A

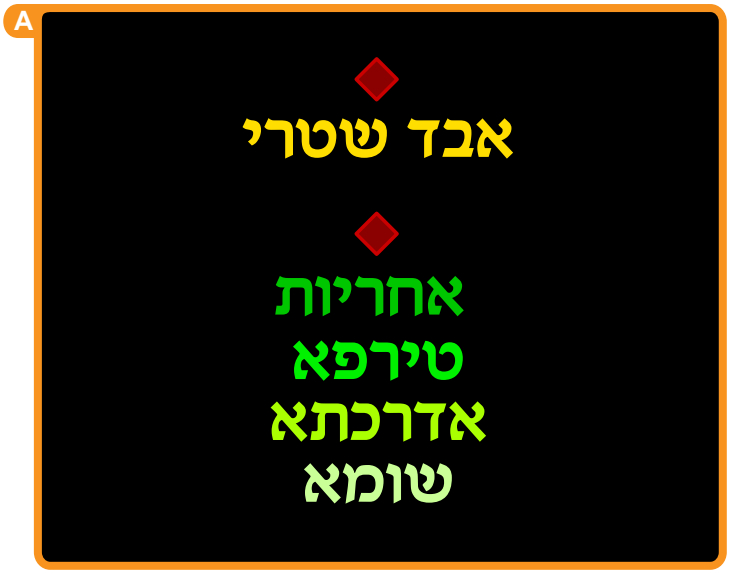
בס"ד

Intro

Today we will Be"H learn דף קס"ט of מסכת בבא בתרא.
Some of the topics we will learn about include:

אבד שטרי
Whether we write a duplicate document for someone who claims to have lost
שטר הלואה, a loan document, or
שטר מקח וממכר, a sale document.

אחריות
A clause in a contract entitling the buyer to compensation if a creditor confiscates the property, or if it was stolen property and the original owner seizes the property;
He may collect from the seller's property, or from property that the seller sold to others AFTER selling this particular property.
The Gemara lists the stages involved in claiming sold property:
טירפא
Allowing one to seek sold property;
אדרכתא
Allowing him to seize the property, and
שומא
Assessing the property's value;

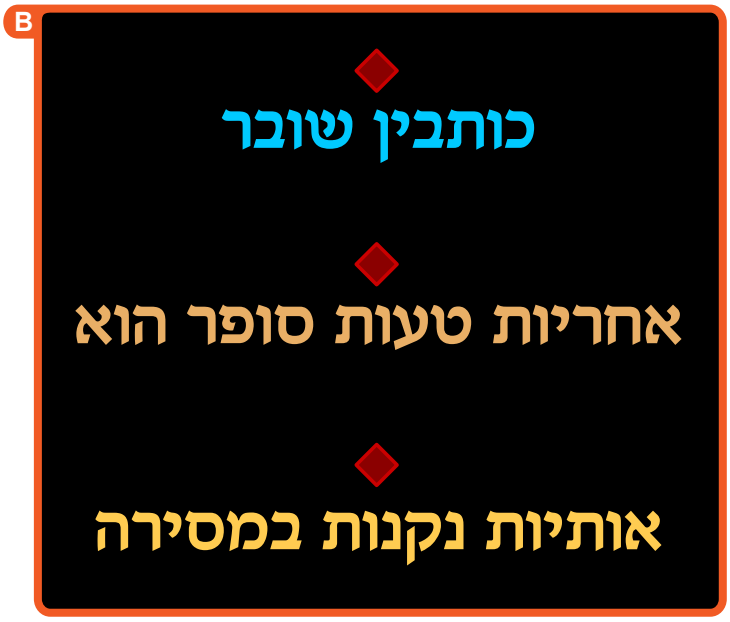


B

כותבין שובר
Whether the borrower must accept a receipt instead of the lender returning the original loan document upon payment?

אחריות טעות סופר הוא
Whether every document implicitly includes אחריות or not?

אותיות נקנות במסירה
Whether one can acquire the deed, and thereby the property, by the transfer of the deed, which is the original gift or sale document, without writing and giving a new document of sale;



So let's review...

The Gemara continues discussing the writing of duplicate documents, and cites a ברייתא:
שטרי הלואה
הרי שבא ואמר אבד שטר חובי
If a creditor claims to have lost a loan document,
אע"פ שאמרו עדים
אנו כתבנו וחתמנו ונתננו לו
אין כותבין לו את השטר
Even if witnesses testify that they wrote, signed and delivered a loan document with all the details described by the claimant, we do not write him another loan document, because, as the Rashbam explains
שמא לא אבד הראשון
אי נמי דלמא חזר ומצאו
Perhaps he did not lose the first document, or perhaps he will eventually find it, and
טריף והדר טריף
He might use both documents to collect the same loan twice.
And the Gemara later elaborates on this concern.

However, there's a Machlokes in the case of
שטרי מקח וממכר
Documents of sale;
The חכמים says
שטרי מקח וממכר
כותבין
חוץ מן האחריות שבו
Properties are often sold with אחריות, a guarantee, entitling the buyer to compensation if a creditor confiscates the property, or if it was stolen property and the original owner confiscates it. If that happens, the buyer can collect from the seller's property, or from property that the seller sold to others AFTER selling this particular property.

The חכמים hold that if the buyer lost a sale document, we do write him a second document, but we do not include אחריות, even if the first document included אחריות.

רבן שמעון בן גמליאל אומר
אף שטרי מקח וממכר
אין כותבין
רשב"ג holds we do not write a second sale document at all, even without אחריות.

ברייתא

שטרי הלואה
הרי שבא ואמר אבד שטר חובי
If a creditor claims to have lost a loan document,
אע"פ שאמרו עדים
אנו כתבנו וחתמנו ונתננו לו
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He might use both documents to collect the same loan twice.
And the Gemara later elaborates on this concern.

שטרי מקח וממכר
Documents of sale

חכמים
שטרי מקח וממכר כותבין חוץ מן האחריות שבו
If the buyer lost a sale document, we do write a second document, but we do not include אחריות, even if the first document included אחריות.

רבן שמעון בן גמליאל
אף שטרי מקח וממכר אין כותבין
We do not write a second sale document at all, even without אחריות.

2 The Gemara later on Amud Bais explains that this מחלוקת רשב"ג וחכמים whether we write him another שטר מכר is based on another מחלוקת רשב"ג וחכמים in the following ברייתא:

רשב"ג אומר
הנותן מתנה לחברו
והחזיר לו את השטר
חזרה מתנתו

If the recipient returns a gift or sale document, the item also returns to the original owner, because רשב"ג holds אותיות נקנות במסירה

One can acquire the deed, and thereby the property, by the transfer of the deed, which is the original gift or sale document, without writing and giving a new document of sale.

וחכמים אומרים
מתנתו קיימת

The gift remains with the recipient, because the חכמים hold אין אותיות נקנות במסירה

One cannot acquire the deed and the property by transfer of the deed, and the original owner can only re-acquire it with a new document of sale or another valid קנין.

2 *The Gemara later explains that this מחלוקת is based on another מחלוקת between רשב"ג וחכמים in the following ברייתא:*

רשב"ג אומר

הנותן מתנה לחברו
והחזיר לו את השטר
חזרה מתנתו

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One cannot acquire the deed and the property by transfer of the deed, and the original owner can only re-acquire it with a new document of sale or another valid קנין.

3

Therefore, רשב"ג holds
אף שטרי מקח וממכר
אין כותבין
We do not write the buyer a new שטר מכר, because perhaps he returned the original שטר מכר and the property no longer belongs to him.
However, the חכמים hold
שטרי מקח וממכר
כותבין
We do write the buyer a new שטר מכר, because even if he returned the original שטר מכר, the property still belongs to him.

However,
כותבין
חוץ מן האחריות שבו
The new שטר מכר cannot be written with אחריות, with a guarantee, because
אין כותבין
שתי שטרות על שדה אחת
We do not write two deeds containing אחריות for a single property, because of the following concern - according to the מסקנת הגמרא;
דלמא קאתי מכח אבהתיה
וטריף ליה להאי
Perhaps a מערער might present witnesses that he inherited this property from his father and the מוכר stole it from him and had no right to sell it.
The מערער would then seize the property from the לוקח, who would then go back to the מוכר based on his אחריות. If the מוכר currently has no properties in his possession
אזיל האי ומפיק חד וטריף לקוחות
This לוקח, let's call him לוקח א', will produce one שטר מכר and based on the אחריות would confiscate a property from a subsequent buyer - let's call him לוקח ב', who bought it from this מוכר after לוקח א'.
Up to this point, this is all legitimate;

3

רבן שמעון בן גמליאל
אף שטרי מקח וממכר אין כותבין
We do not write a second sale document
because perhaps he returned the original שטר מכר and the property no longer belongs to him.

חכמים
שטרי מקח וממכר כותבין
We do write a second document.
because even if he returned the original שטר מכר, the property still belongs to him.

כותבין
חוץ מן האחריות שבו
The new שטר מכר cannot be written with אחריות, with a guarantee, because

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Up to this point, this is all legitimate;

4

However, since לוקח א' also has a second שטר מכר, he will be tempted to scheme with the מערער as follows:
ואמר ליה
שוף לי דאיקום בה
והדר תא טירפן
He will say to the מערער, let me stay in the property a few years until the current case will be forgotten and then you will be מערער again;
And at that time
מפיק אחרינא
והדר אזיל טריף לקוחות אחריני
לוקח א' will produce his second שטר מכר and based on the אחריות would confiscate another property from a לוקח ג'.
For this reason, we do not write a second שטר מכר with אחריות.

The Gemara points out, however, that we are not concerned that
כיון דנקיט תרי שטרי
טריף והדר טריף
He will use both documents to claim two properties immediately, without waiting a few years; because
נפישי עליה בעלי דינין
If he gets involved in disputes with several parties at the same time, his scheme will be uncovered.

The Gemara also points out that this scheme of claiming it twice would only work with a מערער who claims של אבהתא היא, because there are no documents, only witnesses. Therefore, after some time, the מערער can produce other witnesses that he inherited it.
However, it would not work with a בעל חוב of the מוכר who confiscates this property from לוקח א' for a loan owed to him by the מוכר, because the בעל חוב can only confiscate the property from לוקח א' with a שטר חוב and after לוקח א' then confiscates a property from לוקח ב',
קרעניה לשטרא דמלוה
The original loan document is destroyed, since the loan is paid. Therefore,
במאי הדר טריף לה
לוקח א' cannot later confiscate another property from לוקח ג', because there is no שטר חוב.
========

4

However, since לוקח א' also has a second שטר מכר, he will be tempted to scheme with the מערער as follows:

ואמר ליה
שוף לי דאיקום בה
והדר תא טירפן

He will say to the מערער, let me stay in the property until the current case will be forgotten and then you will be מערער again;

And at that time

מפיק אחרינא
והדר אזיל טריף לקוחות אחריני

לוקח א' will produce his second שטר מכר and based on the אחריות would confiscate another property from a לוקח ג'.

For this reason, we do not write a second שטר מכר with אחריות.

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He will use both documents to claim 2 properties immediately, without waiting a few years; because

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This scheme of claiming it twice would only work with a מערער who claims של אבהתא היא, because there are no documents, only witnesses. Therefore, after some time, the מערער can produce other witnesses that he inherited it.

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במאי הדר טריף לה

לוקח א' cannot later confiscate another property from לוקח ג', because there is no שטר חוב.

5 However, the Gemara asks that there is another solution:
לכתוב להאי שטרא מעליא
ולכתוב תברא למוכר
We should write for לוקח א' a second standard שטר מכר with אחריות, and then write for the seller a receipt stating;
כל שטרי דיפקון על ארעא דא פסולין
לבר מן דיפוק בזמנא דא
Any document regarding this property is invalid, aside for the document written on this specific date. This would invalidate the first שטר מכר?

The Gemara offers two answers:
1.
אין כותבין שובר
We do not write receipts, because this unfairly burdens the recipient with the responsibility to protect it and present it when necessary.

5

?

לכתוב להאי שטרא מעליא ולכתוב תברא למוכר

We should write for לוקח א' a second standard שטר מכר with אחריות, and then write for the seller a receipt stating;

כל שטרי דיפקון על ארעא דא פסולין לבר מן דיפוק בזמנא דא

Any document regarding this property is invalid, aside for the document written on this specific date. This would invalidate the first שטר מכר?

1

אין כותבין שובר

We do not write receipts, because this unfairly burdens the recipient with the responsibility to protect it and present it when necessary.

6

2.
According to the opinion
כותבין שובר
Ordinarily, we do write receipts, such as for a borrower who partially repays a debt;
However, the Gemara makes the following distinction:
בשטרי הלואה
Where the מלוה claims
אבד שטר חובי
כותבין לו את השטר
And
וכותבין שובר ללוה
However,
בשטרי מכר
Where the לוקח claims
אבד שטרי
אין כותבין לו את השטר
Because
אין כותבין שובר למוכר
Because we are concerned
דלמא אזיל וטריף מיניה דלוקח
ואזיל איהו וטריף לקוחות
A מערער might seize the property from לוקח א', and he will confiscate land from two subsequent buyers, because
שובר גבי לקוחות ליכא
The buyers do not have the receipt in order to disprove his claim, the seller has it.
And even though
לקוחות אמרי ארעא הדרי
When the buyers go back to the seller for a refund, they will discover that he has a receipt, and reclaim his land; however,
אדהכי והכי שמיט ואכיל פירי
The לוקח א' might eat the produce in the interim, and, as the Rashbam adds;
קשה גזל הנאכל
It is difficult to get reimbursed for a stolen item that has been consumed.
Alternately,
ללוקח שלא באחריות
The subsequent two buyers might have bought their property without אחריות and are not entitled to a refund, and will therefore not consult with the seller.

6

2
According to the opinion
כותבין שובר
Ordinarily, we do write receipts,
such as for a borrower who partially repays a debt;
בשטרי הלואה
Where the מלוה claims
אבד שטר חובי
כותבין לו את השטר
And
וכותבין שובר ללוה
בשטרי מכר
Where the לוקח claims
אבד שטרי
אין כותבין לו את השטר
Because
אין כותבין שובר למוכר
Because we are concerned
דלמא אזיל וטריף מיניה דלוקח
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A מערער might seize the property from לוקח א',
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The buyers do not have the receipt to disprove his claim,
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לקוחות אמרי ארעא הדרי
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ללוקח שלא באחריות
The subsequent two buyers might have bought their
property without אחריות and are not entitled to a refund,
and will therefore not consult with the seller.

7

However,
בשטרי הלואה
כותבין שובר ללוה
We do write a receipt for the borrower, because
זוזי מסיק
אמרי פייסיה בעל חוב בזוזי
Since the מלוה is claiming money, the buyer will immediately consult with the seller whether he paid the loan, and so he will discover the fraud, and the claimant will not have a chance to eat the produce.

However,
בשטרי מקח וממכר
אין כותבין שובר למוכר
We do not write a receipt for the seller, because
ארעא מסיק
The מערער is claiming land, and so
מידע ידעי
דמאן דמסיק ארעא
בזוזי לא מפייס
People are not easily persuaded to accept payment instead. Therefore, the other buyers will not consult with the seller whether he paid him money instead, and it might take some time to discover that the seller has a receipt, during which time he will eat the produce.
=======

7

However,
בשטרי הלואה
כותבין שובר ללוה
We do write a receipt for the borrower, because
זוזי מסיק
the מלוה is claiming money,

However,
בשטרי מקח וממכר
אין כותבין שובר למוכר
We do not write a receipt for the seller, because
ארעא מסיק
The מערער is claiming land,

אמרי
פייסיה בעל חוב
בזוזי
And since the מלוה is claiming money, the buyer will immediately consult with the seller whether he paid the loan, and so he will discover the fraud, and the claimant will not have a chance to eat the produce.

מידע ידעי
דמאן דמסיק ארעא
בזוזי לא מפייס
People are not easily persuaded to accept payment instead. Therefore, the other buyers will not consult with the seller whether he paid him money instead, and it might take some time to discover that the seller has a receipt, during which time he will eat the produce.

8 The ברייתא ruled
שטרי מקח וממכר
כותבין חוץ מן האחריות שבו
תנא קמא holds we do write a second sale document, but we do not include אחריות.
The Gemara cites two opinions how to write the document:
1.
רב נחמן says that since
אחריות טעות סופר הוא
Every document implicitly includes אחריות;
They must explicitly exclude אחריות by writing in the document
שטרא דנן דלא למיגבי ביה
לא ממשעבדי ולא מבני חרי
אלא כי היכי דתיקום ארעא בידיה דלוקח
This document does not serve as a basis to claim any property, whether from free or sold property, but merely to confirm ownership.
2.
רב אשי says that since
אחריות לאו טעות סופר הוא
Every document does not implicitly include אחריות;
The must write a שטר מכר
דלא כתיב ביה אחריות
They simply omit אחריות from the שטר.

8

ברייתא

שטרי מקח וממכר
כותבין חוץ מן האחריות שבו

We do write a second sale document, but we do not include אחריות.

1

רב נחמן

Since

אחריות טעות סופר הוא

Every document implicitly includes אחריות;

They must explicitly exclude אחריות by writing in the document

שטרא דנן דלא למיגבי ביה
לא ממשעבדי ולא מבני חרי
אלא כי היכי
דתיקום ארעא בידיה דלוקח

This document does not serve as a basis to claim any property, whether from free or sold property, but merely to confirm ownership.

2

רב אשי

Since

אחריות לאו טעות סופר הוא

Every document does not implicitly include אחריות;

The must write a שטר מכר

דלא כתיב ביה אחריות

They simply omit אחריות from the שטר.