For we have established that – דקיימא לן הלכה כרבי אלעזר בגיטין
The הלכה follows the opinion **of ר"א regarding גיטין.**

Overview

The גמרא states that הלכה כר"א בגיטין, that we do not require עדי חתימה; a גט may be enacted with עדי מסירה alone. תוספות will be discussing two issues:
A) Whether the הלכה is according to ר"א by גיטין only, or by שאר שטרות as well.
B) What is meant that הלכה כר"א? Does it mean that עדי מסירה alone are also sufficient without עדי חתימה (but עדי חתימה alone are also sufficient), or does it mean that only עדי מסירה כרתי, however עדי חתימה alone are not כרתי.[1]

משום דמיירי הכא בגיטין נקט גיטין אבל הלכה כמותו אף בשאר שטרות -

Since we are discussing here the laws of **גיטין,** therefore the גמרא **mentions** that the הלכה is according to ר"א in **גיטין, However,** in truth **the הלכה is according to ר"א even by other שטרות.** Not only by גיטין, but in all שטרות the הלכה is that עדי מסירה כרתי [and not עדי חתימה כרתי. Therefore in all שטרות transactions it would (seemingly[2]) be required that עדי מסירה be present at the time of the delivery of the שטר to the שטר recipient; i.e. buyer of a field, etc].

תוספות will now question his own ruling and subsequently uphold it:

אף על גב דכל אמוראי דלקמן (דף פו,ב) סברי כרבי אלעזר דוקא בגיטין -

Even though that all of the אמוראים later in פרק המגרש **uphold** the ruling of **ר"א** that עדי מסירה כרתי, **only by גיטין** and not by other שטרות.[3] How then can תוספות claim, that the הלכה is like ר"א even בשאר שטרות?

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[1] [These two issues are related (see this תוספות later: "ולפיכך וכו'"). If we were to maintain that the הלכה is that עדי מסירה כרתי only by גיטין, but by שאר שטרות the הלכה is עדי חתימה כרתי (issue 'A'); this would require some explanation. Why is there a difference between גיטין and שאר שטרות? Why by גיטין is the הלכה that עדי מסירה כרתי and by שאר שטרות the הלכה is that עדי חתימה כרתי? One possible explanation would be that by שאר שטרות since the פסוק (in ירמיה לב,מד) states 'וחתום (וכתוב בספר)', we require עדי חתימה (see later א,לו). Concerning גיטין however since the פסוק says only 'וכתב' and does not mention חתימה, therefore עדי מסירה are sufficient (but not required). It would follow then, that עדי חתימה, which are required בשאר שטרות (and where עדי מסירה are not sufficient); they would certainly be כשר by גיטין. We would therefore conclude that when we say הלכה כר"א בגיטין, that would mean that by גיטין we may also follow the ruling of ר"א that עדי מסירה כרתי. However עדי חתימה are certainly כשר (issue 'B'). If, however, we say הלכה כר"א by all שטרות (issue 'A'), then we can maintain that only עדי מסירה can effectuate a transaction and not עדי חתימה (issue 'B').]

[2] See, however, later in this תוספות.

[3] Concerning those אמוראים we cannot qualify their statement as תוספות qualifies the statement in our גמרא. They state specifically that the הלכה is כר"א only by גיטין and not בשאר שטרות.

תוספות replies:

קיימא לן כשמואל בדיני דפליג לקמן (שם) אדרב וקאמר אף בשאר שטרות -

We follow the ruling of שמואל in monetary **laws**, **who argues later** in the גמרא of המגרש **against רב, and** שמואל **says** that the הלכה is like ר"א **even by other שטרות,** that עדי מסירה כרתי.

תוספות will bring additional proof that the הלכה is כר"א אף בשאר שטרות

ועוד בפרק זה בורר (סנהדרין דף כח,ב) גבי מתנתא דהוו חתימי עליה תרי גיסי -

And furthermore in פרק זה בורר, concerning a deed of **a gift that two brothers-in-law signed** on this שטר as the witnesses. This renders the עדי השטר פסול since they are relatives to each other, therefore -

קאמר רבי יוסף זיל אקנייה בעדי מסירה כרבי אלעזר -

רבי יוסף said: 'go enact the delivery of the gift **with עדי מסירה, in accordance** with the ruling of **ר"א,** that עדי מסירה כרתי. Even though the עדי חתימה are פסול, nevertheless there will be valid עדי מסירה to effectuate the transfer of this gift.

ופריך ליה אביי והאמר רבי אבא מודה רבי אלעזר במזוייף מתוכו שהוא פסול -

To which אביי responded that the solution of ר"י will not be helpful, **for ר"א stated that ר"א agrees that** a שטר that is **מזוייף מתוכו it is פסול.** In this case since the two brothers-in-law who signed are קרובים and פסולים לעדות, therefore even if there are עדי מסירה, however the שטר is פסול,[4] because עדי מסירה can only enact a transaction in conjunction with a שטר כשר.[5] Here however there is a שטר פסול on account of the קרובים. The עדי מסירה will not be able to enact the transaction. This concludes the discussion of that גמרא. We may derive from that גמרא, were it not for the פסול of מזוייף מתוכו (had there been no עדים on the שטר), the עדי מסירה would be able to enact the transaction of the מתנה even without עדי חתימה. That proves that עדי מסירה כרתי even by שאר שטרות, as תוספות presently concludes:

משמע דרב יוסף ואביי דהוו בתראי[6] סברי כרבי אלעזר -

It is evident that ר"י and אביי, who were from **the later** אמוראים, **are of the same opinion as ר"א** that עדי מסירה כרתי even בשאר שטרות.

תוספות brings an additional proof that עדי מסירה כרתי בשאר שטרות:

ובפרקין[7], נמי אמר רבי אבא האי שטרא פרסאה -

And later **in our פרק, ר"א said: this Persian שטר** that was written and signed in Persian -

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[4] See previous תוס' ד"ה מודה for the reason that מזוייף מתוכו is פסול according to ר"א.

[5] קרקע is acquired through מסירת השטר, not through עדים alone.

[6] The rule generally is that הלכה כבתראי; the law is practiced according to the opinion of the later Rabbis.

[7] דף יא,א.

דמסריה באפי סהדי ישראל מגבינן מיניה מבני חרי -

That was delivered from the לוה to the מלוה **in the presence of Jewish witnesses** who understood Persian; **we may collect from the unencumbered (unsold)** properties of the לוה.[8] We see that this שטר which had no עדי חתימה כשרים, for it was signed by Persian גוים, nevertheless it is considered a שטר (at least to the extent to be גובה מבני חורי),[9] on account of the עדי מסירה. The conclusion of תוספות is that the הלכה follows the opinion of ר"א that עדי מסירה כרתי even בשאר שטרות.

תוספות continues:

ולפיכך צריך ליזהר שיהו עדי מסירה בשעת נתינת הגט דאינהו כרתי -

And therefore; since the הלכה is according to ר"א that עדי מסירה כרתי [even[10] בשאר שטרות] **care must be taken that there be עדי מסירה at the time when the גט is delivered** to the woman **for they effectuate the divorce -**

דאי ליכא שם עדי מסירה אינה מגורשת אף על גב דאיכא עדי חתימה -

For if there will not be עדי מסירה at the נתינת הגט, **she will not be divorced even though there are עדי חתימה** that signed on the גט, nevertheless it is only עדי מסירה כרתי, not עדי חתימה. The עדי חתימה cannot effectuate the divorce.

The question may arise, if only עדי מסירה כרתי and not עדי חתימה; why have עדי חתימה at all. תוספות responds:

ולא מהני עדי חתימה אלא שאם ימותו עדי מסירה או ילכו להם למדינת הים -

And עדי חתימה are of no avail unless the עדי מסירה die or the עדי מסירה **will travel overseas;** the עדי מסירה will not be available to testify that this woman is divorced. In these cases –

שתינשא על יד עדי חתימה -

She may remarry on the basis of signatures of the **עדי חתימה.** She may use the written and signed גט as a proof that she is divorced.

תוספות will now explain how does the גט prove that she was divorced properly with עדי מסירה in attendance:

דמסתמא בהכשר נעשה -

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[8] We cannot be גובה ממשעבדי, as the גמרא says there, because there is no קול. The reason there is no קול in this שטר is a disputed matter. Some say because only עדי חתימה can create a קול. Others maintain that since it was written in Persian there is no קול. See previous תוס' דף ג,ב ד"ה וגובה (footnote # 15). Even though תוספות there says that there were עדי עכו"ם on the שטר and they are considered like ערכאות (so seemingly there is no proof that עדי מסירה כרתי (ע"מ), nevertheless since למסקנא this שטר פרסאה cannot collect ממשעבדי, this proves that the עדי עכו"ם are meaningless and the שטר collects מבנ"ח only because of the ע"מ. (See מהרש"א הארוך).

[9] The לוה cannot claim פרעתי. See מהרש"א הארוך. See 'Thinking it over' # 1.

[10] See footnote # 1 for an explanation of 'ולפיכך'.

For it was presumably done properly with עדי מסירה. There is a proper גט before us, and עדים signed it. It is clear that the husband intended to divorce his wife. Therefore we may assume that the people involved in this גט, preformed it properly. If there would be no עדי חתימה however on the גט, we cannot assume that it was done properly with עדי מסירה. We do not even know that the husband requested that this גט be written. It may be a fabricated גט.

תוספות will now prove that we may rely on the עדי חתימה, [only] to ascertain that the גט was delivered properly [but not that they can effectuate the גט]:

כדאמרינן בהשולח (לקמן דף לו,א) **-**

As the גמרא says later in **פרק השולח,** concerning the משנה which states: 'אין העדים חותמים על הגט אלא מפני תיקון העולם', that this משנה –

לא נצרכה אלא לרבי אלעזר[11] **דאמר עדי מסירה כרתי -**

was written only in accordance with the view of ר"א, who maintains that עדי מסירה כרתי. Therefore עדי חתימה are not necessary. Nevertheless –

תקינו רבנן עדי חתימה דזימנין דמייתי סהדי אי נמי דאזלי למדינת הים -

The רבנן instituted that עדי חתימה should sign on the גט **for oftentimes** the עדי מסירה **may die or they may travel overseas;** the עדי מסירה will not be available to verify the status of the גט. The fact that there are עדי חתימה on the גט is sufficient verification that the גט was executed properly with עדי מסירה.[12]

תוספות will offer [another] proof that according to ר"א (whose ruling we follow), עדי חתימה cannot effectuate a גט.

וכן משמע בפרק בתרא (לקמן דף פו,ב) **גבי שנים ששלחו שני גיטין -**

And this is also implied in the last פרק concerning the case of **two people who sent two גיטין** to their respective wives -

ושמותיהן שוין [ונתערבו] נותן שניהם לזו ושתיהן לזו -

And the respective **names** of the couples **were identical, and** the גיטין **became mixed up.** We cannot identify which גט each husband sent. The דין is; we are to **give both** גיטין **to this** wife **and both** גיטין again **to the other** wife. In this manner we can be assured that each woman received the proper גט from her husband.

וקאמר בגמרא דלא כרבי אלעזר משום דלא ידעי עדי מסירה בהי מינייהו מיגרשא –

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[11] According to ר"מ since עדי חתימה כרתי the חתימת העדים is מדאורייתא.

[12] If the הלכה would be that עדי חתימה alone can effectuate the גט, the גמרא could have said that the reason the חכמים were מתקן עדי חתימה is for those cases where we are concerned that at the time of delivery, there will not be עדי מסירה כשרים. Therefore we have the עדי חתימה sign to effectuate the גט. Since the גמרא does not give this reason, that is proof that the עדי חתימה can in fact not effectuate the גט (according to ר"א). They can merely be relied on, that the גט was executed properly with עדי מסירה. See תוספות הרא"ש.

And the גמרא there **says**[13] that this solution **cannot** follow the opinion **of ר"א, because the עדי מסירה (**that will be present when both גיטין will be delivered to both women) **will not know with which of these** two גיטין **she is being divorced.** They cannot testify with certainty at which point the divorce took place. There is something lacking in the definiteness of their testimony.[14]

- אבל לרבי מאיר ניחא

However according to ר"מ, it is a proper solution. The עדי חתימה, when they signed on the גט, knew which husband is giving the גט (to which wife). The גט when it was signed is a proper גט. Therefore when the גט is actually given, the עדי חתימה effectuate the divorce. They do not have to be aware when the moment of the divorce is taking place. In every גט with עדי חתימה, according to ר"מ, the עדים merely sign and are not aware when the actual delivery of the גט will take place.

Before תוספות continues to conclude his proof from this גמרא, he interjects a comment concerning what the גמרא says that according to ר"מ it is ניחא:[15]

- וצריך לומר דבמשולשין איירי

It is necessary to qualify the previous גמרא which states that according to ר"מ we are to give both גיטין to both wives; that **we are discussing** גיטין that had **a third** generation written in it to identify the parties. Both parties had the same names and parents names; however they had different grandparents (third generation) names. The גיטין actually contained the grandparents' names; the עדי מסירה (and בי"ד) could not however identify the couples based on the grandparents' names. תוספות will now explain why it is necessary to say that במשולשין איירי.

- דבעי לרבי מאיר שיהא מוכח מתוכו

For ר"מ requires that it be evident from the גט, who is divorcing whom.[16] If the גט was not משולש, we cannot distinguish by reading the גט alone, who the husband and wife are, since there is another couple with identical names. Such a גט is not מוכח מתוכו and is פסול. Once the גט is משולש we are able to ascertain the correct couple that is being divorced with this גט.[17]

- כדאמרינן בריש כל הגט (לקמן דף כד,ב) גבי כתב לגרש את הגדולה

As the גמרא **says** later **in the beginning of כל הגט** פרק **concerning the case**

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[13] This is merely the הוה אמינא of that גמרא. See following footnote #14.

[14] The גמרא maintained in the הו"א that ר"א requires נתינה לשמה as well as כתיבה לשמה. Therefore since the עדים do not know with which גט she is being מגורשת there is no נתינה לשמה. The conclusion of the גמרא is that even ר"א does not require נתינה לשמה and it will be a valid solution according to ר"א as well.

[15] See however תוספות הרא"ש where it seems that 'משולשין' is an integral part of the ראיה.

[16] See תוספות ב,ב (ג,א) ד"ה ורבנן.

[17] Even though we cannot ascertain it now, nevertheless it is כשר, because in principle we will be able to ascertain, who is being divorced with this גט.

where he **wrote** the גט with the intention **of divorcing the older** wife, he may not use it to divorce the younger wife, etc. From that גמרא it is evident that ר"מ requires מוכח מתוכו. This concludes this tangential comment.

תוספות now returns to his proof from the previously quoted גמרא of the two similar גיטין, that according to ר"א only עדי מסירה כרתי and not עדי חתימה.

ואי לרבי אלעזר סגי בעדי חתימה אמאי לא אתיא כרבי אלעזר -

And if we will maintain **that according to ר"א** even **עדי חתימה are sufficient** to effectuate a גט, **why cannot** this דין, that we give both גיטין to both wives, **follow** the opinion **of ר"א -**

דל עדי מסירה מהכא בעדי חתימה סגי -

Remove the עדי מסירה from here; they are useless in the sense that they cannot testify who is divorcing whom. But nevertheless **the עדי חתימה are sufficient** to effectuate the גיטין -

אלא משמע דלעולם בעי רבי אלעזר עדי מסירה -

However since the גמרא refuses to say (in the הו"א) that the דין can follow the opinion of ר"א, but rather maintains that it follows only the opinion of ר"מ, **it is implied that ר"א always requires עדי מסירה** even if there are עדי חתימה, for it is only עדי מסירה כרתי; but עדי חתימה are not כרתי. Their use is only as a proof, but not as enacting the process.

Until now תוספות has asserted that according to ר"א, the עדי מסירה are required to be at the מסירת הגט even though there are עדי חתימה on the גט. תוספות will now add a new point to this discussion.

ועוד דרגיל רבינו תם לומר דאפילו לרבי מאיר בעי עדים בשעת נתינת הגט -

And furthermore, the ר"ת was accustomed to say that even according to the opinion **of ר"מ** who maintains that עדי חתימה כרתי, nevertheless **witnesses are required at the time of the delivery of the גט** to the woman. Even though there are עדי חתימה on the גט. The reason for this is:

דאין דבר שבערוה פחות משנים -

for we cannot enact any **marital issue with less than two** witnesses. The עדי חתימה effectuate the גט, so that we have the proper tool with which to proceed to the act of divorce. The enactment of the divorce process itself, however, requires two עדים that it be effective.[18]

תוספות has concluded discussing the requirement of עדי מסירה by גיטין and will now

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

discuss the role of עדי מסירה by שאר שטרות.

וכן שטר מתנת קרקע או שטר מכר שהוא לקנין קרקע ואינו לראיה -

And similarly, a deed, gifting land or a deed of sale whose purpose is the acquisition of the land and it is not merely **for proof** of ownership;[19] the transference of the property was to be effected by the delivery of the שטר from the original owner to the new owner. In such instances -

אין מועיל כלום לרבי אלעזר[20] אם ידוע שלא נתנו בפני עדים -

Nothing will be accomplished according to ר"א if it is known that the שטר **was not delivered** to the recipient (the receiver of the gift or the buyer) **in the presence of witnesses.** The transaction has not taken place if there are no עדי מסירה present. Neither the recipient of the gift nor the purchaser may claim title to the land. It has not been transferred to them. It is still in the possession of the original owner. He may rescind his previous decision to gift or sell this land. This is because הלכה כר"א בשאר שטרות that only עדי מסירה כרתי. There can be no enactment of any sort (that requires witnesses), unless עדי מסירה are present.

תוספות will now reconsider this previous statement concerning שטרי מכר ומתנה:

מיהו יש לחלק[21] -

However, it is possible that we may differentiate between גיטין and שאר שטרות; that even though by גיטין we must have עדי מסירה; and עדי חתימה are not sufficient, (and even though the הלכה is כר"א even בשאר שטרות), nevertheless there is a difference –

דלענין ממון דמהניא הודאת בעל דין כמאה עדים[22] -

for concerning monetary issues such as gifting and selling **where the admission of a litigant is as acceptable as** the testimony **of a hundred witnesses;** therefore –

סגי בעדי חתימה במקום הודאת בעל דין –

It may be sufficient with just **the עדי חתימה** to effect the transaction without עדי מסירה, for we will consider the עדי חתימה to be **in place of an admission from the litigant.[23]** It will be considered as if the original owner admits before the בי"ד that he gifted or sold this land to the recipient.[24] Had he done that, בי"ד would accept

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[19] A שטר מכר may have two functions. It may prove that that the property belongs to the holder to the שטר. In addition a שטר מכר is the means by which the ownership of the property is transferred from the seller to the buyer. It is a שטר קנין as well as a שטר ראיה.

[20] See 'Thinking it over' # 3.

[21] There is a dispute among the אחרונים, according to the 'יש לחלק', if עדי מסירה כרתי by שטרי ממון.

[22] If the נותן admits that he transferred the property properly with a שטר (and ע"מ), it would be valid.

[23] See נח"מ. See [however] also אילה שלוחה (עמ' רא) (whether במקום בע"ד means when there is a הודאת בע"ד).

[24] It is very questionable when the בעל דין is מודה that he gifted or sold the land with a שטר without ע"ח or ע"מ that it will be a valid קנין. However if there were ע"ח on the שטר, we may consider the שטר valid (even if

his admission, and place the land under the ownership of the recipient. The same process applies when there is a שטר מכר ומתנה with עדי חתימה, that it is considered as if he admitted to the transfer of ownership.

אבל בקידושין וגרושין לא מהניא הודאת בעל דין -

However, concerning matters of קידושין and גירושין the admission of (any of) the parties is not acceptable; where the man and the woman both proclaim in front of בי"ד that they married or that they divorced (in the presence of witnesses), but no one can corroborate it, their testimony would not be accepted. They would remain in the same marital status as they were before this proclamation. The reason that their admission is not acceptable is –

משום דמחייב לאחרים דבקידושין אסר לה אקרובים -

For their admission **imposes a liability on others**. It limits the freedom of others; **for** if they admit that they **married,** through this **he prohibits her** from having relationships with any **of** his **relatives.**[25] She was previously permitted to marry anyone she chose (from his family). Now they cannot marry her. A person's admission is acceptable only if he is 'harming' himself; not if he is 'harming' others. In this case he is restricting his relatives from marrying her.

ובגירושין אסר לה אכהן:

And concerning an admission of **divorce, he is prohibiting her** from marrying a **כהן.** Were he to die, a כהן would be permitted to marry her. Now by asserting that they are divorced, a כהן would be prohibited from marrying her. Therefore since by גירושין and קידושין there is no rule of הודאת בעל דין, therefore עדי חתימה cannot enact the גירושין וקידושין without עדי מסירה. However by שטרי ממון where there is the דין of הודאת בעל דין כמאה עדים דמי, the עדי חתימה may be accepted as a substitute for הודאת בעל דין.[26]

Summary

The הלכה is like ר"א that עדי מסירה כרתי both by גיטין and by שאר שטרות, since שמואל maintains that הלכה כר"א אף בשאר שטרות, and based on the story of the שטר מתנה on which two brothers-in-law signed. תוספות concludes that by all

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we maintain that כרתי ע"מ), on account of הודאת בעל דין. The עדי חתימה provide us with proof that there was a transfer of a שטר (as if the נותן admitted it). Without עדים however the הודאת בעל דין (of transferring a שטר without ע"ח וע"מ) cannot create a קנין שטר, because the שטר itself contains no proof that it was actually transferred or that it is indeed a שטר. See סוכת דוד אות כו. See also נח"מ ובל"י (and footnote # 26).

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

[26] By גו"ק since we must know objectively that there were ע"מ (the admission of the parties that there were ע"מ is insufficient), therefore גו"ק can be enacted only with ע"מ; however by ממון since the property can be transferred by הודאת בע"ד alone (if he admits that he gave a שטר with ע"מ), this indicates that the ע"מ do not (solely) enact the transaction (for in this case we do not know objectively that there were ע"מ), therefore ע"ח (who assure us that there was a transfer of a שטר) can enact the transaction (as if it were הודאת בע"ד). See also אמ"ה # 131-135.

גיטין there must be עדי מסירה present even though there are עדי חתימה on the גמרא of the two גיטין that were mixed up. And even according to ר"מ we require עדי מסירה by the delivery of the גט, since אין דבר שבערוה פחות משנים. תוספות based this (on the גמרא of אין העדים וכו' and) on the גט.

Concerning שאר שטרי קנין, there is an uncertainty in תוספות whether they require עדי מסירה, or perhaps since by ממונות we have the rule that הודאת בעל דין כמאה עדים דמי, therefore the עדי חתימה may be sufficient. However by קידושין וגירושין where the rule of הודאת בעל דין does not apply, we require עדי מסירה.

THINKING IT OVER

1. תוספות proves[27] from the דין of שטרי פרסאי that עדי מסירה כרתי בשאר שטרות. ר"מ would seemingly also agree that if עדי מסירה say that the לוה owes the מלוה money, the לוה would have to pay (מבני חורי). How is this a ראיה that הלכה כר"א בשאר שטרות?[28]

2. The ר"ת maintains[29] that even according to ר"מ we require עדי מסירה at the נתינת הגט. How are we to understand that the משנה of שני גיטין שנתערבו follows the opinion of ר"מ and not of ר"א, if according to ר"מ we also require עדי מסירה?[30]

3. According to the שיטה that שטרי קנין require עדי מסירה,[31] would the ר"ת also maintain that even according to ר"מ we will require עדי מסירה, since by ממון also (as well as by a דבר שבערוה) we can be מוציא ממון only ע"פ שני עדים?[32]

4. תוספות says[33] that by קידושין he is חב לאחרים because אקרובים אסר לה. Seemingly תוספות could have simply said דאסר לה אכולי עלמא?[34]

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[27] See footnote # 9.
[28] See נח"מ.
[29] See footnote # 18.
[30] See נח"מ.
[31] See footnote # 20.
[32] See נח"מ.
[33] See footnote # 25.
[34] See רש"ש.