

## Say the הלכה is like ר"מ

## אימא הלכה כרבי מאיר –

### OVERVIEW

is of the opinion that רב הונא is not effective against a שטר. The גמרא explained that ר"מ, who maintains that אין נאמנים לפוסלו, despite the fact that the עדים have a הפה שאסר, follows the opinion of ר"ה.

In the previous תוספות ד"ה טעמא it was explained that we should not infer that the רבנן disagree with ר"ה. Rather they also can maintain that א"צ לקיימו ר"ה. However עדים are different and more powerful than the לוח. When עדים have a שטר they are believed against a הפה שאסר.

רבנן challenged ר"ה for saying his rule of א"צ לקיימו as if all agree to it. ר"מ maintains that only ר"מ agrees that א"צ לקיימו; that a מגו is ineffective against a שטר. However the חכמים are of the opinion that צריך לקיימו for a מגו is effective against the שטר.

This challenge of רבנן to ר"ה seems to contradict that previous תוספות; which distinguishes between the לוח (whose מגו is ineffective against a שטר) and עדים (where a הפה שאסר is effective against a שטר). Our תוספות will resolve this difficulty.

asks: תוספות

**תימה דאפילו כרבנן נמי מצי סבר ושאני עדים דאלימי לאורועי שטרא -**

**This is incredible;** to assume that רב הונא must agree with ר"מ! **For ר"ה can even agree with the רבנן** that נאמנים לפוסלו, even if he maintains א"צ לקיימו, **since עדים are different** than the לוח. **For the עדים are (more) powerful** than the לוח and are capable of **invalidating the שטר**. The לוח is not believed with the הפה שאסר. However the עדים are believed with the הפה שאסר. מזוייף of מיגו –

**דהכי אית ליה לרבי יוחנן -**

**For this indeed is the opinion of ר"י;** everyone maintains מבשאצ"ל and nevertheless the רבנן maintain that נאמנים לפוסלו for אלימי עדים וכו'.<sup>1</sup> The question is why does ר"י insist that the ruling of מבשאצ"ל follows only the view of ר"מ, when ר"י clearly states that even the רבנן maintain that מבשאצ"ל.<sup>2</sup>

<sup>1</sup> See previous תוספות ד"ה טעמא.

<sup>2</sup> This difficulty is eliminated according to the interpretation of רש"י, who maintains that ר"מ ורבנן argue whether צריך לקיימו or not and there is no difference between the לוח and the עדים.

answers: תוספות

**ויש לומר דרב נחמן אין נראה לו לחלק -**

**And one can say; that ר"נ does not see fit to differentiate** between the לווה and the עדים. According to ר"נ if עדים are believed to be פוסל the שטר (with a שאסר), then the לווה is also believed to claim פרעתי (with a מזוייף); and if the לווה is not believed to claim (במגו דמזוייף) then the עדים are not believed to be פוסל the שטר (with a שאסר). Therefore, if we maintain that מבשאצ"ל (a מגו is ineffective for the לווה) then we must maintain that אין נאמנים לפוסלו (that a הפה שאסר is ineffective for the עדים) like ר"מ stated. ר' יוחנן obviously disagrees with ר"נ.

תוספות asks an additional question:

**ואם תאמר ודלמא דרב הונא מיירי במודעא<sup>3</sup> ואמנה<sup>4</sup> -**

**And if you will say; perhaps רב הונא**, when he states that מבשאצ"ל, **is discussing** a case of מודעא or אמנה (and not the case of פרעתי).<sup>5</sup> It is only when the לווה claims that it was a שטר מודעא or a שטר אמנה that ר"ה maintains that the לווה is not believed with a מגו of מזוייף. However when the לווה claims פרעתי (or when עדים have a הפה) <sup>6</sup> he (they) will be believed because of the מגו.

תוספות will prove that we can differentiate between the claim of פרעתי and the claims of אמנה or מודעא:

**דאפילו רב נחמן מודה לקמן<sup>7</sup> -**

**For even ר"נ** who maintains that שכתבו צריך לקיימו in a case of מודה בשטר, **later agrees** that by a שטר מודעא ואמנה, that even the עדים are not believed. Perhaps ר"ה also meant מודעא ואמנה only, when he said לקיימו א"צ לקיימו. If that is true, ר"ה does not agree with ר"מ, but rather his ruling is according to the רבנן. It is only by (פרעתי) (and also by) (אנוסים וקטנים וכו') (however by) that a מגו is not effective, however by מודעא ואמנה

<sup>3</sup> A מודעא means that the לווה claims that he was forced to agree to the signing of this שטר, even though he did not borrow any money.

<sup>4</sup> An אמנה means that the לווה claims he trusted the מלוה with this שטר (to keep it for when it will be needed), even though he did not borrow any money.

<sup>5</sup> See 'Thinking it over'.

<sup>6</sup> It is perhaps possible that this question is a continuation of the answer to the previous question. תוספות answered that ר"נ does not distinguish between עדים and the לווה. This indicates that ר"ה may indeed make this distinction that even though the לווה is not believed, nevertheless עדים are believed (as the חכמים maintain). It follows therefore that the statement of מבשאצ"ל is not a blanket statement, that no claim is effective against a שטר, but rather that it is a selective statement; certain claims (פרעתי, etc.) are ineffective against a שטר. If that is the case, then perhaps ר"ה was very selective and the statement of מבשאצ"ל is referring to the claims of מודעא ואמנה exclusively. ר"נ agrees that these claims are ineffective. What is ר"נ's challenge to ר"ה?! See footnote # 9.

<sup>7</sup> יטב.

a is effective.<sup>8</sup>

answers: תוספות

**ויש לומר דרב הונא סתם קאמר ולא מפליג:**

**And one can say; that ר"ה stated his ruling (of מבשאצ"ל) in general terms and he did not differentiate** between one type of מודה בשטר (like פרעתי) to another type of מודה בשטר (like מודעא ואמנה). Rather he maintains that in all cases, even by פרעתי, the ruling is that א"צ לקיימו. Therefore ר"נ (who maintains that there is no difference between the לווה and עדים) challenged him<sup>9</sup> that he should have said that כר"מ, because according to the חכמים who maintain לפוסלו נאמנים also maintain that the לווה is פרעתי במגו דמזוייף by נאמן.

### **SUMMARY**

ר"נ disagrees with ר"י and maintains that there is no difference, concerning a מגו against a שטר, between the לווה and the עדים.

The fact that ר"ה did not qualify his statement of אצ"ל מבשא, indicates that it applies in all cases; including if the לווה claims פרעתי.

### **THINKING IT OVER**

asked that perhaps ר"ה made his statement of אצ"ל מבשא only concerning גמרא say that אמנה is not comparable to אנוסים? The case of טעמא דר"מ כדרב הונא is not comparable to! ומודעא<sup>11</sup>

<sup>8</sup> See footnote # 6. who explains as follows: In the case of מודעא ואמנה they are not believed, because according to their testimony the שטר was written properly. It was a properly written שטר. A מגו cannot invalidate a properly written שטר. This is known as ומרע לשטרא. לא אחי על פה. However by אנוסים, they are claiming that there never was a valid שטר (it was never properly signed by עדים כשרים), therefore the מגו is effective. In the case of פרעתי (it is exactly the opposite); he is agreeing the שטר was valid. There is no attempt at all to invalidate the שטר per se. The לווה is (merely) claiming that the loan was already paid. Therefore (according to ר"נ) the מגו is effective.

<sup>9</sup> See footnote # 6. According to this answer that ר"ה does not differentiate and maintains that אצ"ל מבשא is a universal law; no claims (except for מזוייף) are effective against a שטר, then the answer to the first question of תוספות may change as well. It is not merely (as originally claimed) that ר"נ does not distinguish between the לווה and the עדים; but rather that ר"נ deduces from the blanket statement of ר"ה that even ר"ה himself does not make any distinctions; but always maintains that אצ"ל מבשא (even by עדים). See following footnote # 1. תוספות ד"ה לעולם

<sup>10</sup> See footnote # 5.

<sup>11</sup> See footnote # 8.