

מלוה הכתובה בתורה – תורה which is written in the A debt

OVERVIEW

The ר' יוחנן and שמואל cites two (apparently similar) disputes between מוריש. They are in the case of the heirs of a woman who did not bringing her עולה, and if the heirs of a debtor are responsible for his oral debts. שמואל maintains that the heirs are not responsible (for שיעבודא לאו דאורייתא) and ר"י maintains they are responsible (since שיעבודא דאורייתא). The גמרא states that if שמואל would have stated his ruling in the case of the debtor we would not have surmised that the rule applies to the woman, since there (by the woman) her debt to bring the עולה is a מלוה הכתובה בתורה (as opposed to the obligation of a regular debtor). מלוה הכתובה בתורה will explain the term of תוספות.

פירוש¹ כגון קרבנות² ופדיון הבן³ וערכין⁴ ונזקין⁵ –

The explanation of the term מלוה הכתובה בתורה is such debts as for instance sacrifices (which one is obligated to bring) and redemption of the first born son and assessments and damages, these are considered מלוה הכתובה בתורה -

שלא היו יודעים עניני נתינות הללו אם לא שנתחייבה⁶ התורה בפירוש⁷ –

For we would not have known concerning these types of 'giving', if the תורה would not have specifically obligated us in the manner which they are to be discharged -

אבל מלוה כגון שלוח לו מעות בלא⁸ שטר –

¹ תוספות finds it necessary to explain this term, for seemingly both קרבנות and loans are obligations that are written in the תורה; how do we distinguish between them? רש"י explains (בד"ה דלאן) that a מלוה שאינו כתובה means that it is caused by one's own actions. However תוספות rejects this explanation for then ערכין (and נזקין) should not be considered a מלוה הכתובה בתורה since they were caused by his actions. See מהרש"א.

² If one transgresses certain sins he must bring specific types of קרבנות i.e. חטאת or אשם. Similarly there is an obligation for one to bring specific קרבנות after childbirth, the completion of a זכ or זבה period, after purification of a מצורע, etc.

³ One must redeem the first born son by giving the כהן five שקלים.

⁴ If one says ערכי עלי (I am liable for my assessment) or ערך פלוני עלי, the תורה specifies (בז,א-) the amount that needs to be given to the כהן depending on the gender and the age of the נער.

⁵ If one causes damage, the תורה specifies under which conditions there is a liability, and in which manner the payment should be (חצי נזק, נ"ש, מגופו, מיטב וכו').

⁶ The הגהות הב"ח amends this to read שחייבתם.

⁷ We would not know that there is an obligation, and (also) how this obligation should be discharged.

⁸ The הגהות הב"ח amends this to read מעות אפילו בשטר. The מחלוקת between שמואל and ר"י is (only) by a מלוה (for by a בשטר all agree that he collects from the קרקע of the יורשים or לקוחות [either מדאורייתא or ממדברבן]). However logic dictates that even a מלוה בשטר is not considered to be a מלוה הכתובה בתורה just as a מלוה ע"פ.

However the repayment of a loan, for instance if the creditor lent him money (without) [even with] a note, this obligation of payment is not considered a מלוה הכתובה בתורה, for -

אף על גב דכתיב⁹ האיש אשר אתה נושה בו לא חשיב כתובה בתורה –

Even though it is written in the תורה ‘the person whom you have a claim against’ (indicating that the תורה justifies the claim, for the תורה there requires the debtor to provide collateral for the debt), nevertheless **it is not considered כתובה בתורה** -

כיון שאין צריך לפרש בתורה שיעור הנתינה דפשיטא מה שהוא לזה צריך לפרוע:

Since it is not necessary for the תורה to define the amount of giving by a loan; for it is obvious that he has to pay the amount which he borrowed.

SUMMARY

מלוה is when the תורה teaches us that there is an obligation and how this obligation is to be discharged. A loan is not a מלוה הכתובה בתורה, since it is obvious how the obligation must be discharged.

THINKING IT OVER

If someone says מלוה הכתובה בתורה is that considered a מלוה or not? On one hand he created the entire obligation (as by a loan); on the other hand the תורה prescribes precisely what may or may not be brought as an עולה (שלמים, מנחה וכו').¹⁰

⁹ דברים (תצא) כד,יא

¹⁰ נה"מ See