וליחוש דלמא מפקא כולי –

And let us be concerned, perhaps she will produce, etc.

Overview

There is a dispute between רבי אבהו and רב פפא concerning the writing of a receipt. In a case where the לוה admits owing the מלוה; however the לוה requests that the שטר חוב be returned to him. The מלוה claims that he lost the שטר חוב and is willing to give the לוה a receipt instead of the שט"ח. The לוה however, is not satisfied with the receipt, because he is concerned that he may lose it, and the מלוה will produce the שט"ח (the he claimed he 'lost') and will fraudulently collect a second time on his loan. ר"א maintains that since the לוה admits that he owes the money, he must pay. His only recourse is to safeguard the שובר; to protect him from fraudulent claims. ר"פ maintains that we must protect the לוה. He is not required to repay the loan unless the מלוה returns the שטר.

Our משנה states that a woman may collect a כתובה of a בתולה – מאתיים זוז, on the basis of עדי הינומא. She does not have to present the כתובה at all.[1] Seemingly the only way to protect the husband that she should not claim her כתובה a second time is by having the woman write a שובר. Our משנה seems to support the view of ר"א. Otherwise (according to ר"פ), the husband should claim that he will not pay her anything until she produces the כתובה.[2] Our תוספות will explain how indeed there is a difference to the husband whether she returns the כתובה or whether she just writes a שובר.

The גמרא initially asks that we should be concerned that perhaps she will collect a second time. תוספות first explains what the גמרא assumed how this concern should be addressed.

ואפילו על ידי עדי הינומא לא היה לה לגבות עד שתחזיר לו הכתובה -

And even with the witnesses that she wore a **הינומא she should not be able to collect** her כתובה **until she returns the כתובה to** her husband –

כיון שיכול לבוא לידי הפסד במה שנשארה כתובה תחת ידה -

Since the husband **can suffer a loss by** the fact **that the כתובה remains in**

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[1] If there was a necessity to produce the כתובה there would be no need for עדי הינומא. The כתובה would state how much she is owed.

[2] ר"פ defends himself by saying that our משנה is discussing a situation where the custom is not to write a כתובה. Therefore the husband cannot demand anything from his wife. He must be satisfied with a שובר.

her possession. This is the intent of the question וליחוש דלמא מפקא וכו'.

תוספות will now clarify what loss can the husband incur if she retains the כתובה, as opposed to, if she returns the כתובה to him.

דלא מיבעיא למאן דאמר דיכול לטעון אחר מעשה בית דין[3] דמפסיד -

For there is no question that there will be a loss to the husband **according to the one who maintains that one may counterclaim an act of בי"ד; that he will lose** if she retains the כתובה. There is a difference to the husband whether she returns the כתובה or whether she gives him a שובר –

דאם לא יהיה לה כתובה יהיה נאמן לומר פרעתי -

For if she will not have the כתובה in her possession; she will have returned it to him (which proves that he paid it), then even if he loses the כתובה, nevertheless **he will be believed to claim 'I paid'** the כתובה; if she claims it a second time (after being paid previously). However if the כתובה is in her possession then (if he loses the שובר) he cannot claim פרעתי, since she has the כתובה.[4] It is like any שטר חוב which the מלוה presents. The לוה cannot claim פרעתי. Therefore it is readily understood that the husband stands to lose (according to the מ"ד that יכול לטעון פרעתי אחר מעשה בי"ד) if she does not return the כתובה.[5]

תוספות continues to explain that even according to the מ"ד that you cannot be טוען פרעתי אחר מעשה בי"ד, where seemingly there is no real difference if she returns the כתובה or not; nevertheless there is a difference.

אלא אפילו למאן דאמר דלא מצי טעין אחר מעשה בית דין -

But even according to the one who maintains that one cannot counterclaim an act of בי"ד; the husband cannot claim פרעתי, even if the woman does not produce a כתובה. It would seem that there is no difference whether the woman retains the כתובה or not. In either case he cannot claim פרעתי. According to this מ"ד, what is the difference whether she returns the כתובה or not?[6] What is the question וליחוש וכו'?[7]

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[3] A מעשה בי"ד is an obligation than one has to discharge due to an enactment by the חכמים, as opposed to an obligation that one takes upon himself (such as a loan). A כתובה is a prime example of a מעשה בי"ד. Every man who marries is obligated to provide a כתובה for his wife. There is a dispute if a person can claim פרעתי on a מעשה בי"ד, if the claimant has no document; as is the case by us, that the woman does not have the כתובה. See previous תוספות טז,א ד"ה דאי (TIE footnote # 2) .

[4] Everyone agrees that you cannot claim פרעתי (for a מעשה בי"ד) if the claimant has a שטר.

[5] The fact the משנה states that she can nevertheless collect her כתובה without producing it, proves that ר"א is correct. If the defendant (the לוה or the husband in this case) admits that he owes the money, he must pay it; notwithstanding that the claimant is not returning the שטר. This proves that כותבין שובר, despite the protestations of the לוה.

[6] If the husband wants the כתובה as proof that he paid her, she can just as well give him a receipt. In either case he will be required to safeguard it in order to protect himself.

Most importantly, how can we derive from our משנה that שובר כותבין?![8]

תוספות states that there is a difference:

מפסיד במה שהכתובה תחת ידה שאם תתבענו פעם אחרת ולא יהיה לה עדי הינומא -

He will nevertheless **lose if she retains the כתובה in her possession, for if she will present a claim against him another time and she will not have עדי הינומא,** this second time –

יהא נאמן לומר פרעתי מנה במגו דאי בעי אמר אלמנה נשאתיך -

He will at least **be believed to claim that I paid you a מנה with a מגו that he could have said I married you as an אלמנה** and you deserve only a מנה. If he would have claimed אלמנה נשאתיך he would be believed to pay her only a מנה, since she has no עדי הינומא. Therefore if he says I paid you one מנה out of the two he will also be believed.[9] He will merely owe her one מנה instead of two. He will lose this right if she retains the כתובה as תוספות will shortly state.

תוספות offers another situation in which the husband will lose even more money if she retains the כתובה:

או אם יהיה במקום שאין מכירין אם היא אשתו -

Or if the husband **will be in a place where** the people there **are not aware whether she is his wife;** in that case, if she is not in possession of the כתובה –

יהא נאמן לומר פרעתי הכל במגו דאי בעי אמר אין את אשתי -

He will be believed to claim I paid you everything with a מגו that he could have said, 'you are not my wife'. I owe you nothing. She cannot prove that she is his wife, since no one there is aware of their marriage.

והשתא שהכתובה בידה תוציא מאתיים -

However, now that the כתובה is in her possession she will extract from him two hundred זוז. In the first case he will suffer a loss of one hundred זוז and in the

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[7] According to this מ"ד it is obvious that by מעשה בי"ד a receipt is always required, since he can never claim פרעתי (as one can claim by a loan, etc.).

[8] Generally we can perhaps maintain that אין כותבין שובר, and the לוה does not have to pay until the מלוה returns the שטר. There is a practical difference to a לוה whether the מלוה returns the שטר; in which case the מלוה can never claim the loan again, for the לוה will claim פרעתי and will be believed since the מלוה has no שטר. If the מלוה however does not return the שטר, and merely gives the לוה a receipt, there is always the possibility that the לוה will lose his receipt and the מלוה will collect fraudulently a second time by producing the שטר. However by כתובה there is no difference whether the כתובה is returned or not. The only way the husband can protect himself is if he has a document (the כתובה or a שובר) which states that he paid up. Therefore there is no difference to him whether she returns the כתובה or gives him a שובר (according to the מ"ד that לא מצי טעין פרעתי אחר מעשה בי"ד).

[9] Even according to the מ"ד that לא מצי טעין אחר מעשה בי"ד, nevertheless the טענה of פרעתי will be accepted when there is an effective מגו. See: 'Thinking it over'.

second case a loss of two hundred זוז.

וכיון שיכול לבא לידי הפסד אין לו לפרוע:

And since it is possible that he will suffer a loss by her not returning the כתובה **he should not** be obligated to **pay;** until he is assured that he will not suffer any loss due to the fact that the כתובה is in her possession. The fact that the משנה was not concerned about his potential loss proves that כותבין שובר. If a person admits that he owes money, he is required to pay even if the claimant does not return the שטר. The claimant is only required to provide the payer with a receipt. It is the responsibility of the payer to safeguard the receipt.

Summary

There is a loss to the husband if the woman retains the כתובה. According to the מ"ד that מצי טעין אחר מעשה בי"ד, he loses the טענה of פרעתי. According to the מ"ד that לא מצי טעין וכו', he loses either the מגו of אלמנה נשאתיך or אין את אשתי. Therefore (if אין כותבין שובר), he should not pay her until she returns the כתובה.[10]

Thinking it over

When תוספות states that he would be believed for a מנה with a מגו of אלמנה נשאתיך;[11] is that in a case where he claims I paid you partially (a מנה), or (even) in a case where he claims I paid you in full?[12]

[10] See 'Review' in the following תוספות ד"ה זאת, for a more detailed study of this תוספות.

[11] See Footnote # 9.

[12] This would be an unusual מיגו. He is a כופר הכל; he claims I paid in full. [We should believe him partially on account of] His מיגו [which] is that he could have been a מודה במקצת; he could have claimed you were married as an אלמנה and you can collect only a מנה. See מהרש"א (הארוך).