

## The admission of the litigant, etc.

## הודאת בעל דין כולי –

### OVERVIEW

The **ברייתא** rules where the grantor claims that he delivered a שטר (for a field [or to free an עבד]) and the alleged recipient claims that he did not receive anything, that the admission of the recipient is acceptable as the testimony of hundred witnesses, and the grantor can retain title if he so pleases. The issue תוספות explains is why we do not say that the admission of the grantor should be accepted that he indeed did grant the שטר to the recipient and the transfer took place.

בנותן לא אמרינן הכי דפעמים סבר שמקבל מידו וזכה בה והוא לא קבל –

**Regarding the grantor we do not say this** (that הודאת בע"ד כמאה עדים דמי <sup>1</sup>, **for occasionally the grantor assumed that the recipient accepted the שטר and made an acquisition** (of the field, or himself by an עבד), **but** in truth the recipient **did not accept** it;<sup>2</sup> only the recipient knows for sure if he agrees to this transfer. Therefore only his admission is acceptable but not the grantor's.

תוספות responds to an anticipated question:<sup>3</sup>

והא דבעי מי אוכל פירות פירוש בעלמא הוא<sup>4</sup> כדמסיק ולא פליגי:

**And regarding this which the גמרא queries; ‘who eats the fruits’, it is** (not really a query, but rather it is) **merely an explanation** of the ברייתא, **as the גמרא concludes, ‘and they do not argue’.**

### SUMMARY

The הודאת בע"ד of the מקבל is accepted; not of the נותן.

<sup>1</sup> See ‘Overview’.

<sup>2</sup> See תוה"ר (that he may have sent it to him through a שליח and he never received it) or that since the נותן initially had to think that he was going to give it, therefore he mistakenly assumes that he gave it (see אמ"ה # 39). However, seemingly תוספות should have written מידו 'שקבלו' מידו, סבר 'שקבלו' מידו, not מקבל.

<sup>3</sup> תוספות just concluded that we accept the הודאת בע"ד of the recipient (not of the grantor), why does the גמרא ask who eats the fruit; obviously it is the נותן! If הודאת בע"ד could apply equally to the נותן and the מקבל, then the query of מי אוכל פירות is understood; do we accept the הודאה of the נותן or the מקבל (and רב חסדא would be arguing as to whose הודאה is accepted), however according to תוספות there is no query. See ‘Thinking it over’.

<sup>4</sup> The גמרא is merely explaining the rule of the ברייתא that הודאת בע"ד כמאה עדים דמי, that it depends who was מודה; if the recipient was מודה then the נותן receives the פירות, however if it was his heir that was מודה, then משלשלין. See מהרש"א הארוך for alternate explanations.

**THINKING IT OVER**

Why indeed did תוספות not want to explain the query of מי אוכל פירות, that it depends whether we accept the הודאה of the נותן or of the מקבל?!