

## הלכתא<sup>1</sup> נינהו – These are the rules as received by משה at Sinai

### OVERVIEW

The גמרא explained that the reason a שטר מכר is written by the seller (the מקנה) and a שטר קידושין is written by the husband (the קונה) is because it is הלכה למשה מסיני. This term (usually) means that it is a הלכה and therefore no questions can be asked. resolves some difficulties with this interpretation and also offers an alternate interpretation.

asks: תוספות

– תימה כיון דהלכתא נינהו למה לי קרא דויצאה והיתה<sup>2</sup> שהאשה נקנית בשטר<sup>3</sup> –

**It is astounding!** Since these are הלכה למשה מסיני (that a שטר קידושין is written by the husband, and a שטר מכר is written by the seller), then **why is the פסוק of ויצאה והיתה necessary to teach us that a woman can be acquires through a שטר**, when we know this from the הלל"מ?

answers: תוספות

– ויש לומר דשטר מכר לחוד הוי הלכתא –

**And one can say; that the הלכה למ"מ applies only to a שטר מכר** (that the מקנה writes the שטר), but not to a שטר קידושין, for we derive שטר קידושין בשטר – ויצאה והיתה

– ושטר קידושין נפקי מכי יקח דבעל כותבו<sup>4</sup> ודמי<sup>5</sup> למכר –

**And we derive that the husband writes the שטר קידושין from the פסוק of כי יקח** (and it is [not] similar to a sale).

anticipates and resolves a difficulty with this answer: תוספות

– ואף על גב דקאמר הלכתא נינהו לשון רבים לאו אתרווייהו קאי –

**And even though the גמרא stated 'they are derived from a הלכה למ"מ' in the plural** (indicating both מכר and קידושין), nevertheless we are forced to say that the גמרא **is not referring to both of them** (but rather only to מכר) – (שטרי מכר)

– וכהאי גוונא אשכחן בריש בנות כותים (נדה לבב) דקאמר הי קרא והי הלכתא<sup>6</sup> –

<sup>1</sup> See רש"י ד"ה הלכתא.

<sup>2</sup> דברים (תצא) כד, ב. See the גמרא previously on ה,א, asking why the גמרא derives שטר קידושין from ויצאה והיתה if there is a הלמ"מ. However תוספות is not asking why the פסוק writes ויצאה והיתה.

<sup>3</sup> Once there is a הלל"מ that the husband writes the שטר קידושין then it is obvious that a woman can be acquired with a שטר.

<sup>4</sup> The words כי יקח indicate that the husband is acquiring therefore he writes and gives the שטר to the אשה. Even though כי יקח refers (primarily) to קידושין כסף, nevertheless we assume that all acquisitions of an אשה (including שטר and כסף) are similar in that the בעל makes the קנין. See מהרש"א and הכא ד"ה הרא"ש.

<sup>5</sup> The commentaries delete these two words דמי למכר. Others are גורס that דמי למכר.

<sup>6</sup> The גמרא there discusses the source for two laws and רבא concluded that הלכתא נינהו. The גמרא immediately asks which (of these two) is derived from a פסוק and which from a הלכתא; despite that רבא used the plural הלל"מ. This proves that הלכתא נינהו may mean only one is הלל"מ.

**And we find something similar in the beginning of פסוקים where the גמרא asked which one is derived from a פסוק and which one is a הל"מ.**

תוספות asks:

אך קשה דלקמן (דף כו,א) גבי שדה קבעי מנין שנקנית בשטר –

**However there is a difficulty; for later concerning a field the גמרא inquires, from where do we derive that a field is acquired through שטר - ואייתי קרא דכתיב ואקח את ספר המקנה<sup>7</sup> –**

**And the גמרא cites the פסוק of המקנה את ספר המקנה. ואקח את ספר המקנה. According to our גמרא there is no need for a פסוק since it is a הל"מ! However from that גמרא it seems that there is no פסוק for otherwise why do they cite the פסוק!**

תוספות answers:

ושמא יש לומר דכיון דהוא קרא לא הוי אלא מדברי קבלה אין להקפיד בכך<sup>8</sup> –

**And perhaps one can say; that since that פסוק which is cited is merely from the words of the prophets and not from the תורה we should not be concerned about it.**

תוספות offers an alternate solution:

אי נמי יש לפרש הלכות מדינה כלומר מנהג היה כך<sup>9</sup>:

**Or you may also explain the term הלכתא to mean it is the laws of the country, meaning that it was customary to do it in this manner, but it does not mean that it is a הל"מ.**

## **SUMMARY**

There is a הל"מ that the seller writes the מכר שטר. We derive from יקה כי יקח that the husband writes the שטר קידושין. Alternately the writer of a שטר was determined by the prevailing custom; which is that the seller writes it.

## **THINKING IT OVER**

1. הל"מ mentions the נביא that there is no concern if the תוספות answers that. Why however does the נביא (which is ברייתא (cited by תוספות) mention the נביא (which is [merely] דברי קבלה) and not the הל"מ?!<sup>10</sup>

2. When תוספות answered כך מנהג היה was he referring to מכר and קידושין or only to מכר?<sup>11</sup>

<sup>7</sup> ירמיהו לב,א.

<sup>8</sup> We can accept that the נביא (but not the תורה) repeats and substantiates (for us) the הל"מ. See 'Thinking it over' # 1.

<sup>9</sup> The שטר קנין is derived from a פסוק; however it was not specified as to who should write it, and the custom decided who would write the שטר. See 'Thinking it over' # 2.

<sup>10</sup> נח"מ בד"ה בא"ד דכיון # 191 and footnote אמ"ה.

<sup>11</sup> See נח"מ בד"ה בא"ד כלומר.