זאת[1] אומרת כותבין שובר – This proves that we write a receipt

Overview[2]

רבי אבהו maintains that from our משנה we can prove that כותבין שובר. The מלוה is not required to return the שטר חוב to the לוה in order to receive payment; he can offer him a receipt instead (if he claims that he lost the שט"ח). The proof is from the fact that in our משנה the husband must pay the כתובה based on the testimony of the עדי הינומא, even though he is not receiving the כתובה in return. All the husband can demand is a שובר. The discussion whether כותבין שובר or not, is in a situation where there is a suspicion that the שט"ח exists. If however we know for certain (through עדים) that the שט"ח exists no longer, then it is obvious that the לוה must pay and can only receive a שובר.

תוספות anticipates a difficulty with the proof that ר"א brings from our משנה:

אף על גב דהכא לא אפשר -

Even though that here it is impossible any other way, for there are times when the husband has no choice but to accept a receipt. תוספות explains why this is so:

דאיכא למיחש דלמא תשרוף כתובתה בעדים והדרא וגביא בעדי הינומא -

for there is a concern that perhaps she will burn her כתובה in the presence **of witnesses and she will return** to her husband **and collect** the כתובה **with עדי הינומא –**

כדאמרינן בסמוך ודלמא הדרא ומפקא בעדי הינומא וגביא -

As the ברייתא **will shortly state**; that if she burns her כתובה בפני עדים, she can collect with עדי הינומא. In addition the גמרא states that after she collected once with the עדי הינומא, **perhaps she will produce עדי הינומא** again **and collect** a second time.[3] The husband will not be able to claim פרעתי (the second time) –

למאן דאמר הטוען אחר מעשה בית דין לא אמר כלום ועל כן זקוק הוא לשובר -

according to the one who maintains that he who counterclaims a מעשה בי"ד has said nothing; his claim is denied[4] **and therefore** since she can

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[1] This תוספות and the previous תוספות ד"ה וליחוש, complement each other.

[2] See 'Overview' to previous תוספות ד"ה וליחוש.

[3] Perhaps תוספות depends on the גמרא to bolster his claim that she will collect twice with עדי הינומא. Seemingly the עדי הינומא will not testify for her twice in two בי"ד; they will realize that something is amiss. תוספות therefore cites the גמרא, which clearly states that there is a concern that she will collect twice with עדי הינומא. The explanation is (as רש"י states in ד"ה כיון) that she can find many different עדי הינומא, who will testify at different בי"ד.

[4] It is the ruling of this מ"ד that allows her originally to burn her כתובה, without any fear that she will not be paid. A מלוה on the other hand will never burn his שטר בעדים; there is a concern that the לוה will claim פרעתי.

always burn her כתובה **he is dependent on a שובר**; there is no other way to protect himself. תוספות asks that since by כתובה there are circumstances in which the woman can force him to accept a שובר, therefore in general by a כתובה we allow her to collect by merely writing a שובר, without returning the כתובה. However by loans in general where the מלוה cannot collect unless he produces the שטר, for otherwise, the לוה can claim פרעתי, there the דין can be that אין כותבין שובר and the מלוה must return the שטר in order to collect his debt. There is no proof from the fact that כותבין שובר by a כתובה, that the דין should also be כותבין שובר by a מלוה.

תוספות responds that indeed there is proof from a כתובה to a מלוה:

מכל מקום דייק שפיר דבעלמא נמי כותבין שובר -

nonetheless; despite the issue just raised, the גמרא **correctly infers** from this דין of כתובה **that in general**, by loans **also, we can write a שובר,** and the מלוה is not obligated to return the שטר –

דאי אין כותבין בעלמא למה יפרע כאן -

For if in general, by loans, **we cannot write a receipt;** but rather the מלוה is required to return the שטר in order to protect the rights of the לוה, then **why should** the husband **pay** the כתובה **here** in our case, without receiving the כתובה in return –

כיון שיכול לבא לידי הפסד במה שהכתובה בידה כדפירשנו[5] -

since the husband can incur a loss from the fact **that the כתובה is in her possession as we explained** (in the previous תוספות) that if the woman has no עדי or it is הינומא, the husband loses by the fact that the כתובה is במקום שאין מכירין שהיא אשתו בידה.

SUMMARY

Even though the woman can occasionally force the husband to accept a receipt instead of the כתובה, nonetheless she should not be entitled to have him pay, without her returning the כתובה, unless we maintain that כותבין שובר.

THINKING IT OVER

Why, in the קושיא, did תוספות assume that we cannot prove from our משנה that כותבין שובר (since she can burn the כתובה); and in the answer תוספות assumes that we can infer from our משנה that כותבין שובר (since the husband may incur a loss)? What changed from the קושיא to the תירוץ?!

[5] ד"ה וליחוש.

Review[6]

There is a dispute between רבי אבהו and רב פפא concerning the right of the מלוה to offer the לוה a receipt in lieu of returning the שטר חוב. ר"א maintains, that since the לוה admits that he owes the מלוה money, he must repay him, even though the מלוה claims that he cannot return the שט"ח. The לוה can only demand that he be given a receipt to prove that he paid the loan. רב פפא is of the opinion that the לוה is not required to repay the loan, until the מלוה returns the שטר. The לוה can claim that a receipt is not sufficient, for perhaps, the לוה will lose the receipt and the מלוה will produce the שטר and thereby fraudulently collect the payment a second time. ר"א views the rights of the מלוה paramount (since the לוה admits to owing the money), therefore כותבין שובר, while רב פפא is of the opinion that the rights of the לוה must be guaranteed (the מלוה must either produce the שטר or bring עדים that it was burnt, etc.) and therefore אין כותבין שובר.

Our משנה states that a woman can collect her כתובה based on the עדי הינומא. She is not required to produce the כתובה. The גמרא concluded that if we assume that the משנה is discussing places where the custom is to write a כתובה, then this presents a complication for ר"פ and proof for ר"א. The fact that the husband is required to pay without receiving the כתובה in return, supports the view of ר"א, that a שובר is sufficient to placate the payer; the original loan document need not be returned.

תוספות has two general difficulties with this proof from our משנה in כתובות, regarding the case of a loan. One difficulty is dealt with in the תוספות ד"ה וליחוש; the other in תוספות ד"ה זאת. Both questions are according to the מ"ד that הטוען אחר מעשה בי"ד לא אמר כלום; that the husband cannot claim פרעתי if she demands her כתובה, unless he has either the כתובה or a שובר to prove that he already paid her. Otherwise the woman can always claim that her כתובה was not paid up yet. This makes a loan very different from a כתובה. By a loan the מלוה must have the שטר in his possession in order to make a claim; for otherwise the לוה can claim פרעתי. However a woman does not require a כתובה in order to claim her payments, for the husband cannot claim פרעתי.

[6] This is a review of the two תוספות ד"ה וליחוש and ד"ה זאת.

The first question argues that we cannot prove anything from our משנה. It is possible that by a loan the ruling is that אין כותבין שובר; the מלוה cannot collect unless he returns the שט"ח to the לוה. The לוה has a valid claim: if the שטר is not returned and I lose the receipt, I may have to repay the loan again. If however the שט"ח is returned to the לוה, he will have nothing to be concerned of in the future, for even if the מלוה claims that he was not paid, the לוה will not have to pay him, since the מלוה has no שטר. However by a כתובה, there is seemingly no difference to the husband whether she returns the כתובה or writes him a שובר. Either way he will need to guard them. For if he loses the כתובה or the שובר the woman can claim that she was never paid. Therefore since there is no difference to the husband, the rule is that she need not produce the כתובה.

תוספות answers that there is a difference to the husband whether or not she returns the כתובה. The difference is in a situation where the woman cannot find עדי הינומא, or in a place where no one knows that they were once married. In these situations if she will have returned the כתובה (even if the husband loses it), she cannot claim that בתולה נשאתני for she has no עדי הינומא. In the latter case she cannot claim anything at all for the husband has a מגו that 'you are not my wife'. If however she merely wrote him a שובר and he lost it, then she will be able to claim her כתובה a second time based on the כתובה in her possession. Therefore; since the husband stands to lose by her retaining the כתובה, and nevertheless we maintain that she collects without returning the כתובה, this is ample proof that כותבין שובר.

The second question of תוספות is that there is another difference between כתובה and a loan. In the case of כתובה, the wife can force the husband to accept a receipt (and not the כתובה). She has the ability to burn the כתובה in the presence of עדים (before she was paid anything). She then comes to בי"ד with the עדי הינומא and collects. The husband cannot demand the כתובה because she has עדים that the כתובה is burnt. He is forced to be satisfied with a שובר. The husband will be forced to guard this שובר, since his wife can always come back and demand payment. תוספות seems to be arguing that since the woman has the power to make him accept a שובר (if she burns the כתובה), then this power should be applied in all cases even if she has no עדים

that she burnt the כתובה.[7] However by a loan the מלוה cannot afford to burn the שטר, for if he were to do so the לוה can claim פרעתי. There is no way in which the מלוה can 'force' the לוה to accept a שובר, therefore the דין is that אין כותבין שובר. There is no proof from כתובה.

תוספות answers, that even though the woman can force the husband to accept a שובר if she burns the כתובה, nevertheless as long as the כתובה was not burnt, she should be obligated to return it to him upon payment, since it is possible that he may suffer a loss if it remains in her possession (as explained in the answer to question one). The fact she may collect without returning the כתובה indicates that כותבין שובר

[7] This is somewhat similar to a מגו argument ([especially] if we assume that the נאמנות of a מגו is based on the זכות הטענה).