ודוקא אחספא – And only on a potsherd exclusively

Overview

The גמרא states that if one desires to tender his signature to בי"ד for (future) verification purposes, he should sign only אחספא. Otherwise if he signs it on a parchment and an unscrupulous person will find it, he may write above the signature whatever he pleases causing (great) loss to the signer. However if he signs on a חספא there is no such concern. For by a חספא, since it can be forged, any claim on a חספא (even with a signature) will be disregarded. It would seem from this גמרא that a שטר cannot be written on a חספא. However תוספות will cite גמרות that permit שטרות to be written on a חספא. This תוספות will resolve this difficulty.

There are two types of שטרות, namely שטרי קנין and שטרי ראיה. A שטר מלוה is a שטר ראיה; it proves that the לוה borrowed money from the מלוה. It does not create a loan; it (merely) proves that a loan took place. A גט is a שטר קנין. It creates the divorce. It severs the bond between husband and wife; and makes the wife a divorcee.

תוספות offers another option for presenting בי"ד with a signature:

והוא הדין אריסא דמגלתא כדאמר בגט פשוט (בבא בתרא דף קס,ב[1] ושם) -

And similarly one may write his signature **on the heading of a scroll;** at the very top of the parchment **as** the גמרא **states in** פרק **גט פשוט,**

דליכא למיחש למידי -

For there is nothing at all to be concerned about, if he signs (either אחספא or) אריסא דמגילתא. A חספא is פסול for a שטר, since any forgery on a חספא is not apparent. Even if something were written above his signature, no one would be able to claim anything if it is written on a חספא. If he signs אריסא דמגילתא no one can write anything above his signature, to cause any loss.

תוספות anticipates a difficulty with the above mentioned presumption that a שטר which is written אחספא is not valid:

והא דתניא בפרק קמא דקדושין (דף ט,א ושם) –

And that which we learnt in a ברייתא in the first פרק of קדושין מסכת**;** if a person -

כתב על הנייר או על החרס בתך מקודשת לי כולי –

wrote on a paper or on pottery 'your daughter is betrothed to me, etc.';

[1] This appears to be incorrect; it should read קסז,א.

and presented it to the father of this girl, the rule is that the daughter is betrothed to him (if she is not a בוגרת) -

וכן גבי שדה (שם כו,א) **כתב על הנייר או על החרס כולי הרי זה מכורה -**

And similarly concerning a field, if a person **wrote on a paper or on pottery, etc.** that my field is sold to you; the ruling is **that the field is sold.** It is evident from those גמרות that a שטר is valid (even) if it is written on a חרס (which is the equivalent of a חספא). This seems to contradict our גמרא that anything written on a חספא has no validity since it can be forged, without being noticed.

תוספות responds:

נראה דאתיא כרבי אלעזר דאמר עדי מסירה כרתי –

It seems that those ברייתות **follow the ruling of ר"א who maintains that the witnesses** who observe the **transference of** the שטר (from one party to the other), make the שטר **effective.**[2] It is only according to ר"א who maintains עדי מסירה כרתי that these שטרות which are written on something that can be forged (such as a נייר or a חרס) are effective[3] (when the עדי מסירה testify that they were properly transferred). This would (seemingly) resolve the contradiction.[4] [If there are עדי מסירה (and if we maintain that עדי מסירה כרתי) then there is no concern of forgery; for the עדי מסירה will testify to the veracity of the שטר.[5]]

תוספות will prove his contention that the aforementioned ברייתות follow the view of ר"א -

דלרבי מאיר כיון דעדי חתימה כרתי לא מהני על דבר שיכול לזייף –

For according to ר"מ who maintains that **the witnesses who sign** on the שטר make it **effective,** a שטר which is written **on something that can be forged is not a valid** שטר. According to ר"מ who maintains עדי חתימה כרתי, a גט (or any שטר) which was written on a דבר שיכול להזדייף is invalid [even at the point of the transaction[6] (and even if the עדים certify that nothing was changed on the גט)]. For a שטר to be effective, it is necessary (according to תוספות[7]) that the veracity of the שטר be ascertained (only) through the signatures (עדי חתימה כרתי); however since it is יכול להזדייף,

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[2] The word כרתי actually means to cut off. This refers to a גט which cuts the bonds between husband and wife. This term is used because the מחלוקת between ר"א ור"מ was originally stated concerning גיטין. However it affects all שטרות.

[3] It would seem that (even) according to ר"א one may tender his signature on a חספא. There are no עדים at all, only his signature. Anyone who will write anything above the signature will not have any עדים to verify that it is not forged (מהר"ם שי"ף). However, see תוספות in קדושין (ט,א ד"ה כתב) where תוספות (seemingly) states that this גמרא of ודוקא אחספא is (only) according to ר"מ. See מהרש"א (הארוך) and משכנות הרועים אות תפ.

[4] A שטר קנין on a דבר שיכול להזדייף is כשר according to ר"א who maintains עדי מסירה כרתי.

[5] Presently the bracketed sentence is not necessary. There can be no concern of forgery at the moment of קדושין or at the point of sale. All parties are present. See later in this תוספות.

[6] See footnote # 5.

[7] See תוספות there in גיטין כב,א ד"ה מאן.

nothing can be ascertained by the signatures (only though oral testimony). It is possible that the שטר was altered. The signatures cannot tell us if there was a forgery or not. Therefore, according to ר"מ, it cannot be a valid שטר. This applies by all other שטרות as well; since עדי חתימה כרתי, they are not valid on a דבר שיכול להזדייף. Therefore those ברייתות cannot follow the view of ר"מ and must follow the view of ר"א.

תוספות proves this point that a שטר בדבר שיכול להזדייף is כשר only לר"א and not לר"מ:

כדאמר בפרק ב' דגיטין (דף כא,ב ושם) אין כותבין לא על הנייר כולי וחכמים מכשירין –

As the משנה **states in the second פרק of גיטין: 'a** גט **is not written, neither on** erased **paper, etc.,** because it can be forged; **however the חכמים permit it' -**

ומפרש בגמרא[8] מאן חכמים רבי אלעזר –

And the גמרא explains; who are these חכמים, who permit writing a גט on a שטר that can be forged? It is **ר"א** who maintains that עדי מסירה כרתי. According to ר"א who maintains that עדי מסירה כרתי the effectiveness of a שטר depends on the עדי מסירה; not on the עדי חתימה. The גט becomes effective at the moment of מסירה (where there is no concern of זיוף). [Therefore if the עדי מסירה (or even the עדי חתימה) testify that this is the original גט (it was not tampered with), it is effective and the woman has the status of a divorcee.] The same would (seemingly) apply to other שטרות. Those ברייתות by קדושין and מכר follow the view of ר"א.

תוספות anticipates a difficulty with this last assumption that according to ר"א it is permissible to write a שטר on a שטרות דבר שיכול להזדייף on other than a גט:

ואף על גב דאמר התם[9] לא הכשיר רבי אלעזר אלא בגיטין אבל בשאר שטרות לא –

And even though the גמרא **states there that ר"א did not permit** to write on a דבר שיכול להזדייף **except by גיטין; however by other שטרות** he **did not** permit to write them on a דבר שיכול להזדייף. The difficulty is; how is it כשר to write a שטר קדושין or a שטר מכירה on a דבר שיכול להזדייף; they are not גיטין?!

תוספות responds:

הכי פירושא אלא בגיטין ודכוותייהו דהיינו שטרות שאין עומדין לראיה –

This is the explanation of the phrase **'only by גיטין';** that means by גיטין **and their counterparts, which means שטרות that are not intended for proof -**

כגון אותו שאינו עשוי אלא לקנות בו אשה ושדה –

for instance those שטרות **that are not written** in order to retain proof of a transaction; **but rather** that are used **to acquire a woman or a field.** The שטר

[8] דף כב,א.

[9] גיטין כב,ב.

effects the transaction at the moment of transference -

כעין גיטין שעשוין לפי שעה לגרש בו -

Similar to גיטין which are used for the moment as an instrument of divorce; similarly the שטרי קדושין ומכירה which the ברייתות are discussing are שטרי קנין and not שטרי ראיה. When the גמרא said לא הכשיר ר"א אלא בגיטין, the גמרא meant the types of שטרות which are similar to גיטין. A גט is a שטר קנין; it actualizes the divorce. Similarly a שטר קדושין actualizes the betrothal, and the שטר מכירה actualizes the sale of the property. In all these cases ר"א permits writing them on a כתב שיכול להזדייף. The purpose of all these שטרי קנין is to actualize the transaction presently (in the presence of עדי מסירה). There can be no concern of forgery, for both parties (and the עדי מסירה) are present.[10]

תוספות anticipates a difficulty

אף על פי שיכול השטר של קנין להועיל לראיה –

Even though the שטר קנין can be utilized as a proof of the transaction; the person who bought the field can use the שטר קנין of מכירה as a proof of purchase. Similarly the woman can use the שטר קדושין as proof of marriage. How can תוספות say previously that the שטר קדושין ושטר מכר are (merely) שטרי קנין, when they can be used as a שטר ראיה.

תוספות responds:

גם הגט יכול להועיל כדאמר בהכותב (לקמן דף פט,ב) ובפרק קמא דבבא מציעא (דף יח,א ושם) -

The גט can also be utilized as a שטר ראיה that she is divorced; as the גמרא states in פרק **הכותב** **and in the first פרק of ב"מ** מסכת -

וכי תימא נקרעיה בעינא לאינסובי ביה -

And if you will say that we should rip up the גט after it has been given to the woman and the כתובה was collected[11]; this is not proper because the woman can argue that **'I need it to remarry'**; it serves her as a proof of her divorcee status. We see that a גט can also be used as a שטר ראיה, and nevertheless the גמרא clearly states that by a גט it is permitted to write it on a דבר שיכול להזדייף. The same applies to the שטרי קדושין ושטרי מכר; for even though they can be used as a שטר ראיה -

אלא שעיקרן לא לכך נעשו –

However, that which distinguishes גיטין (and שטר קדושין ומכר), is **that initially they were not written for the purpose** of ראיה but rather to perform the קנין. Therefore they can be written on a דבר שיכול להזדייף. They may be used (also) as a שטר ראיה only if the עדי מסירה (or עדי חתימה) will testify to the authenticity of the שטר.

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[10] According to ר"מ, however, a שטר קנין is פסול בדבר שיכול להזדייף; even though, there is no concern of זיוף. It is פסול since עדי חתימה כרתי and it is not מוכח מתוך עדי חתימה that it was not tampered with.

[11] The גמרא there is discussing a place where they do not write כתובות. The women collect their כתבות on the basis of the גט. The issue at hand is what should be done with the גט, once the כתובה was collected, in order to prevent the woman from collecting again.

תוספות explains what the גמרא excludes when is refers to שאר שטרות:

ולא ממעט אלא שטרות שעיקרן לראיה ועשוין לעמוד ימים רבים –

And the גמרא **does not** wish **to exclude** all שטרות besides גיטין; **but rather only those שטרות that are initially written for proof and are made to last many days.** Those שטרות cannot be made on a דבר שיכול להזדייף for it defeats its purpose -

כדמייתי התם קרא ונתתם בכלי חרש וגומר:

as the גמרא **there cites the פסוק** (as a proof that by שאר שטרות it cannot be on a דבר שיכול להזדייף)**:** '**and you shall place** the שטר **in an earthenware utensil, etc.** in order that it should last for many days'. The idea of keeping it for many days is inherently applicable to a שטר ראיה only.[12]

Summary

Signatures may be submitted אחספא and on רישא דמגילתא. According to ר"א, שטרי קנין may be written on a דבר שיכול להזדייף, but not שטרי ראיה.[13] According to ר"מ, neither may be written on a דבר שיכול להזדייף.[14]

Thinking it over

1. What would be the דין (according to ר"א or ר"מ) if a שטר ראיה (for a מלוה or a מכירה) is written on a דבר שיכול להזדייף and the עדי חתימה (or עדי מסירה) testify that it is not מזוייף; would it be a valid שטר or not?

2. Is there any connection between the beginning of תוספות (that a חתימה can be tendered אריישא דמגילתא) and the rest of תוספות?

3. What would be the דין if a purported buyer of a property presented a document written on a דבר שיכול להזדייף, signed by the seller (the signature was authenticated) that the field was sold to the buyer; and the seller claims I never sold it to you, nor did I ever give you such a document?[15]

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[12] Those cannot be written on a דבר שיכול להזדייף even if we maintain that עדי מסירה כרתי; for since they are held for ימים רבים the original עדי מסירה may no longer be available, and we may rely on the חתימת העדים, which cannot vouch for the authenticity of the שטר since it is יכול להזדייף.

[13] The שטרי קנין are effective to actualize the קנין; for it is a valid שטר since עדי מסירה כרתי. These שטרי קנין can also be used in the future as a ראיה provided that the עדי מסירה or the עדי חתימה testify (orally) to the authenticity of the שטר. However שטרי ראיה which are initially made to last a long time (beyond the scope of oral testimony), cannot be written on a דבר שיכול להזדייף.

[14] According to ר"מ a שטר must be מוכח מתוכו that it is כשר. There is no evidence in the שטר that can guarantee its authenticity. Therefore it does not have the power of a שטר.

[15] See footnote # 3.