

They will not sign on a wrongdoing

אעולה¹ לא חתמי -

OVERVIEW

The גמרא states that if עדים claim that כת"י הוא, however it is a שטר אמנה (the לווה did not borrow any money from the מלוה when we signed the שטר); then, even if יוצא ממ"א אין כת"י יוצא ממ"א, they are not believed. The reason is that a שטר אמנה is considered an עולה, and עדים will not sign on an עולה.

anticipates a difficulty:

והא דכותבין שטר ללוה אף על פי שאין מלוה עמו² -

And how are we to understand the ruling that it is permissible for עדים to write and sign a note for the לווה stating that he owes a sum of money to the מלוה even though the מלוה is not with the לווה when the שטר is being written and signed. The עדים do not see any money transferred to the לווה from the מלוה. There should be a concern that this may be a שטר אמנה. Why are the עדים permitted to sign this note.

responds:

היינו למוסרו ללוה ולא למלוה -

That permission is granted only to deliver the שטר to the לווה but they do not have permission to deliver it to the מלוה.³ There is an עולה only if the מלוה is in possession of a שטר אמנה. He may forget that it is a שטר אמנה and attempt to collect with it. Therefore if the עדים do not see the מלוה actually giving the monies to the לווה, they should not sign the שטר if they intend to give it to the מלוה. However (when there is no מלוה present) they are permitted to give the שטר to the לווה. When the שטר is in the possession of the לווה there can be no עולה; the מלוה cannot collect with it.⁴

SUMMARY

עדים may sign a שטר for a לווה not in the presence of the מלוה, provided that they deliver the שטר to the לווה and not to the מלוה.

THINKING IT OVER

¹ יטב, on גמרא is referencing the תוספות.

² If the לווה requests from עדים that they should write and sign a note stating that he borrowed monies from the מלוה; they may do so. To sign a שטר we require (only) the acknowledgement of the one who is obligating himself (דעת המתחייב).

³ This is understood to mean that they may not transfer it to the מלוה even with the consent of the לווה.

⁴ עדים are not believed to claim אמנה היו דברינו (for it is an עולה), only if they state that they delivered the שטר to the מלוה (see תוספות הרא"ש).

Is the prohibition of signing a שטר אמנה, refer to the signing with the intent of delivering it to the מלוה; or is the prohibition limited to actually delivering it to the מלוה, but not the signing per se?⁵

⁵ See אילת השחר who indicates a possible מנה between these two options.