

Verification of notes is a *Derabonon*

קיום שטרות דרבנן –

OVERVIEW

The גמרא states here that קיום שטרות is only מדרבנן; (seemingly) meaning that מן התורה if a מלוה presents a שטר he is entitled to collect with it and does not require any קיום (even if the לווה claims it is a forged document). תוספות is puzzled by this ruling.

תוספות asks:

תימה כיון דמדאורייתא אפילו אין עדים שיכירו חתימת העדים השטר כשר¹ -

It is astounding! Since מדאורייתא a שטר is כשר even if there are no witnesses who recognize the signatures of the witnesses -

אם כן כל אדם שירצה יזייף ויכתוב ויחתום מה שירצה ויגבה ממנו² -

If indeed this is true, anyone who so desires will forge a document and write whatever he desires and sign (fake signatures) and will be able to collect with this document!!

³קיום שטרות דרבנן attempts to modify the meaning of תוספות:

והכא⁴ אומר רבינו יצחק דאיכא למימר כגון שלוח מודה שכתבו וטוען שהוא פרוע -

And the ר"י explains that when the גמרא states here קיום שטרות דרבנן, that can be explained to mean in a specific case, for instance where the לווה admits that the שטר was written with his consent (he borrowed the money) but the לווה claims that the loan was paid up -

וקסבר האי תנא דמודה בשטר שכתבו צריך לקיימו⁵ והאי קיום הוא ודאי מדרבנן⁶ -

And we will assume that the תנא of this משנה maintains that מודה בשטר שכתבו is certainly a רבנן requirement, for (מודה בשטר שכתבו) קיום (for a שטר שכתבו) צריך לקיימו, no קיום would be required and the מלוה would collect his debt.

¹ We are discussing a case where the לווה claims the note is forged (otherwise if he admits that it is a proper note, there is no need (generally) for קיום [see later in this תוספות]), and nevertheless the מלוה can collect without קיום.

² תוס' cannot understand how is it possible that the לווה (or מוכר) claims that the note (of sale) is forged, he will have no recourse at all, and the holder of the note will collect with it. We can imagine the chaos that will result from such a ruling!

³ The ר"י attempts to answer that [obviously] if the לווה (or מוכר) claims that the שטר is מזויף, it will require קיום even מדאורייתא, and when the גמרא states here that קיום שטרות דרבנן it is referring to a specific case.

⁴ This refers to the משנה which states that a קטן שנעשה גדול and a גדול שעמו can be מקיים the שטר. See "Thinking it over".

⁵ מודה בשטר שכתבו צריך לקיימו means that if the לווה admits that the שטר was written on his say so (i.e. he admits to borrowing the money) however he claims that the debt was paid, the rule is (according to this מ"ד) that the מלוה cannot collect unless he is first מקיים the שטר; otherwise the לווה has a מינו of מזויף. This requirement (according to the מדרבנן) is only מדרבנן. Another מ"ד maintains that no קיום is required even מדרבנן.

⁶ We know for sure that the שטר is valid, since the לווה admits to borrowing; the purpose of the קיום is to remove the מזויף of the לווה to claim קיום. This קיום can be understood to be only מדרבנן, since the מלוה is holding a valid שטר.

offers another example where (only):

אי נמי כגון שנתקיים משדה אחת⁷ או משתי שדות ויוצא מתחת ידי עצמו⁸ -

Or you may also say where for instance the שטר was from only one field, or from two fields but the מלוה is holding those שטרות -

דאמר לעיל (דף כ, א) דחיישין שמא זייף -

Where the גמרא previously said that it is not a sufficient קיום, because we are concerned perhaps he forged the signature; in such a case we can also understand that the requirement to be מקיים that שטר is מדרבנן.⁹ However where the לווה claims מזוייף then (seemingly) גמרא should be התורה. This is how we could have explained it based on our שטרות.

has a difficulty:

ומיהו בריש גיטין (דף ג, א. ושם) מוכח דאפילו היכא דאין מכירין החתימה כלל¹⁰ -

However in the beginning of גיטין it is evident that even when we do not recognize the signatures at all -

הוי מדאורייתא כמי שנחקרה עדותן בבית דין:

It is considered as if their testimony has been verified by ד"ד; תוספות finds it very difficult to justify this concept.

SUMMARY

It is understandable that קיום is מדרבנן in the case of מודה בשטר שכתבו or if it was an inferior קיום, but not that קיום in general is מדרבנן.

THINKING IT OVER

explains that here we can understand that קיום is מדרבנן in a case where it is מודה בשטר שכתבו. Seemingly the reason why מודה בשטר requires a קיום is because he has a דמזוייף.¹¹ In our משנה if there is a גדול שעמו who is מקיים the שטר, the מגו of מחויב שבועה since he will be required to swear. He is considered a מחויב שבועה where we rule that he has to pay,¹² so the גדול שעמו alone makes him pay there is no need for the שנתגדל!¹³

⁷ A קיום משדה אחת is not a valid קיום מדרבנן (we require two שדות [and יוצא מתח"י]).

⁸ The מלוה of the שטר in question has other שטרות which he is holding that the same עדים signed on them as well.

⁹ In this case too we have a קיום already, except that the רבנן were not satisfied and wanted a better קיום.

¹⁰ The גמרא there asked how is one שליח believed to testify that the גט was signed properly, and answered that since therefore by גט where there is the concern of עגונה, the חכמים were lenient allowed one עד to be believed. It is evident that in general קיום is only מדרבנן.

¹¹ See footnote # 5.

¹² See ב"ב לד, א.

¹³ See משכנות הרועים אות תתקמה and אילת אהובים.