

One who sells a note of debt to his friend and goes back and forgives it, it is forgiven

Overview

ruled that if a lender sold his note of debt (where someone else owes him money) to his friend, and the מלוה went ahead and forgave the לווה the loan, the rule is that the loan is forgiven and the buyer cannot collect from the לווה.¹ Our תוספות offers (some) explanation for this (seemingly) astounding ruling.

יש מפרשים היינו טעמא דמחלו מחול משום דקנין שטר אינו אלא מדרבנן² -

Others explain that this is the reason why if the מלוה forgave the לווה, the loan is forgiven, because the acquisition of a note is only valid מדאורייתא, however מדרבנן, one cannot sell a note -

ולא אלים להפקיע כח הראשון³ שלא יוכל למחול אותו -

So therefore the sale is not powerful enough to revoke the power of the first one (the seller; the original מלוה), so that he should not be able to forgive the לווה -

וכן משמע בפרק מי שמת (בבא בתרא דף קמז,ב) דקנין שטרות⁴ אינן אלא מדרבנן:

And it also seems so in פרק מי שמת that acquiring שטרות is only מדרבנן.

Summary

חוב the מוחל the מלוה retains the right to be מכירת שטרות is only מדרבנן, therefore

Thinking it over

If מכירת שט"ח is only מדרבנן (and presumably also giving it as a gift or for קידושין), is this woman (who received the שט"ח for קידושין), or מקודשת מה"ת, is also מדרבנן, is this woman (who received the שט"ח for קידושין), or only מדרבנן?⁵

¹ There is discussion elsewhere (ב"ב קמז,ב תוד"ה המוכר) what recourse the buyer has against the מלוה (the seller of the שט"ח).

² only something of substance (whether it is מטלטלין or קרקע) can be sold. By a מכירת שט"ח there is nothing of substance being transferred (merely an obligation). Therefore the מלוה owes the money to the לווה, but not to the buyer.

³ The רבנן could enact that this loan may be collected only by the buyer but not by the מלוה; however they (seemingly) cannot change the fact that the לווה owes money to the מלוה, therefore the מלוה can void this obligation.

⁴ מדרבנן only קונה is מתנת שכיב מרע said that a רבא אמר רב נחמן (המוכר שט"ח לחבירו וחזרו ומחלו מחול) does not apply to a שכ"מ (there is no מחילה), but if a שכ"מ is only מדרבנן, why is any different from a regular מכירה, where he can be מוחל? It is apparent that the גמרא there assumes that מכירת שט"ח is only מדרבנן.

⁵ See 165-7. # אוצר מפרשי התלמוד