He wrote it on paper or on a potsherd – כתב על הנייר ועל החרס

Overview

The ברייתא taught that if a שטר קידושין is written on a נייר or a חרס and given to the woman she is מקודשת; indicating that a שטר may be written on a חרס. From other places it seems that a שטר cannot be written on a חרס[1]. Our תוספות discusses this issue.

משמע דשטר כשר על החרס –

It seems from this ברייתא **that a שטר** written **on a חרס** is **a valid** שטר.

וכן משמע לקמן בפירקין (דף כו,א) דאמר כתב לו על הנייר ועל החרס –

And similarly it also seems so later in this פרק where רב המנונא cites a ברייתא **which states,** 'if **her wrote to him on a נייר or on a חרס -**

שדי מכורה לך שדי נתונה לך הרי זו מכורה ונתונה[2] –

'my field is sold to you, my field is given to you'; it is considered **sold or given'.** It is evident from these two גמרות that a שטר may be written on חרס and it is an effective שטר.

תוספות asks:

וקשה דאמר בפרק ב' דכתובות (דף כא,א) האי מאן דבעי לאחוויי חתימת ידיה בבי דינא -

And there is a difficulty, for אביי **stated in the second פרק of כתובות** מסכת**, 'this person who desires to establish his signature in בי"ד[3] -**

לכתוב אחספא כולי –

Let him sign on a potsherd, etc.' and give it to בי"ד. The גמרא continues -

וקאמר דוקא אחספא אבל אמגילתא לא –

And says; but he should sign **only on a חספא but not on a parchment -**

דלמא משכח[4] איניש דלא מעלי וכתיב עליה מאי דבעי[5] ותנן הוציא עליו כתב ידו –

For perhaps an unscrupulous person will find his signature **and will write above it whatever he desires, and we have learnt in a משנה, if one**

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[1] The writing on a חרס can be erased and the erasure will not be noticeable. It is always possible that the bearer of the שטר will erase and amend the שטר to his advantage; therefore it is not a valid שטר. There are two types of שטרות; a) שטרי קנין and b) שטרי ראיה. A שטר קנין makes a transaction effective, קרקע may be bought with a שטר, a woman may be acquired or divorced through a שטר. A שטר ראיה is (merely) a proof that a transaction took place; it does not however create the transaction. A שטר חוב is a שטר ראיה; it merely proves that the borrower owes the lender; it does not create the obligation (that is caused by the loan).

[2] One of the modes of acquiring קרקע is through a שטר. When the seller hands to the buyer a שטר which states that the field is sold to the buyer, the buyer acquires ownership of the קרקע.

[3] בי"ד will then be able to authenticate other documents which have his signature on them.

[4] It is possible that the parchment with his signature on it will be lost.

[5] He will write (something to the effect) that I the undersigned owe (to this person) a sum of money.

brought forth on another his handwriting[6] he may collect from his unencumbered properties.[7] Therefore he should not submit his signature on a piece of parchment but rather on a חספא.

משמע אבל על חרס ליכא למיחש להכי[8] **דאפילו כתוב עליו לא יועיל**[9] **–**

It is apparent from that גמרא that **however by a חרס there is no such concern, for even if** something **would be written** on this חרס above his signature **it would be useless.** This contradicts the גמרות which indicate that a שטר is valid on a חרס.

תוספות answers:

ואומר רבינו תם דההיא דלקמן וההיא דהכא אתיא כרבי אלעזר –

And the ר"ת answers that the גמרא **later and** the גמרא **here** which imply that a שטר may be written on a חרס **follow the view of ר"א -**

דאמר (בגיטין דף פו,א) **עדי מסירה כרתי**[10] **–**

who maintains [11]**עדי מסירה כרתי -**

וההיא דכתובות אתיא כרבי מאיר דאמר (שם) **עדי חתימה כרתי**[12] **–**

And that גמרא **in כתובות** מסכת which implies that a שטר cannot be written on a חרס **follows the view of ר"מ who maintains** [13]**עדי חתימה כרתי.**

תוספות explains why our גמרא (concerning a שטר קידושין) cannot be according to ר"מ:[14]

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[6] The note stated that the writer owes the bearer of the note a sum of money. The writer cannot deny it for it is in his handwriting. The same rule applies if the note is written above his signature,

[7] The bearer of the note cannot collect (however) from נכסים משועבדים since there were no עדים to make this loan public knowledge so people should be aware of the lien on the property.

[8] תוספות will shortly explain that the writing on a חרס can be forged (through erasures) therefore it is not a valid שטר.

[9] This is the purpose of the admonishment that it should be written only on a חספא where the signer is protected as opposed to a מגילתא where he is exposed to fraud.

[10] Literally 'the transfer witnesses cut off'. In the process of divorce there is a גט which is signed by two עדים (called the עדי חתימה), and the גט is then given to the woman in the presence of two (other or the same) עדים (referred to as עדי מסירה). It is the view of ר"א that the עדי מסירה accomplish the effectiveness of the divorce (עדי מסירה כרתי). In fact according to ר"א the גט does not even require עדי חתימה; if there are עדי מסירה she is divorced. ר"מ however maintains that it is the עדי חתימה who accomplish the divorce (עדי חתימה כרתי) and if there were no עדים on the גט, even if it was given to her in the presence of two עדים, there is no divorce. תוספות will explain how this dispute is applied to other שטרות besides גיטין.

[11] According to ר"א who maintains עדי מסירה כרתי (which means we do not require עדי חתימה) it is understood why if a שטר קידושין or a שטר מכר was written on a חרס it is כשר (even though it can be forged). At the time of the קידושין or the מכירה the עדי מסירה read the שטר to make sure it is in agreement with all the parties, and the שטר is transferred and the קנין is accomplished. There is no concern.

[12] See תוספות הרא"ש here (and תוספות כתובות כא,א ד"ה ודוקא) who answers that our גמרא is according to ר"א, but not necessarily that the גמרא in כתובות is [only] according to ר"מ. See footnotes # 15&22.

[13] According to ר"מ the effectiveness of a שטר is created by the עדי חתימה (without עדים there is no valid שטר). The עדים create a שטר only if we are certain that the שטר which is before us is the same as the שטר the עדים signed on. However if it is a דבר שיכול להזדייף we do not know whether this שטר was tampered with.

וההיא דהכא לא אתיא כרבי מאיר[15] –

And the גמרא **here** (which is discussing a שטר קידושין) **is not compatible with** the view **of ר"מ -**

דכיון דבעינן בשטר קדושין עדי חתימה כדמוכח לקמן בפרק שני[16] (דף מח,א.) –

For since by a שטר קידושין there is a requirement to have עדי חתימה as is evident later in the second פרק -

ועדים שעל גבי החרס לא חשיבי ואין מוכיח מתוכו כלום בחרס[17] –

And witnesses which are found **on a חרס are not considered** witnesses, **for nothing can be proven from the content** of a שטר **חרס** -

דדבר שיכול להזדייף הוא –

since it is something which can be forged -

ותנן בפרק ב׳ דגיטין (דף כא,ב) אין כותבין לא על נייר מחוק ולא על דיפתרא[18] –

And we learnt in a משנה in the second פרק of מסכת **גיטין, 'we do not write** a גט, **neither on erased paper nor on a דיפתרא -**

משום שיכול להזדייף[19] וחכמים מכשירין

Because it can be forged; and the חכמים validate such a שטר'. This concludes the משנה.

ואמרו[20] מאן חכמים רבי אלעזר –

And the גמרא **said, 'who are these חכמים** who are מכשיר; it is **ר' אלעזר** who maintains עדי מסירה כרתי'. תוספות concludes -

שמע מינה[21] דלא מהני בדבר שיכול להזדייף –

It is evident from that גמרא that according to ר"מ a שטר **will not be valid** if it is written **on something which can be forged.**

תוספות anticipates a difficulty:

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[14] תוספות rejects the argument that by שטר קידושין (which is a שטר קנין; its purpose is to enact the קנין of קידושין), a חרס would be acceptable even according to ר"מ who maintains עדי חתימה כרתי. The עדים sign on the חרס and it is given forthwith to the woman. There would seem to be no concern. תוספות disagrees.

[15] תוספות only says that our גמרא here is not according to ר"מ; however תוספות does not say that the גמרא in כתובות is not according to ר"א. See footnotes # 12&22.

[16] The גמרא there cites a ברייתא which states that if one is מקדש a woman with a שטר, according to ר"מ she is not מקודשת and according to ר"א she is מקודשת. One of the interpretations is that it was a שטר without עדי חתימה; according to ר"מ she is not מקודשת since עדי חתימה כרתי and according to ר"א she is מקודשת since there were עדי מסירה.

[17] The idea of עדי חתימה כרתי is that the עדים who signed the שטר are testifying (through their signatures) that all that is written in the שטר is true. However since it is יכול להזדייף they cannot testify at all, for perhaps it was altered after they signed it.

[18] See גמרא and רש"י in גיטין כב,א that דיפתרא is a hide that was salted and prepared with flour but not with gallstones; it is not a completely processed parchment.

[19] An erasure is not noticeable on a נייר מחוק (for it is already erased) and on a דיפתרא.

[20] דף כב,א.

[21] תוספות is ascertaining that even by a שטר קנין (such as a גט) it is פסול if it is written on a דבר שיכול להזדייף.

ואף על גב דאמר בגיטין בסוף פרק שני (דף כב,ב ושם) –

And even though the גמרא **states in גיטין** מסכת **in the end of the second פרק** that -

לא הכשיר רבי אלעזר אלא בגיטין אבל בשטרות לא –

ר"א did not validate a שטר on a דבר שיכול להזדייף in all cases, rather **only by גיטין, however by** other **שטרות** he did **not** validate it if it is a דבר שיכול להזדייף. This concludes the גמרא. It would seem therefore that by שטרי קידושין and שטרי מכר (which are not גיטין) a חרס (which is a דבר שיכול להזדייף) would be פסול. How can we therefore say that our גמרות (concerning שטרי קידושין and שטרי מכר), follow the view of ר"א?!

תוספות responds that when the גמרא there said אבל בשטרות לא -

הני מילי בשטרות העומדות לראיה דבעינן ראוי לעמוד ימים רבים –

Those words were referring **to** those **שטרות which are used as proof** (of a loan or a purchase), **where it is necessary that it should be capable of lasting many years;** in those cases it cannot be a כתב שיכול להזדייף[22] -

אבל זה שאינו עשוי אלא לקדש בו אשה ולקנות בו שדה –

However these שטרות which we are discussing in our גמרא **that are not used** as a proof of purchase or קידושין **but rather** the intent of the שטר is **to be מקדש a woman and to acquire a field;** these שטרי קנין are -

כעין גיטין הוה שעשוי לגרש בו את האשה לפי שעה –

similar to גיטין which are used to divorce a woman at this moment and they can be written on a דבר שיכול להזדייף**.**

תוספות anticipates a difficulty with this distinction:

ואף על פי שהשטר של קנין יכול להועיל לראיה[23] –

And even though a שטר קנין can be useful as a proof, and by a שטר ראיה we said that it cannot be written on a חרס; why therefore do we say that a שטר מכר (or a שטר קידושין) can be written on a חרס?

תוספות answers that -

כמו כן הגט יכול להועיל כדאמר בפרק הכותב (כתובות פט,ב) –

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[22] It is apparent from this that ר"א agrees that שטר ראיה cannot be written on a חרס. This would seem to answer תוספות original question. By קידושין which is a שטר קנין it can be written on a חרס, however in כתובות where we are concerned that he will write above the signature that the bearer owes him money, this is a שטר ראיה where even according to ר"א it cannot be written on a חרס. It would therefore seem that when תוספות answered the contradiction, saying that our גמרא is according to ר"א and the גמרא in כתובות (concerning the signature) is according to ר"מ, it does not mean that the גמרא in כתובות is only according to ר"מ, but rather that the גמרא in כתובות could be according to ר"מ (and according to ר"א); however our גמרא can be only according to ר"א and not according to ר"מ. See footnotes # 12&15. See 'Thinking it over'.

[23] The woman can use the שטר as proof that he married her (and he has the responsibilities associated with קידושין) and the buyer can use the שטר as a proof of purchase.

A גט can also be useful as a שטר ראיה **as** the גמרא **states in** [24] **- פרק הכותב ובפרק קמא דבבא מציעא** (דף יט,א[25]) **וכי תימא ליקרעיניה בעינא לאינסובי ביה**[26] **–**

And in the first פרק **of בבא מציעא; 'and if you will suggest that we should tear** the גט after the woman receives it, the woman can argue **'I need** the גט **to marry** again''. It is evident that a גט can be used לראיה as well and nevertheless ר"א is מכשיר a גט on a דבר שיכול לזדייף -

אלמא אף על פי שהיא צריכה לראיה עיקרו לא לכך נעשה:

It is evident that **even though she needs** the גט **for proof, however initially it was not made for that** purpose; but rather to accomplish the כריתות. Similarly a שטר קידושין and a שטר מכירה are intended for the קנין, so even though they can be used for a שטר ראיה, nevertheless we assume them to be שטרי קנין (as a גט) and they can be written on a דבר שיכול להזדייף.[27]

Summary

A שטר קנין (such as a גט, שטר קידושין or שטר מכר) may be written on a דבר שיכול להזדייף according to ר"א (who maintains עדי מסירה כרתי) even though these שטרות may be used for a ראיה. However a שטר which is intended לראיה cannot be written on a דבר שיכול להזדייף.

Thinking it over

Why did not תוספות answer (the original question) that there is a difference between שטר קנין (like קידושין where a חרס is כשר) and שטר ראיה (as in the case of the signature where a חרס is פסול)? Why was it necessary to mention the מחלוקת between ר"א ור"מ whether עדי כרתי or עדי כרתי!?[28]

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[24] The גמרא there states that since a woman can collect her כתובה (עיקר) by producing her גט, this may result in complications [that she may collect her כתובה twice (or more). We cannot avoid this problem by tearing up her גט after she collected her כתובה for she can claim I need the גט in order to remarry.

[25] This should be amended to יח,א.

[26] The solution (in כתובות) is that בי"ד makes a tear in the גט and writes that this tear was not made because the גט is פסול, but rather to prevent her from collecting with it again.

[27] It would seem obvious that if a שטר מכר was written on a חרס it will be a valid קנין (according to ר"א), however the buyer would not be able to use it as a שטר ראיה to prove that he bought the field. See however בל"י אות רח.

[28] See footnote # 22.