

במותב תלתא כחדא הוינא וחד ליתוהי –

We three were in session together, and one is missing

OVERVIEW

The גמרא states that if one of the three דיינים passed away before he had an opportunity to sign the הנפק, it should be noted in the הנפק that initially there were three דיינים and only two are signing because one is absent. The reason for this is that people should not mistakenly assume that קיום שטרות can be performed in the presence of only two; when in reality three דיינים are required. תוספות will discuss that this requirement is only לכתחלה and not בדיעבד.

פירוש¹ צריך² לכתוב וחד ליתוהי -

The explanation of the phrase 'צריך לכתוב' is that it is merely initially necessary to write 'and one is missing'; the reason for this necessity is -

כיון דכתב בהדיא במותב תלתא הוינא ואין חותמין בו כי אם שנים -

Since it is was explicitly written that 'we three were in session', and only two signed on the הנפק; therefore it is necessary to clarify this discrepancy, that there were initially three דיינים (which is a requirement for קיום שטרות)³ -

אבל ודאי אם לא כתב וחד ליתוהי כשר -

However if he did not write 'and one is absent' it is certainly כשר. The requirement to write 'וחד ליתוהי' is only a לכתחלה requirement; if it was not written in the קיום, the הנפק is nevertheless כשר.

תוספות proves this contention:

תדע מדקאמר ואי כתב ביה בי דינא תו לא צריך ומיירי דלא כתב וחד ליתוהי -

You will know that this is correct; since the גמרא states 'and if he wrote in the הנפק that it was done in the presence of a ב"ד, then nothing else is required'. This ruling that nothing else is required is (also⁴) referring (even) to a case where he did not write 'וחד ליתוהי', and nevertheless it is כשר.

¹ The term 'פירוש' in (ורש"י) תוספות (usually) denotes that the interpretation may be somewhat different from what we may have initially assumed; in our case that this לכתוב צריך is מעכב even בדיעבד.

² In נאה וטוב להם לכתוב וחד ליתוהי the text reads: תוספות הרא"ש.

³ Alternately; the לשון of תוספות which states 'כיון דכתב בהדיא במותב תלתא וכו', indicates that if only two sign it is a כשקרא. See ח"ב מ"ת אות רצד.

⁴ The simple meaning of תו לא צריך is that it is not necessary to write הוינא תלתא. However תוספות expands this to include that it is not necessary to write 'וחד ליתוהי'.

It is obvious that that the phrase of 'וחד ליתוהי' is only a לכתחלה requirement.

'וחד' will prove that the ruling of 'ואי וכו' בי דינא תו לא צריך' is discussing a case where ליתוהי was not written:

מדפריך ודלמא בית דין חצוף הוה:

Since the גמרא asks (why is it sufficient to write בי דינא instead of במותב תלת, to assure us that three were present for the קיום השטר), **'perhaps it was an audacious בי"ד'** (which sits in session with only two דיינים). This question proves that 'וחד ליתוהי' was not written in the הנפק. For if 'וחד ליתוהי' would be written in the הנפק, then how can there be a concern that it was a חצוף; two people signed and they clearly wrote ליתוהי, indicating that there were three דיינים originally. This proves that the ruling of 'בי דינא תו לא צריך' is applicable even if 'וחד ליתוהי' was omitted; for it is not necessary that it be in the שטר. The same will apply if they wrote במותב תלתא הוינא and they did not write ליתוהי, that it would also be (בדיעבד) כשר.

SUMMARY

The requirement to write 'וחד ליתוהי' (if one of the דיינים dies before signing) is only לכתחלה and not בדיעבד.

THINKING IT OVER

1. Why did not the דיבור המתחיל of this תוספות begin with 'צריכין למכתב', instead of 'במותב תלתא וכו'?
2. Tosfos contends that since בי דינא it is כשר even without 'וחד ליתוהי', the same applies by במותב תלתא. Perhaps there is a difference if בי דינא was written or if במותב תלתא was written?!⁵
3. In a case where בי דינא was written, is it necessary to write 'וחד ליתוהי' (even)?⁶

⁵ See [מהרש"א הארוך מהרש"א (המבואר)].

⁶ See מהרש"א הארוך אות א'.