

## Really it is a note of debt from others

## לעולם שטר חוב דאחרים –

### Overview

The גמרא cites a ברייתא in which there was a dispute between ר"מ and the חכמים regarding one who was חוב בשטר מקדש (and a דאחרים). The גמרא was debating the meaning of שטר חוב and concluded that it is a דאחרים; meaning that someone owed this money (in a שטר) and the מקדש gave this שט"ח to the woman as כסף קידושין. It is in this case where ר"מ maintains that she is מקודשת. Our תוספות explains why is this different than a מקדש במלוה where the rule is that אינה מקודשת.

אבל שטר חוב דידה<sup>1</sup> אינה מקודשת<sup>2</sup> -

However if he was מקדש her with her שט"ח she is not מקודשת.

asks: תוספות

ואם תאמר ומאי שנא והא אידי ואידי מלוה היא<sup>3</sup> -

And if you will say; but what is the difference between a שט"ח דידה and a שט"ח דאחרים; in both this case and that case it is a loan?!

answers: תוספות

ויש לומר דודאי מלוה דידה שקנאתו כבר ואינו נותן לה שום דבר חדש -

And one can say; that certainly regarding her loan (a שט"ח דידה), where she already acquired the money, and the מקדש is not giving her anything new -

שהרי אותם המעות היו שלה קודם הקידושין דין הוא דאינה מקודשת -

For these monies (which he is forgiving her) were already hers before the קידושין, it is therefore justified that she is not מקודשת -

אבל כשנתן לה המלוה דאחרים<sup>4</sup> נותן לה דבר חדש שלא היה בידה קודם אמר דמקודשת -

However when he is giving her the loan of others (the שט"ח דאחרים), he is giving her something new, which was not previously in her possession, therefore ר"מ properly rules that she is מקודשת -

<sup>1</sup> This means that she borrowed money from him and gave him a שט"ח that she owes him money. He now gave her the שט"ח as כסף קידושין (basically forgiving the loan), she is not מקודשת, for this is a case of מקדש במלוה.

<sup>2</sup> If ר"מ would maintain that (even) by שט"ח דידה, she is מקודשת, why state דאחרים.

<sup>3</sup> In a certain sense one might assume that by שט"ח דידה there is more reason to be מקודשת, since she is now certainly freed of her debt; however by שט"ח דאחרים she first has to collect it from the לווה and she cannot be sure that she will be successful. See 'Thinking it over'.

<sup>4</sup> When he is מקדש her with שט"ח דאחרים, he is giving over to her the loan that was owed to him. She can now go and collect the money from this לווה (who initially owed the money to the מקדש).

תוספות responds to an anticipated difficulty:

דנהי דאין המלוה בעין<sup>5</sup> מכל מקום זכות<sup>6</sup> הוא לו<sup>7</sup> כאילו היה בעין:

**For granted that** (even by a דאחרים שט"ח) **the** (money of the) **loan is not present,** **nevertheless it is a right granted to her** which makes it **as if** the money was present.

### **Summary**

By a שט"ח דידה he is not giving her anything new which she did not have before, not so by a שט"ח דאחרים where he is granting her a new זכות.

### **Thinking it over**

It is (almost) obvious that any woman would rather receive for her קידושין a forgiveness of her loan, than being given a note for someone else's debt (assuming the amounts are the same).<sup>8</sup> What forces us to make the kind of distinction that תוספות states (whether he is giving her something now or not); why do not we look at what the woman prefers?!<sup>9</sup>

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<sup>5</sup> Since there is no actual money being transferred, with what is he being מקדש her (see footnote # 3)?

<sup>6</sup> This שטר has a monetary value; it can be sold, therefore he is giving her now something of value.

<sup>7</sup> לו', is used here generically (when the acquirer of this דאחרים שט"ח is a man); obviously here it means that it is a זכות for her (the המקודשת).

<sup>8</sup> See footnote # 3.

<sup>9</sup> See בחלת משה.