

דאית ביה זמן כמה שוה – זמן How much is it worth if it has

OVERVIEW

טופס¹ if one is holding the שטר בשטר ruled that in a case of ר' אלעזר and the other the תורף², each one receives what he is holding. רבינא explained this to mean that we evaluate the difference between a שטר which has זמן (which is written in the תורף) and a שטר which has no זמן. That difference is given to the one who holds the תורף and they divide the rest of the money.³ רש"י and תוספות both explain (in their different ways) why is it that we only assess the value of זמן which is written in the תורף and not the other aspects which are written only in the תורף or in the טופס.

פירש רש"י דמעוולו ומלוה לא שיימינן דכתיבי נמי בשיטה אחרונה בטופס – רש"י explained that we do not include in the assessment of the תורף that it contains the amount of money that is owed and the names of the ליה and מלוה, since these items are also written in the last line of the שטר in the טופס -

והוא עיקר דתנן (בבא בתרא דף קסה,ב) כתוב [בן] מלמעלה מנה כולי – which is the main part of the שטר, as the משנה taught, 'if it was written above (previously) that the loan was for a מנה, etc, and at the bottom (conclusion) of the שטר two hundred, we always follow the bottom'. Therefore the only advantage of the תורף over the טופס is the זמן which does not appear בטופס.

פירש"י asks on תוספות:

ותימה הא אין למידין משיטה אחרונה⁴ ולכך עושין חזרת השטר⁵ –

¹ The טופס is the standardized form of a שטר (including the שיטה אחרונה which repeats what is mentioned previously in the שטר) and includes the signature of the witnesses.

² The תורף includes all the pertinent information of the שטר such as the names of the מלוה and ליה, the amount of the loan, and the date of the שטר.

³ Let us assume that the total value of the שטר with the זמן is a hundred זוז (see following ויחלוקן), and the value without the זמן is eighty זוז (a difference of twenty זוז); if the מלוה is holding the זמן, he receives twenty זוז plus forty (half of eighty) for a total of sixty זוז. If the ליה is holding the זמן, we deduct twenty from the total and divide the remaining eighty, so he pays the מלוה only forty זוז.

⁴ ב"ב קס"ב,א. The חכמים were concerned that perhaps the עדים will leave some space between the last line of the שטר and their signature. The מלוה (who is holding the שטר) may be tempted to add something (in his favor) in the space between the שטר and the signature. Therefore the חכמים instituted that the last line of a שטר is meaningless, and we merely repeat on the last line that which was previously written in the שטר. In this way even if the עדים do not sign immediately under the שטר and the מלוה adds anything it will be disregarded.

⁵ How can רש"י equate the תורף (which is the testimony of the שטר) with the (last line of the) טופס which is meaningless?!

And this is astounding (to say that the **טופס** contains the same as the **תורף**)! **for we do not derive anything from the last line** of the **שטר**, **and therefore we merely have a repetition of the salient points of the שטר** on the last line.

שטר: statement that we follow the last statement of the רש"י rejects תוספות

ומתניתין דכתוב למעלה מנה לא מייירי בשיטה אחרונה –

And that משנה, which teaches **that if a מנה is written above** and מאתיים was written below, the rule is that we follow that which was written last, the **משנה is not discussing** that it was written **on the last line** of the **שטר**, but rather later in the **שטר**, but before the last line.

further: פירש"י cites תוספות

וגם פירש דבעדים לא שיימינן –

And רש"י also explained that we do not assess the value of עדים as belonging to the **טופס** -

דרבן שמעון בן גמליאל אית ליה מודה בשטר שכתבו אין צריך לקיימו⁶ –

Since רשב"ג maintains that if the לוח admitted that he wrote the שטר, then קיום is not necessary, therefore the signature of the **עדים** is of no value.

תוספות challenges this explanation:

ופירושו תימה דאם חשב אותו שאינו תופס עדים כאילו יש לו שטר בלא עדים⁷ –

And רש"י's explanation concerning the עדים is astounding! For if we consider the one who is not grasping the **עדים** in the **שטר** (the one who is holding the **תורף**), as if he has a **שטר without עדים** -

אם כן לרבן שמעון בן גמליאל נמי לא אתי שפיר –

Then it will not work out even according to רשב"ג -

דנהי דסבר דאין צריך לקיימו מכל מקום כשאין כלל עדי חתימה פסול –

For granted that קיום is not required, nonetheless if there are no עדי חתימה at all, the שטר is פסול!

תוספות continues to ask (on פירש"י):

ועוד במה עדיף תורף מטופס כך השטר פסול בלא טופס כמו בלא תורף –

And furthermore what is the advantage of the תורף over the טופס?! The שטר is just as פסול without a טופס as without a תורף -

דאם נמחק אפילו שיטה אחת מן השטר הוא פסול –

פסול is even if one line is erased from the שטר,

⁶ The פרעתי which we are discussing is in a case where the לוח (admits to borrowing but he) claims.

⁷ רש"י equates the one who is holding on to the signature of the **עדים** with the one who is not holding the signature of the **עדים**, since the **עדים** are immaterial.

גמרא offers his explanation of our תוספות:

אלא ודאי יש לומר דבמה שהשטר נפסל אין שמין –

But rather we must certainly say that we do not assess any aspect of the שטר which invalidates the שטר if it is missing -

– דכך שוה כשתופס שיטה אחת מן הטופס כמו תופס לוח ומלוח ומעות ועדים –

For it is of the same value when one grasps one line of the טופס as if one grasps the מעות, מלוח, לוח, and עדים -

– והשטר אינו כשר בלא זה כמו בלא זה⁸ –

For the שטר is not valid without this (טופס) as it is invalid without that (לוח, מלוח, מעות ועדים) -

– אבל זמן שהשטר כשר בלא זמנו שמין כמה שוה⁹ –

However concerning the date, wherein the שטר is כשר without a date, this is what we assess; the value of the date which allows the מלוח to collect from נכסים משועבדים.

תוספות informs us of a different approach to this issue:

– ובירושלמי איכא¹⁰ אמר רבי אלעזר הכל הולך אחר מי שתפוס עדים¹¹ –

And in the תלמוד ירושלמי it states, ר"א maintains it all depends on who is grasping the signature of the עדים -

– ופליג אגמרא שלנו דמזכיר זמן¹² –

And the ירושלמי argues on our גמרא which mentions זמן -

– וסובר דעדי מסירה כרתי¹³ והשטר כשר בלא עדי חתימה¹⁴ –

For the ירושלמי maintains that עדי מסירה כרתי and a שטר is כשר without עדי חתימה: explains how we assess the value of the עדי חתימה תוספות.

– ושמן כמה שוה שאין צריך לחזור אחר עדי מסירה¹⁵ –

And we assess how much is it worth (for the מלוח) to have the עדי חתימה, in order that it will not be necessary to search out the עדי מסירה to verify the validity of the שטר (and the date) -

– ולית ליה ההוא לישנא דגט פשוט (בבא בתרא דף קעא) –

⁸ Since (both) the מלוח (and the לוח) need the entire שטר including what the other is holding, therefore one has no advantage over the other concerning any part of the שטר which is essential for the שטר to be valid.

⁹ See ברכת אברהם אות ג.

¹⁰ גיטין פ"א סוף ה"א (בדפוסים שלנו ד,ב).

¹¹ This seemingly contradicts that which תוספות previously stated that any item which is indispensable to the שטר cannot be included in the assessment.

¹² See 'Thinking it over' # 1.

¹³ There is a מחלוקת as to which עדים create the efficacy of a שטר. According to ר"מ it is the עדי חתימה (those who sign on the שטר) which create the effectiveness of the שטר, while אליעזר ר' maintains that עדי מסירה (those who witness the transfer of the שטר) are כרתי.

¹⁴ Since a שטר is כשר without עדי חתימה, it may be included in the assessment of the שטר.

¹⁵ See 'Thinking it over' # 2.

פרק גט פשוט **And the ירושלמי does not agree with that particular opinion in** who claims -

דסבר רבן שמעון בן גמליאל עדי חתימה כרתי:

That רשב"ג maintains כרתי, but rather the ירושלמי maintains that רשב"ג holds עדי מסירה כרתי like the other views in פרק גט פשוט.

SUMMARY

There is a dispute between רש"י and תוספות why זמן is the only item which is assessed. According to רש"י we cannot assess the names of the מלוה, לווה, the amount of money since they are repeated in the טופס בשורה אחרונה, we cannot assess the עדים since רשב"ג maintains לקיימו רשב"ג so the עדים are superfluous. תוספות maintains that we cannot assess any item which is necessary for the שטר, therefore we can only assess זמן (for a שטר is כשר without זמן). The ירושלמי maintains that we only assess the עדים since they maintain (according to רשב"ג) that עדי מסירה כרתי.

THINKING IT OVER

1. Why does the ירושלמי mention only עדים as the sole item which is assessed in the שטר;¹⁶ why does he not mention that we assess זמן as well?¹⁷
2. תוספות explains that when the ירושלמי rules that we follow the עדים, it means that there is an advantage of having ע"ה for that releases the מלוה from searching for the ע"מ.¹⁸ In our case however, where the לווה admits to writing the שטר (and רשב"ג maintains לקיימו רשב"ג), we do not need the ע"ה, so what is the advantage of having the ע"ה?

¹⁶ See footnote # 12.

¹⁷ See (אות ד'). . [The מפרשים do not offer the following answer to this question: Presumably זמן cannot be assessed since there is no advantage for the one who is holding the זמן; for even without the זמן we can ask the עדי מסירה when the שטר was transferred, and collect from משועבדים from that date onwards. Why not?]

¹⁸ See footnote # 15.