And for instance, that it is detrimental for others - וכגון שחב לאחרים

Overview

The גמרא states that there is an occasion when a מלוה is not believed to claim that the שטר he is holding is a שטר אמנה. This happens when by his admission he causes harm to others. The case is where ראובן (the first מלוה) lends money to שמעון (the first לוה). In addition לוי (the second לוה) owes money to שמעון (the second מלוה [and first לוה]). According to the rule of שעבודא דר"נ, the first מלוה (ראובן) can collect directly from לוי (the second לוה). If however שמעון claims that לוי owes him no money and the שטר he holds against לוי is merely a שטר אמנה, then ראובן (the first מלוה) would not be able to collect from לוי, if שמעון is telling the truth. The דין is that שמעון is not believed to claim it is a שטר אמנה since he is causing harm to ראובן. A person is believed only to obligate himself but not to obligate or cause harm to others.

There is a ruling from שמואל that המוכר שט"ח לחבירו וחזר ומחלו מחול ואפילו יורש מוחל. This means that if לוי owes שמעון money בשטר, and שמעון sold this שטר to ראובן;[1] now ראובן (and not שמעון) has the right to collect the monies of the שטר from לוי. Nevertheless שמעון has the right to be מוחל לוי the חוב and ראובן will not be able to collect the חוב from לוי. If שמעון died before ראובן collected the debt from לוי, the heirs of שמעון may also be מוחל the debt to לוי, preventing ראובן from collecting on his purchased שט"ח.

תוספות asks:

ואם תאמר ולהימניה במגו[2] דאי בעי מחיל ליה[3] -

And if you will say; let us believe the מלוה, who claims that it is a שטר אמנה, **with a מגו, for if** the מלוה **wanted he could have absolved** the לוה from repaying him. If the מלוה would be מוחל the לוה, then the אחרים (those to whom this מלוה owes money), would lose their right to collect from the לוה. This power of the מלוה (to deprive the אחרים from collecting from his לוה) should also apply when he claims that it is a שטר אמנה, thus causing the אחרים to lose the ability to collect from the לוה.

תוספות will prove that the מלוה has the right to be מוחל a loan even if it harms others.

---

[1] The price paid for such a שט"ח is usually discounted from the face value (the amount of the loan) of the שט"ח. The buyer has to wait for his money and is taking a risk, for the לוה may not pay him.

[2] See 'Thinking it over' # 1.

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

דהא המוכר שטר חוב לחבירו וחזר ומחלו מחול (לקמן דף פה,ב) -

For if one sells a documented loan to his friend and went back and forgave the לוה from repaying the debt, the law is that the loan **is absolved.** The purchaser of the note cannot collect from the לוה.[4] We derive from this law that the מלוה can be מוחל a loan even if it causes a loss to others. The same power should be applied, through מגו, if he claims that it is a שטר אמנה. The question is as follows: We derive from the דין of (שמואל that) המוכר שט"ח לחבירו וכו', that a מלוה has the right to be מוחל a חוב even if it causes harm to a legitimate buyer. It is therefore assumable that the same applies in a case of שעבודא דר"נ. If the second מלוה is מוחל the second לוה, the מחילה is valid even though it causes a loss to the first מלוה.[5] A person has a right to be מוחל a חוב even if it causes hardship to others. In the case of שטר אמנה the only question is whether the מלוה is saying the truth when he claims that he is holding a שטר אמנה (since he is harming someone). It should be assumed, however, that he is telling the truth, by virtue of the מגו; because he could harm the first מלוה regardless, by openly being מוחל the חוב.[6]

תוספות answers:

ויש לומר דלאו מגו הוא דשמא אין דעתו למחול ולהפסיד חובו -

And one can say that this is no מגו. The מלוה will not want to be מוחל the loan, **for perhaps it is not his intention** (even when he claims שטר אמנה הוא) **to give up and lose his loan –**

דעכשיו שאומר אמנה הוא לא מפסיד מידי דאין הלוה גזלן -

For now when he claims that the שטר is **אמנה** the מלוה **is not losing anything for the לוה is not a robber.** The מלוה is sure that the לוה will still repay him, for he owes him the money. [7] However if he is מוחל the חוב outright then the לוה will not (have to) repay him. Therefore, since there is no מגו, the מלוה cannot claim אמנה, for we do not believe his admission when it causes harm to others.

---

[4] There is a discussion in תוספות ב"ב קמז,ב ד"ה המוכר as to the liability (if any) of the מוכר to the לוקח.

[5] One may even argue that it is a ק"ו. If a מלוה who sold his שטר and (seemingly) gave up his rights to collect from the לוה, may, nevertheless, be מוחל the חוב and harm the innocent buyer who explicitly bought this שטר to collect the חוב; then certainly a bona fide מלוה can be מוחל a חוב to his own לוה, even though he may be indirectly causing a loss to his own מלוה, by denying the first מלוה the opportunity to collect his חוב from his לוה (on whom he (the first מלוה) did not necessarily depend on originally when he made the loan to the first לוה).

[6] The term מגו here may be interpreted slightly different than usual. תוספות is saying that there is no concern of חב לאחרים, for the מלוה could just as easily be מוחל the חוב and cause the חב לאחרים regardless. Therefore since there is no חב לאחרים we should accept the הודאה of the מלוה that it is a שטר אמנה (see סוכ"ד אות לז).

[7] The מלוה is claiming שטר אמנה to prevent the third party from collecting from the לוה. He is hoping that the לוה will eventually pay him instead of paying the third party. See 'Thinking it over' # 3. [However the מלוה is not concerned that (since the לוה is not a גזלן) he will pay the first מלוה (as is required by שעבודא דר"נ), because [perhaps] paying one מלוה instead on another is not considered גזילה (and the second מלוה will 'sweeten the deal', somehow, so the לוה will pay him).]

תוספות anticipates a difficulty:

אף על גב דבסוף פרק קמא דבבא מציעא (דף כ,ב[8] ושם) אמרינן מגו כהאי גוונא גבי מצא שובר -

Even though that in the end of the first פרק of ב"מ מסכת **we do say this type of a מגו**; that (s)he could be מוחל, **concerning** the case where someone **found a receipt** for a כתובה payment; the ברייתא there says –

בזמן שהאשה מודה יחזיר לבעל -

In a case where the woman admits that she wrote the receipt and received her כתובה payment from the husband, the receipt **should be returned to the husband** as proof of payment.

דקאמר שמע מינה איתא לדשמואל[9]-

The גמרא there **states that we derive from** this ruling that **שמואל's** ruling of המוכר שט"ח לחבירו וחזרו ומחלו מחול **is correct.**

תוספות question is that just as we say here that the מלוה is not believed to say אמנה הוא and be חב לאחרים with a מגו of מחילה (because he does not want to be מוחל the חוב); the same should apply there. How does she have the מגו there that she could have been מוחל the כתובה? She does not want to be מוחל the כתובה, for then she would definitely not collect her כתובה. However if she just verifies this (false) שובר, she imagines that she will still collect from her husband, for he is no thief. The husband knows that he still owes her the כתובה; the שובר

[8] In our גמרא it is on יט,ב and כ,א.

[9] There is reason not to return the שובר to the husband even if the woman admits to writing it and being paid. It is possible that this woman sold her כתובה rights to someone; that when she will be divorced (or widowed) the buyer will have the rights to collect her כתובה from her husband's estate. The woman may have written this (false) receipt prior to the date of sale of her כתובה, but actually gave it to her husband after the sale took place (rendering the receipt invalid, for the כתובה now belongs to the buyer). When the buyer will come to collect the כתובה, the husband will present the receipt which predates the sale date and claim that he already paid his wife the כתובה before she sold it. On account of this concern we should not return the שובר to the husband, for it is possible that the husband and wife are in collusion to deprive the buyer of his rights. The fact that the שובר was lost and not held in safekeeping gives credence that something is amiss. The fact that we do return the שובר indicates that there is no such concern. The reason that there is no such concern is that there is a ruling of שמואל that המוכר שט"ח לחבירו וחזרו ומחלו מחול. Therefore the woman has the option of being מוחל her husband from paying her the כתובה, even after she sold it to the buyer; in which case the buyer would anyway not be able to collect. [The כתובה is the equivalent of a שט"ח that the husband owes monies to his wife. Let us assume the כתובה payment is two hundred זוז. The woman sold this כתובה note to a לוקח (on ר"ח אייר) for fifty זוז (the note is discounted since it is possible that the husband will never divorce his wife and she will predecease him, and the buyer will receive nothing). She wrote a receipt on ר"ח ניסן that she received her payments. However, she actually received her payments in סיון (or did not receive any payment at all). The לוקח is due the two hundred זוז, but she would rather keep the full two hundred זוז for herself; even if she will have to return the fifty זוז to the buyer (because according to the שובר it was a bogus sale; she already ostensibly received her כתובה on ר"ח ניסן), she will still realize a profit of one hundred-fifty זוז.] The woman is therefore believed to claim that the שובר belongs to her husband, because (even if she intends to cause the buyer a loss) she has a מגו that she could have been מוחל the כתובה and the buyer would suffer the same loss. This concludes the explanation of the גמרא in ב"מ.

notwithstanding. What is the difference between our גמרא where we say there is no מגו of מחילה (because he does not want to lose his debt), and the גמרא in ב"מ where there is a מגו of מחילה.

תוספות responds:

שמא התם סמכינן אמגו כל דהו משום דאיכא שובר דמוכח[10]-

Perhaps there in ב"מ **we can depend** even **on a meager מגו, for there is a receipt that proves** that the woman is saying the truth. In ב"מ this flawed מגו is sufficient.

תוספות offers an additional answer to the original question why the מלוה is not believed with the מגו of מחילה:

ואם נאמר דמכירת שטר חוב אינו אלא מדרבנן[11] הוה אתי שפיר -

And if we would assume that selling a שט"ח is not valid מן התורה, **but only מדרבנן**, then the question **would be properly** answered –

דמצינן למימר דוקא מוכר שטר חוב דהוי מדרבנן יכול למחול -

For we will be able to argue, that **only** when one **sells a שט"ח, where** the sale **is** only valid **מדרבנן;** it is only then that the seller **can be מוחל** the loan, and the buyer suffers a loss; because the buyer only owns the right to the חוב, מדרבנן not מן התורה.[12]

אבל בנושה בחבירו כולי דחייב לו מן התורה אינו יכול למחול -

However, in the case where one has a **claim against another, etc.** In a case where the לוה of the original מלוה is also a מלוה to a subsequent (and second) לוה **so that** the second לוה **is obligated מן התורה to** the original מלוה (on account of שעבודא דר"נ); in such a case, the לוה of the original מלוה **cannot be מוחל** the debt owed to him by his (subsequent) לוה, for his לוה is already obligated מן התורה to the original מלוה.[13]

---

[10] The previous argument against the מגו of מחילה does not completely destroy the מגו; but rather it renders it flawed and weak. There is a possibility that he risks losing his debt by claiming אמנה just as by being מוחל. The two claims may be equally detrimental. There is a difference between the claim in our גמרא that it is a שטר אמנה and the claim in ב"מ that she wrote the שובר. In ב"מ we found a שובר which states that the woman received payment. The woman is substantiating that which is stated in the שובר. Therefore, even though there is a possibility that there is collusion between the husband and wife, nevertheless the (meager) מגו of מחילה is sufficient to believe the woman that the שובר is correct. In our case however, the מלוה is claiming that it is a שטר אמנה; he is not substantiating the שטר but rather he is contradicting the שטר. In order for him to be believed to contradict a שטר, a proper מגו is required. The מגו of מחילה is insufficient because it has a flaw. He may not want to be מוחל and thereby lose his חוב.

[11] See תוספות דף פה,ב ד"ה המוכר who explains that by selling a שט"ח nothing of substance is being sold (except where the לוה owns קרקע), therefore it is a מכירה only מדרבנן.

[12] It seems that מן התורה the לוה still owes the money to the מלוה. It is only that the רבנן gave the buyer a right to collect the money (in return for his payment); not that the לוה actually owes it to the buyer. Therefore if the מלוה is מוחל the loan there is nothing for the buyer to collect. ועי' באחרונים.

[13] תוספות answer is that one can be מוחל a חוב if it harms others, only in a case where the others (who are being harmed) are not owed this חוב מן התורה only מדרבנן. In the case of המוכר שט"ח לחבירו וכו', the purchaser of the שט"ח

תוספות will now offer a proof that when the obligation to pay the חוב is מן התורה then it cannot be נמחל by the original giver.

וכן משמע בפרק מי שמת (בבא בתרא דף קמז,ב ושם) -

And it also seem so in פרק מי שמת that if the gift is valid מה"ת then the giver cannot be מוחל –

דקאמר ומודה שמואל דאם נתנו במתנת שכיב מרע[14] שאינו יכול למחול -

For the גמרא says there that **שמואל admits** (concerning the rule of המוכר שט"ח and even the heir of the מלוה can be מוחל לחבירו וחזרו ומחלו מחול) **that if** the מלוה transferred the חוב to another (not through a sale but) through a **sickbed gift;** the heir of the מלוה (i.e. a son who did not receive this loan as part of his inheritance) **cannot be מוחל** this חוב (even though that generally the (מלוה and his) heirs can be מוחל the חוב (שטר) that he sold) –

ומסיק מתנת שכיב מרע דאורייתא[15] ואין יכול למחול -

And the גמרא **concludes** there that a **sickbed gift** is transferred to the recipient **מן התורה and** therefore the heir **cannot be מוחל** the חוב. The גמרא continues –

דאי סלקא דעתך מדרבנן אמאי אינו יכול למחול -

For if it would **enter your mind** that a מתנת שכ"מ is valid only **מדרבנן, why cannot** the heir **be מוחל** the חוב. This concludes the quote from the גמרא.

משמע דבמידי דאורייתא אינו יכול למחול -

It seems from that גמרא **that** concerning **תורה matters** the maker (or the heirs) of the שטר **cannot be מוחל** the loan. The (only) explanation the גמרא gave why they cannot be מוחל is because the transfer is valid מה"ת. This supports תוספות contention that there is a difference between המוכר שט"ח which is valid only מדרבנן and therefore the מלוה can be מוחל; and by שעבודא דר"נ which is valid מדאורייתא and therefore the second מלוה (the first לוה) cannot be מוחל the חוב of the second לוה (that is owed מה"ת [through שעבודא דר"נ]) to the first מלוה.

תוספות rejects this last proof that if there is a חיוב מה"ת then a מחילה is not valid:

---

is not owed money by the לוה מן התורה only מדרבנן. [מן התורה the לוה still owes the money to the original מלוה, not to the buyer.] Therefore the original מלוה has a right to be מוחל the חוב. If however, by being מוחל a חוב, harm is done to one whom monies are owed to מן התורה, the מחילה is not effective. In the case of the three people where the first לוה owes the first מלוה and the second לוה owes the first לוה (the second מלוה), then מן התורה the second לוה owes the first מלוה. Therefore the first לוה cannot be מוחל the second לוה and prevent the first מלוה from collecting from the second לוה. There is no question therefore why is not the (second) מלוה believed that שטר אמנה הוא with a מגו of מחילה, because indeed the second מלוה cannot be מוחל his חוב. The first מלוה can always collect from the second לוה. The answer is that one cannot be מוחל a חוב that is owed מן התורה (both to the person who is being מוחל and) to the person who is being harmed.

[14] The rule is that a שכיב מרע, one who is sick and lying on his deathbed, may bequeath his assets to whomever he chooses, even by word of mouth only, without the usually required קנינים.

[15] The גמרא there subsequently rejects this reasoning and says that a מתנת שכ"מ is only קונה מדרבנן; however the חכמים gave it the same power as if it was a דאורייתא.

ויש לדחות דהתם ודאי אי מתנת שכיב מרע דאורייתא אין היורש יכול למחול -

And it is possible to reject this proof **for there** by the case of the heir of the שכ"מ, **certainly if a sickbed gift is** valid **מן התורה,** then **the heir cannot be מוחל** the חוב and deprive the recipient from collecting the loan –

דמאי אולמיה האי יורש מהאי יורש[16] -

For why is this heir, who wishes to be מוחל the loan, **stronger than this heir,** who received his power to collect the loan through the שכ"מ. Both parties, the recipient and the heir, are not the original מלוה. Therefore the heir is not any stronger than the recipient and cannot be מוחל the חוב and deprive the recipient from the power granted to him by the שכ"מ.[17] However in our case of שעבודא דר"נ the first לוה is the original מלוה of the second לוה. Therefore even if there is a שעבוד מה"ת from the second לוה to the first מלוה, nevertheless the שעבוד stems from the loan of the second מלוה, who is the primary מלוה to the second לוה. This second מלוה is stronger than the first מלוה and can therefore be מוחל the חוב. The proof is therefore rejected.

תוספות brings an additional proof that in the case of שעבודא דר"נ the second מלוה cannot be מוחל the חוב:

ועוד יש להביא ראיה דהנושה בחבירו וחבירו בחבירו אינו יכול למחול -

And it is possible to bring additional proof that one who has a loan by his friend and that friend has a loan by another **friend;** in this situation the second מלוה **cannot be מוחל** the חוב –

דאמרינן בסוף האשה שנפלו (לקמן פא,ב) הרי שהיה נושה באחיו מנה ומת והניח שומרת יבם -

For the בריית **states in the end of האשה שנפלו** פרק **in a case where one brother** (ראובן) **was owed money by his own brother** (שמעון) **and** ראובן the מלוה **died** without children **and he left over** his wife **waiting** for her **brother-in-law,** שמעון the לוה, to be מייבם her –

לא יאמר הואיל ואני יורש החזקתי -

שמעון **should not reason since I am the heir** of ראובן, **I have taken possession** of this debt**.** In addition to being a brother of ראובן which entitles שמעון to the ירושה; when שמעון is מייבם the wife of ראובן all of s'ראובן assets belong to שמעון; including the debt that שמעון owes ראובן. Now שמעון is the owner of this debt. He may argue that this debt is now owed to me. שמעון cannot say that and wipe out the debt (from himself to himself).

אלא מוצאין מידו ולוקח בהן קרקעות והוא אוכל פירות ומוקמי לה כרבי נתן -

---

[16] He is not necessarily an heir; however תוספות refers to him as an heir with equal power as the natural heir, since מתנת שכ"מ is מה"ת.

[17] When the גמרא explained that a מתנת שכ"מ cannot be נמחל since it is מה"ת, it did not mean that when the חב is owed money מה"ת there can be no מחילה. Rather the גמרא meant that since מתנת שכ"מ is מה"ת then the heir who is יורש מה"ת is no stronger than the recipient who acquires his gift also מה"ת.

But rather we take the monies owed **away from** שמעון **and we buy fields with this** money, which now belong to the wife of the deceased **and** שמעון the new husband **consumes the produce** of these fields. The fields themselves, however, belong to the woman. The גמרא there explains that **we establish** that this ברייתא **follows** the view of **ר"נ –**

דהא הוי כמו נושה בחבירו מנה וחבירו בחבירו דכל אשר לבעלה משועבד לה לכתובה -

For the case in this ברייתא is **similar** the case of שעבודא דר"נ, where a person has a **claim of a מנה against his friend and that friend** has a claim against **another friend.** The גמרא explains how the two cases are similar; **for everything that her** deceased husband **owned is indentured to** the wife as payment **for her כתובה.** Therefore it is as follows: ראובן (the deceased מלוה) owes his wife all his assets (including the loan to שמעון). שמעון owes ראובן the debt. שמעון therefore owes the debt to s'ראובן wife on account of שעבודא דר"נ. Therefore he must give her the monies to buy a field and he eats the פירות; as the דין requires with any monies that a woman brings into a marriage. This concludes the explanation of the גמרא. Now תוספות commences with his proof –

ואי יכול למחול אמאי ילקח בהן קרקע ימחול לעצמו שהוא יורש ויכול למחול -

And if the דין is that by שעבודא דר"נ, the second מלוה **can be מוחל** the חוב **why should fields be bought** with this money and given to the woman, **let** שמעון **be מוחל** the loan to himself, **for he is the heir** of ראובן; he is now the מלוה of himself; **and** as a מלוה **he can be מוחל!** Originally ראובן was the מלוה and שמעון the לוה. However by the process of יבום, now שמעון, who inherited all the assets of ראובן, is the מלוה of שמעון. He should be capable of nullifying the חוב (as the second מלוה). The fact the גמרא states that he cannot be מוחל this חוב and must pay the first מלוה, proves that the second מלוה cannot be מוחל the חוב to the second לוה, and deprive the first מלוה from collecting the חוב from the second לוה. Therefore there is no question that the מלוה has a מגו of מחילה, since by שעבודא דר"נ there can be no מחילה by the second מלוה.

תוספות rejects this proof as well:

ויש לדחות דשאני התם דאין יורש אלא מכחה ואינו יכול להפקיע כחה -

And it is possible to reject this proof.[18] **For** by יבמה **it is different** than a regular case of שעבודא דר"נ, **since** שמעון **does not inherit** the assets of ראובן on his own merit, **but rather** he inherits ראובן **on account of** the woman.[19] **Therefore he cannot dislodge her interest.** He cannot deprive her of her due, on

[18] Generally in a case of שעובדא דר"נ the second מלוה can be מוחל the second לוה, even though he is depriving the first מלוה from collecting his debt from the second לוה.

[19] If שמעון would not marry the wife he would not necessarily inherit the assets of ראובן. Therefore since s'שמעון claim to s'ראובן assets is based only on account of the woman that he is being מייבם

account of his ירושה, since his whole ירושה is due to her.[20] However in a regular case of שעבודא דר"נ where the second מלוה is owed the money on his own accord (not because of the מלוה ראשון) he may have the right to deprive the מלוה ראשון from collecting, by being מוחל the לוה שני. This proof is rejected as well. The question would then remain if the מלוה שני can be מוחל the חוב, he should be believed to claim אמנה הוא with a מגו of מחילה.

[ויש[21] מפרשים דדוקא במוכר שטר חוב יכול למחול שקדם חובו של מוכר -

[And others explain and answer this question **that only when selling a שט"ח can** the מלוה **be מוחל** the חוב even though he harms the buyer **because the debt to the seller** (the מלוה) **preceded** the obligation of the לוה to the buyer. Originally the לוה owed the seller. Subsequently after the sale the לוה owes the buyer. Therefore since the original loan was against the מלוה and the buyer was not involved at all, that is why the מלוה can be מוחל.

אבל הנושה בחבירו שקדם חובו לחוב של חבירו אינו יכול למחול -

However, in the case of **one who is claiming** a debt **from his friend; where his loan** (from the first מלוה) **preceded the loan of his friend** (from the second מלוה); when the second מלוה lent money, he already owed money to the first מלוה; in this case the second מלוה **cannot be מוחל.** When the second מלוה lent the money, automatically the second לוה was already משועבד to the first מלוה. He never was a לוה only to the second מלוה; he was immediately a לוה to the first מלוה as well because of שעבודא דר"נ. Therefore the שעבוד of the first מלוה prevents the second מלוה from being able to be מוחל the חוב.[22]

תוספות continues to explain the case of the שומרת יבם on this basis:

ושומרת יבם נמי קדם שטר חובה לחוב בעלה] -

And also by the case of the **שומרת יבם, her note of indebtedness** (in which her husband owes her money for her כתובה) **preceded the debt** that was owed to her deceased **husband** by his brother. There is a similar situation; where the party who wishes to be מוחל the חוב was already indebted to another prior to his lending the money to his לוה. The husband lent him the money after he married this woman. Therefore the surviving brother cannot be מוחל the חוב which he inherited from his deceased brother, since the deceased brother was already indebted to his wife prior to this loan. The surviving brother initially

---

[20] See חב"ב אות רסג.

[21] See תומים ספ"ו סק"י that the bracketed statement is from תוספות ישנים.

[22] This should not be interpreted to mean that the י"מ are of the opinion that שעבודא דר"נ is only in a case where the second לוה borrowed from the first לוה after the first לוה had already borrowed from the first מלוה. The דין of שעבודא דר"נ applies even if the first לוה borrowed after the second לוה borrowed from him. The י"מ are merely arguing that there can be no מחילה if the מוחל lent his money after he already borrowed. See (however) יעב"ץ.

owed the wife the money. There can be no מחילה if the present לוה initially owed the present מלוה.[23]]

תוספות has a final מגו question:

ואם תאמר אכתי נהימניה במגו דאי בעי קלתיה כדאמרינן בסוף זה בורר[24] (סנהדרין לף לא,ב) -

And if you will say; that we should **still believe** the מלוה that it is a שטר אמנה **with a מגו for he could have burnt** this שטר which he presently claims is a שטר אמנה, **as** the גמרא **states in the end of** פרק **זה בורר.** If this (second) מלוה would have burnt this שטר (which he presently claims is a שטר אמנה), then the first מלוה would not be able to collect from the second לוה, since the first מלוה has no proof that the second לוה owes anything to the second מלוה. Therefore the second מלוה should be believed that שטר אמנה הוא and deprive the first מלוה from collecting from the second לוה with the מגו of אי בעי קלתיה!

תוספות answers:

ויש לומר דהכא אתחזק בבי דינא -

And one can say; that here we are discussing a situation where the שטר **was** already **established in בי"ד.** It was already known by בי"ד (before he claimed שטר אמנה הוא) that this מלוה has a שטר –

דאמרינן התם כיון דאתחזק בבי דינא אי בעי קלתיה לא אמרינן[25] -

For the גמרא **states there**, that **since** the שטר was already **established in בי"ד we do not** honor the argument that [**s**]**he could have burnt it.**

תוספות offers an additional answer to this last מגו question:

אי נמי הכא מיירי כשהשטר הוא ביד שליש:

Or you may **also** argue, that **here** the גמרא is discussing **a situation where the שטר was in the possession of a third** party. The מלוה no longer had the option of burning it.

Summary

תוספות asked that the מלוה should be believed that it is a שטר אמנה since he has a מגו of מחילה.

---

[23] According to the י"מ, the case of שטר אמנה, where the מלוה is not believed, is limited to a situation where the purported שטר אמנה 'loan' took place after the loan to the חב. Otherwise the שטר אמנה טענה would be accepted. Similarly in the case of יבמה, the loan to the brother took place after the marriage. Otherwise the surviving brother could be מוחל the חוב.

[24] The case there (on ל,א) involved a מלוה and לוה who deposited a שט"ח by a woman. The woman presented the שטר when they came to בי"ד, and claimed, however that the לוה had already paid up. According to one version, she was believed for she has a מגו; she could have burnt the שטר and the מלוה would not be able to collect.

[25] This follows the second version that she was not believed, since בי"ד was previously aware of the שטר.

תוספות answered that the מגו of מחילה is inadequate (since the מלוה is contradicting the שטר) for since he does not want to lose the חוב, he will not be מוחל.
An additional answer is that מחילה by חב לאחרים is valid only when the חב owns the חוב מדרבנן (as in המוכר שט"ח לחבירו), but not when the חב is owed the חוב מדאורייתא (as in שעבודא דר"נ).
[The י"מ answer that מחילה by חב לאחרים is valid only when the חב was not initially owed the money (as in המוכר שט"ח); however when the חב was initially owed the money (as by the יבמה and [conditionally] by שעובדא דר"נ) then the חוב cannot be נמחל.]
There is no מגו of אי בעי קלתיה either because the שט"ח was איתחזק בבי"ד or it was ביד שליש.

THINKING IT OVER

1. תוספות asks that he should be believed that it is a שטר אמנה with a מגו of מחילה.[26] Seemingly this is a מגו במקום עדים. The עדים החתומים על השטר testify that it is not a שטר אמנה (and therefore if כת"י יוצא ממקום אחר the עדי השטר are not believed to say אמנה.).[27]

2. תוספות asks that he should be believed that it is a שטר אמנה with a מגו of מחילה.[28] Seemingly, we cannot believe him that it is a שטר אמנה since he is משים עצמו רשע by keeping a שטר אמנה in his possession?[29]

3. What is the difference if the מלוה is מוחל the חוב outright, or if he says it was a שטר אמנה?[30] A שטר אמנה means he never lent any money to the לוה and therefore it is tantamount to an admission that the לוה owes him nothing! What would be if the מלוה claimed that the debt was paid?[31]

4. Can the second מלוה be מוחל the חוב to the second לוה in a situation of שעבודא דר"נ?

---

[26] See footnote # 2.
[27] See סוכ"ד אות לז.
[28] See footnote # 3.
[29] See פנ"י.
[30] See footnote # 7.
[31]. See משכנות הרועים אות רס"ה.