

אמר רב נחמן עדים שאמרו אמנה¹ היו דברינו אין נאמנים –
ר"נ stated: Witnesses that claimed, our testimony was
concerning a trust document, they are not believed.

OVERVIEW

מודעא היו or אמנה היו דברינו claim that עדי השטר maintain that if the רב נחמן they are not believed (even with a מגו), and it is a שטר כשר. This seems to contradict our משנה which states that if עדים claim that they were קטנים ואנוסים when they signed the שטר they are believed (with a מגו). This ruling of ר"נ also contradicts a previously mentioned ruling of ר"נ that (even) a לזה is believed to claim דמזויף במגו; why are two עדים not believed with this (same) מגו?! Our תוספות will differentiate between these various claims.

ר"נ's ruling first sets the parameters of תוספות:

על כרחך באין כתב ידם יוצא ממקום אחר איירי³ -

You are compelled to say that we are **discussing** a case **where their handwriting is not released from elsewhere**; we cannot authenticate this שטר based on other signatures. These עדים themselves must authenticate their own signatures.

דאי כתב ידם יוצא ממקום אחר פשיטא⁴ דהכי פריך לעיל⁵ -

For if their כתיב is available from elsewhere; if we can be מקיים this שטר without their explicit testimony, then **it is obvious** that the עדים are not believed to claim דברינו היו אמנה **for this is what the גמרא asked previously**. Why would ר"נ find it necessary to teach us this ruling!

אין כתיב יוצא ממקו"א offers an additional proof that we are discussing a case where תוספות:

ועוד דמר בר רב אשי קאמר⁶ דאין נאמנים משום דלא ניתן לכתב -

¹ אמנה means trust. The עדים (who are מקיים their own חתימה) claim that the לזה trusted the מלוה and gave him the שטר for a (possible) future loan, which the עדים never saw take place.

² מודעא means a notification of coercion. The עדים claim that the borrower or seller informed the עדים that they were being coerced into agreeing to this transaction. See 'Thinking it over # 3.

³ ר"נ is teaching that even though these עדים have a פה שאסר (for they could claim it is not our handwriting), nevertheless they are not believed.

⁴ They have no פה שאסר. They are contradicting a שטר מקיים which is presumed not to be a אמנה (in addition to being ומגידים).

⁵ ר"נ אמר רב יט,א; where ר"נ said that the claim of אמנה is not acceptable. The גמרא there asked, if the עדים stated this, then if כתיב יוצא ממק"א it is obvious they are not believed; there is no need to teach this ruling.

⁶ ר"נ disagrees with ר"נ concerning a שטר מודעא (since it is לכתב) and agrees with ר"נ דמר בר רב אשי

And furthermore; מר בר רב אשי maintains that the עדים are not believed to claim דברינו היו דברינו, because a שטר אמנה is not permitted to be written; it is an עולה.

Tosfos continues with his proof.

ואי בכתב ידם יוצא ממקום אחר אפילו ניתן לכתב פשיטא דאין נאמנים⁷ -

And if we are discussing a case where מר בר רב יוצא ממקום"א is כתיב"י how can מר בר רב אשי claim that the reason אין נאמנים is because ניתן לכתב; it is not so, for even if it is permitted to write a שטר אמנה it is obvious that the עדים are not believed to claim דברינו היו דברינו.

Tosfos asks; now that it is established that ר"נ is discussing a case where אין כתיב"י יוצא ממקום"א there is a difficulty:

וקשה דאמאי לא מהימני במגו -

And there is a difficulty! Why are these עדים not believed, since they have a מגו. They had the option of claiming that it is not our handwriting;⁸ in which case the אמנה היו could not collect with it. Therefore we should also believe them now that שטר. מודעא היו דברינו or דברינו and the מלוה should not be able to collect with this שטר.

Tosfos anticipates a rebuttal to his question and rejects it. It is possible that ר"נ is of the opinion (like ר"מ [and ר"ה])⁹ that we cannot invalidate a שטר through a מגו. Once we know that a שטר is not מזויף, it is then deemed to be a שטר כשר. No claim can invalidate it, regardless whether there is a מגו to substantiate the claim. According to this view once the עדים admit that it is not a שטר מזויף they are not believed that it is a מודעא\אמנה. Perhaps this is also the view of ר"נ. Tosfos says that this is not true –

דהא רב נחמן גופיה אית ליה לעיל¹⁰ מגו לפסול את השטר -

– שטר a מגו is effective to void a שטר himself previously maintains that ר"נ

דקאמר כי אתו לקמן לדינא אמרינן להו זילו קיימו שטריכו וחותרו לדינא -

For ר"נ stated that when they come before us for a ruling we say to them

concerning a שטר אמנה that אין נאמנים.

⁷ See footnote # 4. There is an advantage in this second proof (that the reason of מר בר רב אשי would be wrong) over the first proof (that it would be a פשיטא). A פשיטא is not as troublesome as a wrong reason. On the other hand there is a disadvantage in the second proof, because it is possible that מר בר רב אשי is discussing a different case than ר"נ. It is not clear that מר בר ר"א is addressing his comments directly to ר"נ. See מר בר ר"א who states that Tosfos could have proven his point from the second statement of מר בר ר"א; that דברינו היו דברינו נאמנים. It is obvious that this is only in a situation of ממקום"א אין כתיב"י יוצא ממקום"א.

⁸ See תוספות הרא"ש.

⁹ תוספות ד"ה טעמא וד"ה מודה. See דף יט,א.

¹⁰ יט,א.

(the claimants with the שטר), first **go to authenticate** the signatures on **your שטרות** to prevent the (or טענה) מגו of מזוייף and afterward **go down to the court** case. The reason ר"נ required them to be מקיים the שטר is –

דמהימן לומר פרוע במגו דמזוייף -

Because the לוח is **believed to claim** the loan was **paid** when he has a מגו of claiming מזוייף. It is evident that even if the לוח claims פרוע, which implies that it is a proper שטר, nevertheless since he has a מגו he is believed to claim פרוע and prevent the (שטר the מקיים without first being) שטר from collecting with this (מלוה) –

וכל שכן עדים דאלימי לאורועי שטרא כדאמר במי שמת¹¹ (בבא בתרא קנד, א) -

And how much more so should this be true by two עדים who are more **powerful** than an individual לוח, **as** the גמרא **states in שמת**; פרק מי שמת; they certainly should be able **to discredit the שטר**. These עדים have a מגו. Therefore even though they agree it is not מזוייף, nevertheless they should be believed that שטר מזוייף with the מגו that they could have claimed that it a דברינו.

In summation the question is:¹² Why when a לוח claims פרעתי he is believed (even though the מלוה is in possession of the שטר), because he has a מגו; and why are the עדים, who claim אמנה/מודעא היו דברינו, not believed, even though they also have a מגו.

answers: תוספות

ותירץ רבינו יצחק דהיינו טעמא דמודעא הואיל ומודים שהשטר נכתב ונמסר כהלכתו -

And the ר"י answered that this is the reason why the עדים are not believed to claim דברינו **שטר was written and delivered** (to [the מלוה or] the buyer) **properly**¹³ –

שוב לא אתי על פה ומרע לשטרא אפילו במגו¹⁴ -

An oral declaration cannot subsequently come and discredit the שטר even if this declaration is substantiated through a מגו.

anticipates a difficulty with this concept of לשטרא ע"פ ומרע, and justifies it:

ולא דמי לאנוסים וקטנים דמתניתין -

¹¹ The גמרא there states that it is possible that a לוח is not believed to claim דמזוייף; however עדים who are אלימי טפי are believed to discredit the שטר (by claiming וקטנים) with a מגו. See מזוייף. See previous טעמא where תוספות cites ר' יוחנן (in ב"ב קנד, ב) who maintains that עדים are believed with a מגו, but the לוח is not believed with a מגו.

¹² See ש"ף who maintains that תוספות question is from the משנה which states that וקטנים are אנוסים; why are מודעא ואמנה any different? תוספות mentions דמזוייף, merely to forewarn that ר"נ is of the opinion that לקיימו צריך שכתבו שטר and a מגו is effective.

¹³ See footnote # 17.

¹⁴ The תוס' הרא"ש adds that it is similar to ומגידים.

And this case of מושנה is not comparable to the cases of our משנה which states that the עדים are believed if they claimed היינו or אנוסים קטנים לא אתי ע"פ. Seemingly there too we should apply this rule of לא אתי ע"פ. ומרע לשטרא.

now explains the difference between these cases:

שאין מודים שהיה שטר כשר כלל אלא סותרין אותו הלכך מהימני במגו -

For there, in the משנה, the עדים do not admit that there ever was a שטר at all, but rather the עדים contradict the שטר. A שטר which is signed by קטנים or אנוסים is no שטר at all! **Therefore the עדים are believed** that they were אנוסים and קטנים **with a מגו** that they did not have to be מקיים the שטר –

דלא שייך כאן לומר דלא אתי על פה ומרע לשטרא שהרי אינם מודים שהיה שטר -

For it is not applicable to say here in this case that ‘an oral declaration cannot come and discredit a שטר’, for the עדים do not admit that there was a שטר. The difference between קטנים ואנוסים (where the עדים are believed) and מודעא (where the עדים are not believed), is that by מודעא the עדים testify that the שטר was executed properly; however they claim that there was an issue which disqualifies the transaction described in the שטר. In such a case the rule is that לא אתי ע"פ ומרע לשטרא, even if there is a מגו to substantiate the claim.¹⁵ In the cases of קטנים ואנוסים, however, the עדים are stating that there never was a (proper) שטר since they were אנוסים and קטנים;¹⁶ therefore there is no ע"פ that is מרע לשטרא, for there is no שטר. The עדים are believed since they have a מגו.

goes on to explain why by דברינו they are also not believed:

ואמנה נמי נראה דהיינו טעמא דלא מהימני לרב נחמן דלא מרעי לשטרא -

And concerning the claim of אמנה it also appears that this is the reason that the עדים are not believed, according to ר"נ for the עדים are not empowered to discredit the שטר –

הואיל ומודים שהשטר נכתב כדין מדעת הלוח¹⁷ -

¹⁵ Once the עדים testify that כתי"י הוא זה, there is a שטר כשר. A שטר כשר is presumed not to be a מושנה (otherwise there can never be a שטר). The עדים cannot void a written שטר through their oral testimony. [In addition, other commentaries (see footnote # 14) maintain that they are חוזרים ומגידים.] The explanation of לא אתי ע"פ ומרע לשטרא, may be dependent on the meaning of נאמנים (whether the שטר is פסול, or there is no פסול). See footnote # 1. See ואלך. A simple explanation may be that once there is a valid written שטר the חכמים enacted this rule to protect the integrity of the שטר; that it cannot be voided by a (contradictory) oral declaration. See ‘Thinking it over’ # 2.

¹⁶ A שטר, which קטנים ואנוסים sign, is a שטר without עדים; which is no שטר at all.

¹⁷ Previously (footnote # 13) when Tosfos was discussing a מודעא, the expression was מודים שהשטר נכתב כדין מדעת הלוח, since they claim there was a מודעא. See Tosfos; however Tosfos did not say it was מדעת הלוח, since they claim there was a מודעא.

since the עדים admit that the שטר was properly written with the consent of the borrower. מודעא היו ר"נ maintains that according to the claims of both, לא אתי ע"פ ומרעי לשטרע are not believed on account of דברינו and דברינו.

is מודעא ואמנה anticipates that one can challenge this assumption that the reason for אמנה is the same. Perhaps the reason for אמנה is different than מודעא. The reason why אמנה is not believed may be as מר בר רב אשי stated, that אמנה is לא ניתן לכתב; it was never permitted to be written. A שטר אמנה is an illegal document. It is אסור for עדים to sign on such a document. When the עדים say אמנה היו דברים there are declaring themselves רשעים. The rule is that אין אדם משימ עצמו רשע.¹⁸ This is the reason why אמנה is not believed according to מר בר רב אשי. תוספות maintains that according to ר"נ this is not the reason for אמנה.

דלא מפרש טעמא דאמנה משום דלא ניתן לכתב אלא מר בר רב אשי -

For the גמרא **did not** universally **explain** that **the reason** אמנה is not believed is **on account that it is not allowed to be written**; this reason does not apply to all the opinions **but rather** this explanation expresses the view of מר בר רב אשי only –

אבל לרב נחמן טעם אמנה ומודעא שניהם שוה¹⁹ -

However, according to ר"נ the reason for disbelieving the עדים in the cases of אמונה ומודעה are the same in both: namely that לא אתי ע"פ ומרע לשטרא.

There still remains the original question of why an individual is believed to claim **פרעתי** (לא אתי ע"פ ומרע לשטרא) (even though **דמזוייף** **אמנה** are not believed to claim **שטרא**), and **תוספות** addresses this issue:

והוא דאית ליה לרב נחמן דנאמן לומר פרוע הוא במגו דמזוייף -

And regarding that which ר"נ maintains that the ליה is believed to claim the loan was paid, with the מגו that he could have claimed that the שטר was forged; seemingly it is case of אתי ע"פ ומרע לשטרא –

תוספות answers:

התם נמי²⁰ לא מרע לשטרא כלל הלכך מהימן במגו²¹ -

There too (by פרוע במגו דמזוייף), the לוח is not discrediting the שטר at all!

‘Thinking it over’ # 1.

¹⁸ See footnote # 24 why תוספות prefers that ר"נ and רב אשי disagree.

¹⁹ It is apparent from the syntax of the גמרא that according to ר"נ there is no difference between מודעה and אמנה.

²⁰ The term נמי is to be understood that just as by אנוסים they are not מרע שטר (since there was no שטר to begin with), so too by פרוע there is no מרע לשטר (since the שטר remains a valid [paid up] שטר).

²¹ A שטר is issued with the intent that it will eventually be paid up. The claim of פרעתי is not against the שטר per se; but rather it is against the claim of בעי מאי בידי שטרך. The מנו of מזוייף is sufficient to support the claim of פרעתי against the claim of וכל בידי וכל.

Therefore the לוח is believed to claim פרוע when he has the מגו of מזויף. The מזויף agrees that it is a proper שטר. He simply claims that he paid up (and did not retrieve the שטר in lieu of his payment).

In summation: When a claim is מרע לשטרא, it discredits a שטר; the rule is that לא אתי ע"פ (even) according to the שטר, where there is a valid שטר (even) according to the עדים, and the עדים are being מרע this שטר, they are not believed even with a מגו. In cases where there is no שטר or where there is no discrediting of a שטר, a מגו is effective to be believed. Therefore in the cases of אנוסים וקטנים where there is no שטר, the עדים are believed with a מגו. In the case of פרוע (there is a שטר, however) there is no מרע לשטרא; no one is denying the validity of the שטר, therefore the לוח is believed with a מגו.

ואתי שפיר רב נחמן כרבנן דרבי מאיר²² -

And ר"מ can properly follow the opinion of the רבנן who argue with ר"מ and maintain that by אנוסים וקטנים (as well as במגו דמזויף) they are believed (with a מגו), since they are not מרע לשטרא; however by אמנה ומודעא (where they are מרע לשטרא), they are not believed.

והיה ברייתא דמי שמת (גם זה שם): דשטר אמנה הוא זה דאינו נאמן²³ -

And concerning that ברייתא in פרק מי שמת which states that if the מוכר claimed **that this is a שטר אמנה** where the ruling is **that he is not believed** –

דבעי לוקמי כרבי מאיר רב נחמן מוקי לה כדברי הכל:

which ר"מ there wanted to establish that it follows the opinion of ר"מ; **ר"מ maintains that** the ruling of the ברייתא is according to all opinions, including the רבנן (for מרע לשטרא) ע"פ (לא אתי ע"פ).²⁴

SUMMARY

According to ר"נ:

לא אתי ע"פ ומרע who claim מודעא\אמנה היו דברינו are not believed since לשטרא.

אנוסים וקטנים היינו claim who עדים (אין כת"י יוצא ממק"א) are believed, since there is no valid שטר for they claim אנוסים וקטנים היינו.

מרע לשטרא, since במגו דמזויף who claims פרוע לוח is believed.

²² See 'Thinking it over' # 5.

²³ The case there (קנ"ב) is where the מוכר claims it was a מודעא שטר. Nevertheless the proof from עדים to the case of מוכר is certainly valid. If the עדים cannot be מרע לשטרא, certainly the בעל דבר cannot be מרע לשטרא.

²⁴ It would seem that if the reason that עדים are not believed to claim אמנה is because לא ניתן לכתב, then the לוח himself should be believed to claim דמזויף במגו דמזויף; אמנה לוח himself did not do any עולה. However if the reason that עדים are not believed to claim אמנה is because מרע לשטרא ע"פ, then the same rule would apply to the לוח as well. This may be one of the reasons תוספות insists that according to ר"נ the reason of אמנה is because מרע לשטרא ע"פ. See 'Thinking it over' # 4.

he admits that it is a valid שטר.

THINKING IT OVER

1. לא אתי ע"פ ומרע claims that by מודעא the עדים are not believed, since ²⁵Seemingly in the case of מודעא there is (also) no שטר at all. A שטר must be written with the consent of the מתחייב (the one who is being obligated by the שטר). In the case of מודעא there is no consent on behalf of the מתחייב (the לווה or the מוכר) for they are being coerced. The עדים should therefore be believed!²⁶

2. What would be the ruling if other עדים testified that it was a שטר ²⁷? (אין כת"י יוצא ממק"א or כת"י יוצא ממק"א (either when מודעא/אמנה

3. What can עדים do to protect the מוכר if he claims he is being coerced into this sale?²⁸

4. Why is תוספות adamant that the reason of אמנה is on account of לא אתי ע"פ ²⁹? and not because of ליכתב וכו'?

5. תוספות writes that since ר"נ distinguishes between ומודעה and אמנה and אנוסים ³⁰Seemingly we must say that רבנן דר"מ agrees with the ר"נ, ופרוע, we can say that ר"נ agrees with the רבנן דר"מ regardless, since ר"נ ruled that the בעל השטר must be מודה בשטר שכתבו צריך לקיימו (for די"ת the שטר before the מקיים ³¹!

²⁵ See footnote # 17.

²⁶ See סוכ"ד אות ע"ב.

²⁷ See footnote # 15.

²⁸ See ב"ב דף מט,א.

²⁹ See footnote # 24.

³⁰ See footnote # 22.

³¹ See מהר"ם שי"ף and פנ"י.