר is delivered (with ע"מ), it becomes effective retroactively from the date on the שטר. If however both שטרות have the same date (and are delivered on that date) then the one that was delivered first is זוכה, for the other שטר does not go into effect until it is delivered and then it becomes effective only from the date on the שטר which is not earlier than the date on the שטר which was delivered previously.

[6] אביי explains the ruling that עדים may sign a שטר for a לוה (that he owes money) even though the loan did not take place. We are not concerned that the מלוה may claim his debt from properties the לוה sold after the date on the שטר, but before the loan took place (which seemingly the מלוה should not have a lien on them), because the עדים by signing on this date acquire a lien (on behalf of the מלוה) on the properties of the לוה retroactively to this date (provided that the מלוה ultimately lends him the money).

[7] The rule is (if we maintain ע"מ כרתי) that a שטר can become effective either at the moment of transfer, or it can become effective (when transferred) retroactively from the (end of the) day it was signed. Therefore if the dates are the same, the earlier מסירה (on that date) will determine ownership, and if the dates are not the same, the earlier date determines ownership. See 'Thinking it over'.

[8] One may have assumed that עדיו בחתומיו זכין לו is valid only if we maintain ע"ח כרתי, but not if we maintain ע"מ כרתי like שמואל. The fact that the גמרא seeks to establish שמואל (of ע"מ כרתי) like אביי (of עבחז"ל) means that even if we maintain ע"מ כרתי, nevertheless the ע"ח play an important rule to the extent that עבחז"ל.

[9] Brothers-in-law are considered relatives and are פסול לעדות together.

signed on the שטר מתנה -

משמע דסבר אביי כרבי אלעזר –

It seems that אביי (who maintains עבחז"ל) **agree with ר"א** (who maintains ע"מ כרתי) -

דפריך ארב יוסף דקאמר זיל אקנייה בעדי מסירה כרבי אלעזר –

For אביי **challenges רב יוסף who told** the grantor, '**go and grant** the שטר מתנה **to** the recipient **according to ר"א with** (different) **ע"מ** who are כשר (and not relatives) -

ופריך אביי והא מודה רבי אלעזר במזויף[10] מתוכו שהוא פסול[11] –

And אביי challenged this ruling of רב יוסף, saying '**but ר"א agrees that if it is 'forged from within' that** the שטר **is פסול'.**

תוספות rejects a possible refutation of this proof:

וזהו דוחק[12] דאליבא דרב יוסף קאמר וליה לא סבירא ליה:

And it is awkward [to answer] that אביי when he asked והא מודה ר"א וכו', **he was talking according to רב יוסף** who maintains ע"מ כרתי; **however** אביי **does not agree that** ע"מ כרתי. This says תוספות is a דוחק.

Summary

Even if we maintain ע"מ כרתי we can still maintain עדיו בחתומיו זכין לו.

Thinking it over

What would be the ruling (if we maintain ע"מ כרתי) in a case where he wrote two שטרות on ר"ח ניסן the first was written and signed for ראובן and the second for שמעון, but did not give it to them until ב' ניסן. On ב' ניסן he first gave the (second) שטר to שמעון and afterwards he gave the (first) שטר to ראובן.[13]

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[10] ר"א maintains ע"מ כרתי and a שטר does not require עדי חתימה; however if there are ע"ח in the שטר, they must be proper ע"ח, if they are not כשר (for whatever reason) the שטר is פסול (even if it was transferred in the presence of ע"מ כשרים). This פסול is called מזוייף מתוכו – the שטר is forged from within itself. See תוס' גיטין ד,א ד"ה מודה, for the reason why מזוייף מתוכו is פסול according to ר"א.

[11] It is apparent that אביי agrees that ע"מ כרתי, for otherwise he should not have said והא מודה ר"א במזוייף מתוכו, but rather that it is a שטר פסול since ע"ח כרתי and they are קרובים. See נח"מ.

[12] The הגהות הב"ח amends this to read, דאליבא **לומר** דוחק.

[13] See footnote # 7 and נח"מ.