

**There are others who – איכא דאמרי אמר רב יוסף דלא אמר להו תיתבו כולי – say that רב יוסף said, ‘that he did not tell them, ‘sit, etc.’**

## **OVERVIEW**

ruled that we do not enforce a hidden gift (מתנתא טמירתא). There are two versions (in the name of רב יוסף) what is a מתנתא טמירתא. The first version is that the grantor told the עדים, ‘go and hide and write him a מתנה’. The second version (according to our גירסא) is that he did not tell the עדים, ‘sit in the marketplace and in the street (where everyone can see) and write it’. The גמרא explained that the difference between these two opinions is where he merely told them to write it (and did not say hide, etc. but he also did not say sit in the שוק, etc.)<sup>1</sup>

asks:

**אהך גירסא קשה לרבינו יצחק מאי קבעי מאי בינייהו הא בהדיא חולקין בסתמא<sup>2</sup> – The ר"י has a difficulty with this גירסא; why does the גמרא ask, ‘what is the difference between the two interpretations of ר"י’; it is explicitly clear that they argue in a case of סתמא where he told the עדים (nothing) just to write the גט –**

asks an additional question:

**ועוד דפסקין לקמן<sup>3</sup> הלכתא דחיישינן בסתמא – And furthermore the גמרא rules later that we are concerned for a מתנה טמירה in a case of סתמא (which we understand to mean that he only told them to write), that by סתם it is not a valid מתנה –**

**ואם כן היכי מגבינן כולו מתנתא כיון דאינו אומר לסהדי כתבו בשוקי<sup>4</sup> ברייתא – So if indeed this is so that בסתמא it is not a valid מתנה, how do we enforce all עדים (nowadays) since the custom nowadays is that he does not tell the עדים write it וברייתא בשוקי, but rather only סתמא, so it should not be a valid מתנה.**

answers the latter difficulty:

**ומיהו<sup>5</sup> לפי שנוהגים עתה לכתוב בשטרי מתנה –**

<sup>1</sup> According to the first opinion that a מתנה טמירה is where he told them to hide, it will be כשר by סתם; according to the איכא דאמרי that for a מתנה to be valid he needs to tell the עדים sit in the שוק, it will be considered a טמירה by סתם.

<sup>2</sup> argues that the difference between the two לשונות is so obvious that we cannot understand the question.

<sup>3</sup> מא, א.

<sup>4</sup> The הגהות הב"ח amends this to read בשוקי וברייתא.

<sup>5</sup> The הגהות הב"ח amends this to read יש לומר לפי שנוהגים עתה לכתוב בשטרי מתנה.

However, one can say; according to the custom nowadays to write in the text of שטרי מתנה -

ואמר לנו מתנה זו כתובה בשוקא וחתמוה בברא -

‘And the grantor told us (the witnesses), “write this שטר מתנה in the שוק and sign it in the streets”’,

הלכך כי אמר להו נמי סתמא דעתו לומר כמו שכותבים בשטרות -

Therefore even if the grantor actually told the עדים to write it סתמא, his intention was to tell them that they should write in the manner it is written in the שטרי מתנה, namely בשוקי ובברייתא; this is nowadays -

ובימי האמוראים לא היו נוהגים לכתוב כך -

However in the days of the אמוראים it was not customary to write in the notes - 'כתובה בשוקא וחתמוה בברא'

לכך היה צריך לומר להם בפירוש כתבו בשוקא כולי -

Therefore it was necessary (then) to tell the עדים explicitly, ‘כתבו בשוקא’, etc.<sup>6</sup>

גירסא offers an alternate תוספות

ורבינו חננאל גריס דאמר להו לא תיתבו בשוקא ברא -

And the גירסא of the ר"ה is that the דאמרי איכא maintain that a מתנה טמירה is where he told the עדים do not sit in an outside market when you write the מתנה (but he did not tell them to hide) -

וקרי ליה סתמא שאינו אומר להם להטמין עצמו ואומר שלא לפרסם -

And when the גמרא says (איכא בינייהו) סתמא it is referring to this case where he does not tell them to hide but he tells them not to publicize it -

והיינו סתמא<sup>7</sup> כלומר לא פרסם ולא הטמינם<sup>8</sup> -

And סתמא means [that he did not specify], neither that they should publicize it (which would be valid according to everyone), nor that they should hide (which would void the שטר מתנה according to everyone), rather he told them not to publicize it -

אבל כתובו לא חשיב סתמא וכשר<sup>9</sup> לפירוש רבינו חננאל -

However if he told the עדים only כתובו (and did not add בשוקא) that is not

<sup>6</sup> answered the second question regarding the הלכה, however he) did not answer the first question how come the סתמא asks בינייהו מאי, when it is obvious that they argue by גמרא.

<sup>7</sup> The דלא פירש לא פרסם ולא הטמינה אבל amends this to read הגהות הב"ה.

<sup>8</sup> According to the first לשון (that if he tells them to hide it is a טמירה) in this case it is כשר (since he did not tell them to hide) according to the א"ד (that if he tells them ברא בשוקא it is לא תיתבו) in this case it is (also) פסול since he told them לפרסם. See ‘Thinking it over’.

<sup>9</sup> According to the ר"ה פ"ר that which the א"ד stated that if he tells the עדים do not write it וכי בשוקא, it is פסול, does not mean that he is required to tell them בשוקא; rather even if he told them כתובו alone it is כשר, however if he told them not to be מפרסם then it will be פסול according to the א"ד.

considered **סתמא** and it is **כשר** according to ר"ח.<sup>10</sup>

ולפיכך<sup>11</sup> מה שנהגו לכתוב בשטרות מתנה זו כתובה בשוקא וחתמוה בברא –

And according to this פירוש that plain כתובו is **כשר** (even without בשוקא), that which was instituted to write in שטרות that this מתנה, you should write it בשוקא and sign it בברא, is not really necessary, for it is **כשר** in all instances as long as he did not tell them not to be מפרסם; the reason it is written in the מתנה –

אינו אלא לשופרא דשטרא –

Is only for the ‘beauty’ of the שטר; (it is merely an elegant expression showing that he is gladly and openly granting this gift).

פי' ר"ח is reluctant to accept the תוספות

ומיהו לישנא דסתמא לא משמע הכי:

However the expression of **סתמא** does not indicate this which the ר"ח claims, namely, that he told them not to be מפרסם but he did not tell them to hide; rather **סתמא** means he only told them to write and nothing else.

## SUMMARY

According to our גירסא the term **סתמא** refers to where he merely told the witnesses כתובו. However according to ר"ח it means when he told them not to be מפרסם (but not to hide), however כתובו סתם is **לכו"ע**.

## THINKING IT OVER

Seemingly according to the ר"ח there still remains תוספות original question, why does the גמרא ask מאי בינייהו when it is evident that they argue in a case where (he did not tell them to hide, but rather) he told them not to publicize it?<sup>12</sup>

<sup>10</sup> According to the ר"ח there is a חידוש in the answer of the גמרא that the difference is by **סתמא**, since **סתמא** means not to publicize and not to hide, however סתם כתובו is **לכו"ע**.

<sup>11</sup> The הגהות הב"ח amends this to read **ולפי זה** מה (instead of **ולפיכך** מה הב"ח).

<sup>12</sup> See footnote # 8 and סוכ"ד אות סד ונח"מ.