But רב פפי said this verification - האמר רב פפי האי אשרתא

Overview

The גמרא cited a ruling (some say it in the name of רב הונא and others in the name of רב) that if in the process of writing a קיום on a שטר, two of the דיינים recognize the signature and one does not; then if the two did not as yet sign (the אשרתא) they may testify for the third דיין (as to the authenticity of the שטר) and he may also sign. [However if the two signed already, they may not testify for the third דיין.] The גמרא challenges this ruling. How is it permissible to write the אשרתא (in which it says that we three דיינים verified the signatures of the witnesses) when in fact at the time of the writing, one of the דיינים could not verify the signatures of the עדים. The גמרא cites רב פפי who states this restriction (in the name of רבא) and explains that this אשרתא would be פסול for it is מחזי כשקרא; it appears as a falsehood. The אשרתא states that the signatures are verified by three דיינים, when in fact, when these words were written, one of the three דיינים could not verify the signatures. תוספות will discuss whether this ruling of רב פפי and the concern of מחזי כשקרא is an accepted ruling or whether it was rejected and we are not concerned for מחזי כשקרא.

תוספות asks:

תימה דפריך מדרב פפי[1] -

And it is incredible; that the גמרא **challenged** the previous ruling of שלשה שישבו לקיים את השטר וכו', **from** a ruling of **רב פפי -**

ובפרק הכותב (לקמן דף פה,א ושם) **מסיק דליתא לדרב פפי מדרב נחמן כולי[2] -**

For in פרק הכותב the גמרא **concludes that s'רב פפי** ruling **is negated on account of s'רב נחמן** ruling -

ועוד דבפרק כל הגט (גיטין כו,ב ושם) **מסיק דרב לית ליה דרב פפי[3] -**

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[1] תוספות may (also) be asking how can we refute a ruling by רב הונא or רב, from a ruling of רב פפי who was also (only) an אמורא (and of a later generation than רב הונא or רב). תוספות goes on to strengthen his question.

[2] רב נחמן ruled that according to ר"מ who maintains that a גט does not require כתיבה לשמה (only חתימה לשמה), a person who finds a גט in the rubbish, may have it signed and delivered to his wife for a proper divorce. It is evident from רב נחמן that we are not concerned for מחזי כשקרא; otherwise this גט would be פסול (even if לשמה is not required) for it was not written at all for this man and wife.

[3] רב maintains there that by all שטרות (except גט) one may write the entire טופס (the legal format of the document minus the relevant details, such as the names, date, etc.); even though ultimately the שטר will be מחזי כשקרא for it was not written for this transaction; disagreeing with רב פפי.

And furthermore in פרק כל הגט the גמרא **concludes that רב disagrees with רב פפי –**

והיכי פריך הכא מדרב פפי אמילתיה דרב[4] -

so how can the גמרא here present a **challenge from רב פפי on a statement of רב**; when it is evident that רב clearly disagrees with רב פפי -

מיהו הא איכא לתרץ דאלישנא דאמרי לה משמיה דרב הונא פריך[5] -

However, this last question **can be answered, that** the גמרא **is challenging the view that claims** that the foregoing statement of ג' שישבו וכו' **was said in the name of רב הונא** and not in the name of רב. The challenge is to רב הונא from רב פפי; we do not find elsewhere that רב הונא disagrees with רב פפי. However the original question remains that the גמרא in הכותב writes 'דליתא דרב פפי מדרב נחמן'.

תוספות entertains a possible answer; that the question may be as follows:

ואין לומר דהכי פריך כיון דאמר משחתמו אין מעידין לפניו וחותם -

And we cannot answer that this is the challenge; since רב הונא (or רב) **said that once** the דיינים **signed, they may not testify in the presence of** the third דיין **and have him sign –**

אלמא חיישנין למיחזי כשקרא[6] -

This proves that רב הונא **is concerned about 'false appearances'**; that רב הונא agrees with רב פפי; תוספות concludes with the proposed question –

אם כן משכתבו עד שלא חתמו נמי דכתיבה נמי מיחזי כשקרא[7] -

If so then even in the case **where they wrote it and had not signed it yet, it should also** not be permitted for the two דיינים to testify before the third דיין and have him sign; because the writing of the אשרתא (before all the דיינים are acquainted with the signatures of the עדים) **also appears as a lie.**

תוספות rejects this (proposed question as an) answer:

דאם כן הוה קשיא דרב אדרב דהכא חייש למיחזי כשקרא ובפרק כל הגט (שם) לא חייש -

For if this is so; that the reason why after the two דיינים signed they may not testify before the third דיין, is on account of מיחזי כשקרא, **then there is a contradiction from one statement of רב to another. For here רב is חייש**

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[4] According to the 'ואמרי ליה' this ruling of 'שלשה שישבו וכו was said by רב הונא in the name of רב.

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

[6] We are presently assuming that the reason for אין מעידין לפניו is because it is מחזי כשקרא, since the third עד did not recognize the signatures at the time the אשרתא was signed.

[7] The question on רב הונא would not be so much from רב פפי, but rather that there is an inconsistency in the statement of רב הונא. רב פפי was mentioned as an adjunct, since משחתמו אין מעידין לפניהם, indicates that רב הונא agrees with רב פפי that חיישינן למחזי כשקרא (see אילת אהבים וכסא שלמה).

למיחזי כשקרא according to this proposed answer (for he forbids testifying after the signing); **and in פרק כל הגט[8] he is not concerned** for מיחזי כשקרא. We, therefore, cannot say that the reason why משחתמו אין מעידין לפניו וכו', is on account of מיחזי כשקרא.

אלא טעמא דמשחתמו דמי לנוגעים בעדות[9] -

But rather the reason why **משחתמו אין מעידין לפניו is; for once they signed** on the אשרתא, their subsequent testimony **is similar to a biased testimony.** Once the two דיינים signed on the אשרתא they (seemingly) have a vested interest in completing it, therefore their testimony before the third דיין appears tainted.

כעין שפירש בקונטרס[10] גבי ההוא שקרא ערער על אחד מהן -

Similar as to how רש"י explained the גמרא **concerning** the case **where a controversy arose on one of** the דיינים. However there is no indication that either רב הונא or רב are חייש למיחזי כשיקרא. The question remains how the גמרא can challenge them from the ruling of רב פפי, which is a discredited ruling.

תוספות answers:

ותירץ רבינו תם דדרך הש״ס להקשות אפילו מדבר דלא הוי הלכתא הכי -

And the ר"ת answered; that this is the custom of the גמרא, to present a challenge even from a ruling that is not the accepted **הלכה.**

תוספות continues with a halachic ramifications:

ופוסק רבינן תם דכתבינן אורכתא[11] אפילו אמטלטלי[12] דכפריה[13]

And the ר"ת ruled that we do write a הרשאה even for movable property which the defendant denies that he has in his possession; nevertheless the הרשאה may be written -

דלא קיימא לן כרב פפי דחייש למיחזי כשקרא אף על גב דפריך מינה -

For we do not follow the ruling of רב פפי who is חייש למיחזי כשקרא; regardless that the גמרא bases **challenges** on his ruling of מחזי כשקרא -

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[8] See footnote # 3.

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

[10] רש"י (בסוף העמוד) ד"ה משחתמו. The גמרא there discusses a case where a suspicion arose concerning one of the דיינים that was meant to sign on the אשרתא. The other two דיינים can testify to nullify this suspicion only before these two signed on the אשרתא, but not after the two signed, for the same reason; they are נוגע בעדות.

[11] אורכתא is a הרשאה or 'power of attorney'. If a plaintiff wants to send an agent in his place to prosecute a claim, he must invest in this agent a power of attorney stating that the agent is claiming and collecting on his own behalf. Otherwise the defendant can argue that he has no dealings with this agent. See ב"ק ע,א.

[12] The plaintiff claims that the defendant has some of his מטלטלין in his possession.

[13] The הרשאה states that the agent may collect the מטלטלין in question as if it is his own. However since the defendant denies possessing the מטלטלין, it seems that the עדים who sign on this הרשאה, are signing on a false document, since according to the נתבע there are no מטלטלין in his possession.

ופריך נמי מנהרדעי[14] בכמה מקומות בפרק שבועת העדות (שבועות דף לג,ב ושם) -

And the גמרא also presents challenges from the ruling of נהרדעי in various places in ש"ס including **in פרק שבועת העדות -**

ובפרק יש בכור (בכורות דף מט,א) **והאמרי נהרדעי לא כתבינן אורכתא כולי -**

And in פרק יש בכור where the גמרא asks in these two places, '**but the נהרדעי rule that we do not write a הרשאה, etc.,** in a case of מטלטלי דכפריה, for it is מחזי כשקרא; nonetheless we do not follow the rulings of נהרדעי and רב פפי, but rather we maintain that לא חיישינן למחזי כשקרא. And we do write a הרשאה even on מטלטלי דכפריה.

תוספות offers an additional answer to the original question; how can the גמרא ask from רב פפי, when the גמרא states concerning רב פפי that וליתא; his ruling has been negated:

ויש מפרשים וליתא דקאמר בהכותב[15] ובפרק כל הגט[16] (גיטין דף כו,ב ושם) -

And others explain that the term **'וליתא', which the גמרא uses in פרק הכותב and in פרק כל הגט -**

דלא בעי למימר דליתא לדרב פפי אלא דליתא לקושיא -

That it does not mean that s'רב פפי ruling is negated, but rather that there is no question. The difficulty that was raised in those גמרות on account of רב פפי is nonexistent; it can be resolved -

שאין לדמות אשרתא שהוא מעשה בית דין לשאר שטרות -

That we cannot compare an אשרתא which is a מעשה בי"ד to other שטרות. By an אשרתא one must be careful that it should not be מחזי כשקרא; however by other שטרות it does not matter if it is מחזיר כשקרא, since they are not מעשה בי"ד.[17]

דבמעשה בית דין לכולא עלמא חיישינן למיחזי כשקרא[18] -

However by a מעשה בי"ד everyone agrees (even רב) **that we are חושש למחזי כשקרא.** It is therefore understood why in our גמרא we ask from רב פפי, since here we are also discussing the identical case of אשרתא which is a מעשה בי"ד. The challenge from רב פפי will be on רב as well.

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[14] See following paragraph.

[15] The גמרא (לקמן פה,א) cites a case of a woman who was obligated to swear. She requested that a document be written beforehand that she discharged her שבועה properly and was vindicated. This document was to be given to her after the שבועה. רב ביבי בר אביי agreed. רב פפי asked that it is מחזי כשקרא, based on his ruling in the name of רבא; for at the time of the writing she has not yet sworn.

[16] See footnotes # 2 & 3.

[17] This resolves the difficulties in פרק הכותב and in פרק כל הגט, for in both of those cases it was not a מעשה בי"ד, which was מחזי כשקרא. In פרק הכותב it was the note concerning her שבועה (see following footnote # 18) and in פרק כל הגט it is concerning שאר שטרות, but not מעשה בי"ד.

[18] See תוספות ישנים in the margin who writes; **וההיא דהכותב לא חשיב מעשה בית דין דבעדים סגי שיעידו שנשבעה – and that** case **in פרק הכותב is not considered a מעשה בי"ד** (even though she asked בי"ד to write a release for her that she swore) **for it is sufficient that עדים testify that she swore.**

תוספות offers an additional answer on the original question:

ורבנו יצחק מדנפי"ר[19] תירץ דלכתחלה ודאי חיישינן למיחזי כשקרא[20] –

And the ר"י מדנפי"ר answered that initially we are certainly concerned for מחזי כשקרא and therefore no document should be written לכתחלה if it is מחזי כשקרא.

תוספות proves his point that לכתחלה we are חושש למחזי כשקרא even according to רב who argues with רב פפי:

כדאמר להו רב לספרי כי יתיבתו בהיני כולי (בבא בתרא דף קעב,א) –

As רב ordered his scribes that when you are working in היני, etc.; you should write in the שטר, the place where the שטר is being written is in היני, even though the instructions were given to you in a different place. It appears that even רב is concerned for מחזי כשקרא לכתחלה. However, this restriction of מחזי כשקרא is only - לכתחלה

אבל בדיעבד לא חיישינן ולהכי פריך הכא דהוי לכתחלה –

However, once it was done we are not concerned whether it is מחזי כשקרא or not; and therefore the גמרא **here challenged** the ruling of שלשה שישבו, for here **it is** a case of **לכתחלה.** They are writing the קיום before all the דיינים are aware of the authenticity of the שטר.

והא דקאמר דליתא לדרב פפי היינו דיעבד –

And that which the גמרא states (in פרק הכותב and in פרק כל הגט) **that** the ruling of **רב פפי is discredited; that refers** only to case of **דיעבד**; not in cases of לכתחלה.[21]

תוספות will now show that where the גמרא states וליתא concerning the ruling of רב פפי, (that even though it appears to be case of לכתחלה [where s'רב פפי ruling should apply] nevertheless) it is similar to a דיעבד -

דההיא איתתא דהכותב (לקמן דף פה,א ושם) -

For by the case of **that woman** in פרק **הכותב** -

כיון שהיתה צריכה לחזור לבית דין כדיעבד דמי -

Since if we would not write the שטר זכות for her now, **she would be required to return to בי"ד,** a second time,[22] therefore it **is similar to a בדיעבד** situation.

והרשאה נמי דכתבינן אמטלטלי דכפריה –

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[19] See תוספות שבת קמג,א ד"ה ואם.

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

[21] Concerning טופסי שטרות which are permitted to be written לכתחלה (even though it is מחזי כשקרא); nevertheless since it is for תקנת סופרים it is considered בדיעבד. (ודו"ק)

[22] The plaintiff in that case (to whom the woman 'owed' a שבועה), requested that she swear in his city. The woman agreed provided that the local בי"ד write and give her now the שטר זכות. If they would refuse and only give it to her after she swore, she would have to return to this בי"ד a second time.

And also in the case of **הרשאה which we do write for the מטלטלין** which the נתבע **denies** (even though it is מחזי כשקרא) -

היינו משום כיון דאינו יכול לילך שם כדיעבד דמי:

It is because since the תובע **cannot go there** and present his claim to the נתבע personally, **it is similar to a בדיעבד** situation. Even though in both of these cases we write it לכתחלה, nevertheless they are considered דיעבד situations.

Summary

The ר"ת maintains that we are not concerned about מחזי כשקרא. [Therefore a הרשאה may be written even for מטלטלי דכפריה.] Others maintain that we are חייש למחזי כשקרא only by a מעשה בי"ד. The ר"י מדנפי"ר maintains that לכתחלה we are חושש למחזי כשקרא, however not בדיעבד.

Thinking it over

1. תוספות attempted to answer that the question from רב פפי was according to the לישנא that said this דין in the name of רב הונא.[23] The גמרא subsequently answers that the הלכה should read not משחתמו but rather משכתבו. However according to רב who is not חייש למחזי כשקרא why would he say משכתבו, it should say משחתמו?![24]

2. תוספות says that the reason once the two דיינים signed on the שטר they cannot testify before the third דיין is because it is דמי לנוגעים בעדותן.[25] Is the נגיעה because they want to substantiate their original stance (that it is a valid שטר); or is the נגיעה that they do not want their signing to be for naught?[26]

3. According to the ר"י מדנפיר who maintains that לכתחלה all agree that we are חושש למחזי כשקרא,[27] how will he explain the ruling of ר"נ that אפי' מצא באשפה חותמו ונותנו לה, which is seemingly לכתחלה?![28]

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[23] See footnote # 5.
[24] See רע"א; see ח"ב אות שי"ח.
[25] See footnote # 9.
[26] See משכנות הרועים אות תקג.
[27] See footnote # 20.
[28] See פנ"י and אילת אהבים.