מודה רבי אלעזר במזוייף מתוכו –

ר"א agrees where it is evidently corrupted from within

Overview

The גמרא maintains that the משנה can follow the opinion of רבי אלעזר (even according to רבה). The reason why we require the חתימה to be לשמה is because if the חתימה were שלא לשמה it would be considered מזוייף מתוכו. Even though ר"א does not require עדי חתימה, nevertheless he maintains that if there are עדי חתימה, they must be valid עדים. If the עדי חתימה are not valid עדים, then the שטר is deemed to be מזוייף מתוכו and it is פסול. Our תוספות discusses the reason that מזוייף מתוכו is פסול, and how it applies to חתימה שלא לשמה.

תוספות asks:

תימה לרבינו יצחק –

The ר"י is perplexed by this statement that חתימה שלא לשמה is considered מזוייף מתוכו:

מה ענין שלא לשמה למזוייף מתוכו שחתומים בו קרובין או פסולין -

What connection is there between signing **שלא לשמה to** the דין of **מזוייף מתוכו** which applies in cases **where relatives or invalid** witnesses[1] **signed** the document?! It is only in these cases (that רבי אבא states) that רבי אלעזר maintains that since it is מזוייף מתוכו, by these witnesses signing the שטר, therefore it is פסול -

דהתם בדין מיפסל משום דילמא אתי למיסמך עלייהו -

For in those instances the שטר is **justifiably invalidated because it may be that we will come to depend on** the signatures of **these** invalid witnesses -

להשיאה או להוציא ממון על פיהם -

To allow **her to remarry, or to extract money on the basis of their testimony**,[2] and -

אף על פי שהדבר אמת[3] אין לעשות אלא בעדות כשר -

Even though that the testimony **is true; it should not be done, unless proper witnesses** attest to the facts (that she is divorced, or the money is owed). In these cases however, where the עדים are קרובים or פסולים, we are allowing her to remarry or to collect money based on the testimony of עדים פסולים. Therefore a שטר which is signed by עדים פסולים is invalid, since we may rely on the עדי חתימה who are פסול.

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[1] These are people who are known to have committed acts which invalidate them from being acceptable witnesses.

[2] ר"א does not require עדי חתימה; only עדי מסירה. However in general (if there were עדי מסירה), we may also rely on the עדי חתימה to authenticate that which the שטר states; provided that they are עדים כשרים.

[3] There was עדי מסירה when the גט or the שטר was transferred to the proper party.

תוספות will now prove that the testimony of עדים cannot be accepted, even if it is true, unless it is presented in the approved manner.

כדאמר בפרק ארבעה אחין[4] (יבמות דף לא,ב) -

As the גמרא **says in פרק ארבעה אחין** concerning[5] a שטר קידושין -

נינחיה גבי עדים זימנין דחזו בכתבא ומסהדי ורחמנא אמר מפיהם ולא מפי כתבם -

'Shall we place the שטר קידושין **with the witnesses; at times they may see** the testimony **in the written** שטר **and they will testify** according to what is written, but **the תורה states** that we believe witnesses what they say **from their mouths, not from their written** documents'.[6]

We derive from that גמרא that the proper procedure must be followed by הגדת עדות. Even though they will testify correctly; we have given them the שטר קידושין that they themselves signed, and that we know is correct. Nevertheless since the תורה requires that the testimony of עדים, not be based on a written document, but rather on their memory (מפיהם ולא מפי כתבם), we cannot accept this testimony even though it is true. The same holds true if קרובים or פסולים signed on a valid שטר, for which there were עדי מסירה who witnessed the transaction. When it will become necessary to corroborate the action called for in the שטר, we cannot depend on these עדי חתימה; we must have the original עדי מסירה. These עדי חתימה are פסול; we cannot enact anything based on the testimony of their signatures, even though it is true. This explains why ר"א maintains that מזוייף מתוכו, in the case of עדים פסולים, is a שטר פסול. Inadvertently we may rely on the testimony of their signatures when the עדי מסירה will not be readily available.

אבל הכא שהעדים כשרים אלא שחתמו שלא לשמה[7] -

However in our case, **where the עדים** who signed שלא לשמה were **proper** עדים; **they merely signed** the גט **שלא לשמה** -

מה תקלה יש בכך אם נסמוך עליהם -

What calamity can there be if we will depend on them, and allow the woman to remarry based on their testimony. They are עדים כשרים. They are aware that the

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[4] See 'Thinking it over' # 1.

[5] In a שטר קידושין there is no זמן; for it will serve no purpose to have the זמן in a שטר קידושין as the גמרא there explains. We cannot give the שטר קידושין to either the husband or wife, because they are suspect to alter the זמן. We do not want to give this שטר קידושין to the עדים, for if they will be required to testify concerning the date of the קידושין (they may be required to testify in the case of a suspected adultery, etc.), we are concerned that they will not remember the date on their own; they will need to refer to the שטר, and that testimony is not valid; as תוספות presently quotes the גמרא there.

[6] There is much discussion among the commentaries how is a שטר acceptable, it is מפי כתבם and not מפיהם.

[7] There is a noted comment from רבי עקיבא איגר concerning חתימה שלא לשמה. He is puzzled what is meant by חתימה שלא לשמה. Seemingly if it is signed שלא לשמה, meaning that the עדים were somehow unaware of (the details) what they were signing, then it is not only שלא לשמה, there is no testimony at all. Various commentaries offer different possible solutions to this question. This question is not applicable according to the מ"ד who maintains that the requirement of לשמה includes that one must verbalize specifically that he is writing or signing the גט לשמה (see also נח"מ).

husband is divorcing his wife. The fact that they signed שלא לשמה should not detract from their signed testimony that she is divorced.

תוספות anticipates a possible solution, and refutes it.

וליכא למימר דאי שרינן בחתמו שלא לשמה יבא להכשיר זמנין -

And we cannot say that the reason we consider חתימה שלא לשמה to be מזוייף מתוכו, **for if we will permit** a גט **that was signed שלא לשמה it may result occasionally, that we may permit -**

דיחתמו תחילה ויכתבו גט על גבי חתימתן[8] והתם ליכא עדות כלל -

That the witnesses **may sign initially**; before the גט is even written **and** afterward **they will write the גט above their signatures, and** in **that** case **there is no testimony at all.** The עדים did not really sign a document they just wrote their names on a blank parchment. It is obvious that we cannot rely on their signatures as testimony. This seemingly should explain why ר"א will maintain that חתימה שלא לשמה is considered מזוייף מתוכו. We are not concerned about שלא לשמה itself, as תוספות previously explained. However we are concerned that if חתימה שלא לשמה is permitted then eventually the עדים will sign before the גט is written. We surely cannot rely on the signatures in such an event.

תוספות refutes this explanation:

דאם כן מטעם זה גם בשאר שטרות היה לנו להצריך חתימה לשמה -

for were this true; that there is a valid concern, that if it is signed שלא לשמה people will eventually allow them to sign before the document is written, then **for this same reason; by other documents,** besides גיטין **we should have** also **required חתימה לשמה;** to prevent a similar occurrence of the witnesses signing before the document is even written.[9] The fact that no other document is required to be signed לשמה is proof that there is no such concern.

תוספות answers:

ויש לומר דמכל מקום[10] איכא למיגזר חתימה אטו כתיבה -

And one can say; that nevertheless we can make a decree concerning **the חתימה on account of the כתיבה -**

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[8] The reason this may come to pass is that since (there are עדי מסירה anyway, and) we are allowing them to sign שלא לשמה, it will be interpreted that their signing is merely 'symbolic'. As a consequence people will eventually not mind even if the witnesses sign before the writing of the גט, since (there are עדי מסירה and) it is only 'symbolic'.

[9] See 'Thinking it over' # 2.

[10] Even though we cannot be גוזר that if the חתימה will be שלא לשמה, it may come that they will sign an empty document, nevertheless there is a different גזירה; as תוספות continues.

דאם אין עושין חתימה לשמה גזרינן פן לא יכתבו גם הכתיבה לשמה:

For if the חתימה will not be performed לשמה we are concerned that **perhaps the writing** of the גט **will not be written לשמה either**[11]. A גט that is written שלא לשמה is פסול according to ר"א. Therefore a גט that is signed שלא לשמה is considered מזוייף מתוכו and is פסול.[12]

Summary

The פסול of מזוייף מתוכו in general refers to a שטר that קרובים or פסולים signed. According to ר"א there is no need for עדי חתימה. Nevertheless if קרובים or פסולים do sign, the שטר is פסול since it is מזוייף מתוכו. The reason for this פסול is because we are concerned that eventually we may rely on the עדי חתימה to validate the שטר. The שטר cannot be validated on the basis of these עדי חתימה since they are קרובים ופסולים. It is irrelevant that their testimony is true; the תורה requires us to accept the testimony of עדים כשרים only.

We find a similar דין, concerning the requirement that the testimony of the עדים should be מפיהם and not מפי כתבם. Even though we are certain that their testimony is true, nevertheless we do not accept the הגדת עדות if it is מפי כתבם.

The reason that עדי חתימה שלא לשמה is considered מזוייף מתוכו, cannot be the same as for קרובים ופסולים mentioned above. Their חתימה should be accepted as a proper הגדת עדות, since they are עדים כשרים.

We cannot say that חתימה שלא לשמה is מזוייף מתוכו, because we are concerned that if we permit חתימה שלא לשמה, we may come to permit the חתימה even before the כתיבה, which surely cannot be relied on as a הגדת עדות. If that concern is valid then all שטרות in addition to גיטין should require לשמה. This is not the case.

The reason that חתימה שלא לשמה is considered מזוייף מתוכו and is פסול, is on account of a different גזירה. We are concerned if the חתימה is כשר שלא לשמה,

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[11] The commentaries ask: In the previous תוס' ד"ה וחתמו we learnt that there is no concern that if the כתיבה is שלא לשמה the חתימה will also be שלא לשמה. Why does תוספות say here that if the חתימה is שלא לשמה, we are concerned that the כתיבה will also be שלא לשמה? Seemingly it would be more logical to be גוזר the חתימה אטו כתיבה that precedes it, than to be גוזר the כתיבה אטו חתימה which follows it. See מהר"ם, מהר"ם שי"ף, מהודרא בתרא et al. See 'Appendix' for a possible solution to this problem.

[12] This פסול of מזוייף מתוכו by חתימה שלא לשמה is different than the פסול of מזוייף מתוכו when the שטר is signed by a קרוב או פסול. In the latter case we are concerned that we will rely on these עדי חתימה to ascertain what is written in the שטר. In the former we are concerned that it may cause that the כתיבה will be שלא לשמה as well. See (however) בל"י אות ע.

people may mistakenly assume that the כתיבה is also כשר שלא לשמה. Therefore חתימה שלא לשמה is considered מזוייף מתוכו and the גט is פסול.

Thinking it over

1. Why is it necessary for תוספות to bring a proof from the גמרא in פרק ד' אחין (concerning the שטר קידושין) that we require proper עדות?[13] It is obvious that קרובים ופסולים cannot testify!

2. תוספות states[14] that if the חשש of חתימה שלא לשמה is that they will ultimately sign before the גט is written; then the same גזירה should apply to all שטרות. Seemingly there is a difference between גיטין and all other שטרות. By גיטין there is a חיוב of לשמה (כתיבה), therefore if we see the עדים signing שלא לשמה we will assume that their signing is meaningless, and they can sign even before the גט is written. In the case of all other שטרות however, there is no חיוב of either כתיבה or חתימה לשמה. Why would we suspect that people would mistakenly assume that if the חתימה is כשר שלא לשמה, they should be permitted to sign before the שטר is written!?

Appendix

To resolve the apparent contradiction between the two תוספות,[15] a distinction needs to be made first between two types of גזירות.[16]

There is the practical גזירה (A). It states we cannot do (a) for if we allow (a) then inadvertently it may come to pass to do (b) as well; and (b) is forbidden. An example of this גזירה, is what we learnt in the previous תוספות that one is not permitted to write a גט במחובר (according to ר"מ), for if we write a גט במחובר (a), we may inadvertently forget[17] and sign it also במחובר (b). If a גט is signed במחובר (according to ר"מ) it is פסול.

Then there is the conceptual (and more universal) גזירה (B). It states we cannot do (a), for if we allow (a) then people will mistakenly think that (b) is

[13] See footnote # 4.
[14] See footnote # 9.
[15] See footnote # 11.
[16] See 'Thinking it over # 4 in the previous תוספות ד"ה וחתמו.
[17] We will not (necessarily) think that חתימה במחובר is permitted. Rather on account of the circumstances in this instance (that it is written במחובר), we may forget and sign it במחובר as well.

permitted as well;[18] and (b) is actually forbidden. An example of this type of גזירה is presented in this תוספות. The עדים are not permitted to sign שלא לשמה; for if they will sign שלא לשמה (a), we may mistakenly think that you are permitted to write the גט שלא לשמה (b). A גט written שלא לשמה (according to ר"א) is פסול.

In the previous תוספות it was explained that גזירה (A) is applicable only by מחובר and not by שלא לשמה. We can assume that עדים will not inadvertently sign שלא לשמה because it was written שלא לשמה. There is no connection between the two; as opposed to כתיבה וחתימה במחובר, which are very much connected. We were not discussing a type (B) גזירה that people will think that since כתיבה is מותר במחובר so too חתימה is מותר במחובר and similarly by שלא לשמה. It is the opinion of תוספות that there is no such חשש. The reason being; that both כתיבה and חתימה are required in a גט according to ר"מ. The rules are clearly set. כתיבה and חתימה are clearly differentiated. כתיבה is כשר במחובר ושלא לשמה. However חתימה is פסול במחובר ושלא לשמה. Everyone knows this and sees this many times. There is no type (B) גזירה.[19]

According to ר"א however, כתיבה is required (לשמה); however חתימה is not required at all. There is no דין that חתימה שלא לשמה is כשר. It is merely that חתימה is not required. When people will see that the עדים signed (שלא לשמה), they will mistakenly assume that the signing of the עדים is a part of the process of writing the גט. They will subsequently assume further that if the עדים can sign שלא לשמה, the entire גט can be written שלא לשמה.[20] Therefore here there is a type (B) גזירה; that if we allow חתימה שלא לשמה (a), people may mistakenly think that כתיבה שלא לשמה (b) is also permitted. Thus the contradiction is resolved. In the previous תוספות we were discussing a type (A) גזירה, and in this תוספות we are discussing a type (B) גזירה, which is applicable only according to ר"א, and not according to ר"מ.

[18] It is not that they will merely forget (this one time) and inadvertently do (b) wrong. Rather they will mistakenly misinterpret the דין, that (b) is מותר

[19] There is only a type (A) גזירה by מחובר, because of inadvertent forgetfulness; not a mistake in דין.

[20] See יד דוד.