

There is no concern of לשון הרע

לית בה משום ליסנא בישא –

OVERVIEW

stated that anything which is said in the presence of three people there is no concern (anymore) of transgressing the prohibition of לשון הרע.¹ Our תוספות explains the reason for this ruling and resolves an apparent contradiction to this explanation.

explains the reason for this ruling:

דקלא אית לה וסופו שידע² –

For since there is publicity (if it is said in the presence of three people) **so ultimately he** (the subject in question) **will know** of this conversation.

anticipates a difficulty:

אף על גב דמלוה על פה אפילו בכמה עדים אינו גובה מן הלקוחות –

Even though that by an oral loan (which is not documented) the מלוה **cannot collect from the buyers even** if the loan was made in the presence of **many witnesses** -

וטעמא משום דלית ליה קלא³ כדאמר לקמן (דף מב,א) –

And the reason the מלוה cannot collect from the לקוחות **is as the גמרא states later, because** a מלוה **has no publicity**; but this seemingly contradicts what תוספות just stated here that if it was said in the presence of three there is a קול, so why on one hand the מלוה cannot collect from the לקוחות (for there is no קול), and on the other hand it is not לה"ר and it is a valid מחאה (because there is a קול)?!

replies:

דהתם הוי טעמא משום דמאן דיזיף בצינעא יזיף⁴ –

For there (by a מלוה ע"פ) **there is a reason** why there is no קול, **since the one who**

¹ See the דמתאמרא ד"ה רשב"ם (עמוד א') and the following (הב') תוספות ד"ה לית (הב') for a more detailed explanation of this ruling. See also מ"מ on כל ד"ה לט,א.

² See footnote # 1.

³ The rule is that a מלוה can be collected from the לקוחות who bought property from the לוי after the loan; however a מלוה cannot collect from the לקוחות. The difference is that by a מלוה ע"פ there is no קול, so no one is aware that the לוי owes money, therefore it is not 'fair' to punish the innocent buyers that their purchase should be taken from them by the מלוה. However by a מלוה בשטר there is a קול and the לקוחות knew of the risk they are taking that their properties may be taken away from them by the מלוה, therefore they are not being hurt 'unfairly'.

⁴ A person does not want it to be known that he owes money for this will affect him adversely in his business dealings. See 'Thinking it over'.

borrows, borrows in secrecy therefore the witnesses do not publicize it,⁵ however by (לה"ר) or) מחזה, where it is not a loan, if it is said בתלתא there is a קול.

תוספות offers an additional distinction:

ועוד דהתם אין יודעין מי יקח שיגידו לו פלוני חייב⁶ אבל מאן דידע מחאה יאמר למחזיק:
And in addition, there by a loan, the witnesses **do not know who will buy the**
property of the לווה, **so that they should inform him that** your seller owes money
and the property is indentured, **however** (regarding מחאה) **whoever knows of the**
מחאה will tell the מחזיק, since the מחאה must include who is the current מחזיק.⁷

SUMMARY

Something said in the presence of three is publicized (except for a loan, since he borrows secretly).

THINKING IT OVER

What would be the ruling (according to the first explanation of תוספות) if the לווה tells the (three) witnesses that they should publicize the loan;⁸ or (according to the second answer of תוספות) if the witnesses are aware who is purchasing property from the לווה,⁹ can the מלווה collect from the משועבדים (since it is publicized and/or they are aware who is buying)?¹⁰

⁵ See סוכ"ד אות יז that the witnesses understand the s'לוה's need for secrecy and they do not publicize the loan.

⁶ See 'Thinking it over'.

⁷ See previously ב.ט.ל that a proper מחאה is when he says 'וכו' פלניא גזלנא הוא וכו'.

⁸ See footnote # 4.

⁹ See footnote # 6.

¹⁰ See סוכ"ד אות יז.