We write a receipt – כותבין שובר

Overview

The גמרא explains that the reason the woman can collect without returning the כתובה is because we follow the opinion that כותבין שובר. The creditor has the right to collect, even if he does not produce the שטר as long as he provides the debtor with a receipt. תוספות will question the validity of applying this ruling to a כתובה (as it is applied by a loan).

תוספות anticipates a difficulty:

אף על גב דבפרק גט פשוט (בבא בתרא קעא,ב ושם) מפרש טעמא -

Even though that in פרק גט פשוט the גמרא **explains the reason –**

דמאן דאמר כותבין שובר משום דעבד לוה לאיש מלוה[1] -

of the one who maintains that we write a receipt. The reason is **because** there is a verse which reads **that 'the borrower is a slave to the person who lends'**; indicating that we favor the lender over the borrower, in various instances. This includes this situation, in which the מלוה is not required to produce the שטר, but may rather write a receipt to the לוה.[2] The question is, if the reason for כותבין שובר is because עבד לוה לאיש מלוה, then by a כתובה, where the husband is not a לוה, nor is the wife a מלוה, the rule of כותבין שובר should not apply.[3] Why then can she collect without producing the כתובה?!

תוספות responds that עבד לוה לאיש מלוה -

לאו דוקא לוה אלא הוא הדין בכל חוב כמו כתובה דהכא -

does not specifically refer to a **לוה,** that only an actual לוה is considered an עבד, and must acquiesce to the claim of the מלוה **but rather this ruling** applies **to all debts** that are owed.[4] The one owing the money, for whatever reason, is treated as the עבד **just as the case here of a כתובה -**

---

[1] משלי כב,ז.

[2] Where there is a choice whether to inconvenience the לוה by writing him a שובר and not returning the שטר (obliging him to safeguard the שובר) or whether to require the מלוה to produce the שטר (and otherwise he will not be paid), we choose to place the burden on the עבד לוה instead of on the מלוה.

[3] תוספות is assuming that the rule of כותבין שובר is only by a real מלוה ולוה. The מלוה did the לוה a favor by lending him the money. Therefore whenever there is a conflict between their respective interests, we rule in favor of the מלוה. However by a כתובה there were no favors rendered by the wife, therefore the rule of עבד לוה should not apply.

[4] תוספות concludes that the rule of עבד לוה is not dependent whether the creditor did a favor to the debtor. The mere fact that he is a debtor obligates him to pay the debt, notwithstanding that he may suffer a loss in the future since the שטר was not returned to him. The proof that this is so is from the fact that the גמרא uses

ושטרי מקח דאמר התם[5] דכותבין שובר:

And notes of sale, regarding which the גמרא **states there that we write a שובר** in the case of a שטר מקח. We can infer from that גמרא that the rule of כותבין שובר applies to all situations not only by loans, where the מלוה did a favor to the לוה, by lending him the money. Therefore it applies to כתובה here as well.

SUMMARY

The rule of כותבין שובר applies to all debtors, regardless if there was a loan or not.

THINKING IT OVER

1. In the previous two (תוספות ד"ה וליחוש וד"ה זאת), it seemed that כותבין שובר is more appropriate by a כתובה than by a loan. In this תוספות it seems that כותבין שובר is more appropriate by a loan than by a כתובה. How can this seemingly apparent contradiction be resolved?

2. In general, how can we maintain that אין כותבין שובר? This implies that even if the לוה admits that he owes the money, nevertheless if the מלוה does not produce the שטר, the לוה does not have to pay (even if the מלוה offers to write a receipt). This does not seem to be justified! How can a future doubtful concern (that the לוה may lose the שובר and the מלוה will produce the 'lost' שטר) outweigh a definite obligation in the present!?

---

this rationale for שטרי מקח as תוספות points out. The meaning of עבד לוה may be that the one who owes, the לוה, must bear the burden of safeguarding the שטר, much as an עבד must bear the burden his master places upon him.

[5] ב"ב קסט, סע"א וע"ב. The case there is where the buyer of a property lost his deed; the עדים (of the first שטר) may rewrite a שטר מכר for him that he bought the field. However, they may not include in this new שטר מכר, the guarantee that if this field is taken away from him (by a בע"ח) he can collect from the מוכר (both from בני חורין and משועבדים). The reason we do not include the אחריות is because we are concerned that the buyer did not lose his original deed and will fraudulently collect twice from the buyer, עיי"ש. The גמרא asks, let us write אחריות in this new שטר and give the מוכר a receipt stating that the only valid bill of sale on this property is this last שטר, thus preventing any fraud. The גמרא initially proves from this that אין כותבין שובר and then refutes this proof, עיי"ש. In any event since there is no לוה ומלוה here, how can we prove anything concerning כותבין שובר by a לוה ומלוה if the reason for כותבין שובר is because of עבד לוה לאיש מלוה?! This proves that כותבין שובר applies to whomever even if he is not a לוה, but merely owes (or may owe) money.