

A בס"ד

Intro

Today we will Be"H learn מ'דף מ' of בבא בתרא.
Some of the topics we will learn about include:

עדות

The Gemara discusses whether we require two or three witnesses for the following;

מחאה

Protesting an unlawful occupancy of his property;

מודעא

A notification regarding a coerced sale;

הודאה

An admission of liability;

קנין

A קנין חליפין, a transfer of ownership through a symbolic exchange; and

קיום שטרות

Affirming the authenticity of the signatures on a document;

A

עדות

מחאה

מודעא

הודאה

קנין

קיום שטרות

B

The Gemara also discusses whether, in all of these cases, צריך לומר כתובו
The witnesses may sign a document without his explicit instruction.

The Gemara discusses several Halachos of a מודעא, including:

1.

מודעא אמאן דלא ציית דינא

Whether we only write such a document if the buyer is known to ignore דינא?

2.

אנן ידעינן ביה

באונסא דפלניא

The witnesses must testify that they know the specific circumstances of duress.

3.

לא כתבינן מודעא אזביני

Under what circumstances we do not write a מודעא regarding forced sales.

The Gemara also discusses

מתנתא טמירתא

The validity of gift document that was written in secret, and

הויא מודעא לחברתה

Whether every secret gift document serves as a מודעא for a subsequent gift document, and neither one is binding.

B

צריך לומר כתובו

מודעא

אמאן דלא ציית דינא

אנן ידעינן ביה באונסא דפלניא

לא כתבינן מודעא אזביני

מתנתא טמירתא

1 So let's review...

The Gemara lists the number of witnesses necessary for various legal proceedings:

1.

מחאה בפני שנים

ואין צריך לומר כתובו

One must protest an unlawful occupancy of his property before two witnesses, and they can sign a document attesting to his protest even without his explicit instruction, because as the Rashbam explains;

זכות הוא לו

It is to his benefit; and

זכין לאדם שלא בפניו

One can perform a beneficial act on behalf of another, even without his knowledge.

2.

מודעה בפני שנים

ואין צריך לומר כתובו

If one is coerced into selling his property, he must notify two witnesses beforehand that the upcoming sale is against his will, and they can sign a document attesting to this announcement even without his explicit instruction, because ®

זכות הוא לו

It is to his benefit.

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The number of witnesses necessary for various legal proceedings

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ואין צריך לומר כתובו**

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3.

הודאה בפני שנים
וצריך לומר כתובו

An admission of liability is only binding if performed in front of two witnesses. Furthermore, they cannot write a document recording his admission without his explicit instruction, because ®

חוב הוא לו

It is to his detriment, and

אין חבין לאדם שלא בפניו

One cannot perform a detrimental act on behalf of another without his knowledge and consent.

And as the Rashbam explains;

עד השתא הוי מלוה על פה

והמלוה לחבירו בעדים

א"צ לפורעו בעדים

Until now the debt was not documented, and he would have been believed to claim it was repaid. However, now that it is documented, he would not be believed to claim it was repaid. Therefore, they cannot create a document of the debt unless he agrees.

2

3

הודאה בפני שנים וצריך לומר כתובו

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3

4.
 קנין בפני שנים
 ואינו צריך לומר כתובו
 A קנין חליפין, a transfer of ownership through a symbolic exchange, can take place even in front of only two witnesses, because
 לאו כמעשה בית דין דמי
 It does not require the presence of a בית דין. As the Rashbam explains
 אסהודי בעלמא הוא
 It merely requires the presence of witnesses.
 However,
 ואינו צריך לומר כתובו
 They can record the transaction without his explicit consent, even though
 חוב הוא לו
 It is to the seller's detriment to write the document?
 Because
 סתם קנין לכתיבה עומד
 As the Rashbam explains, since the seller agrees to a קנין סודר, which is effective immediately, and does not require the buyer to perform a קנין משיכה or קנין חזקה on the item itself,
 מתכוין הוא להקנותו בעין יפה
 He is clearly eager to complete the transaction, and we can assume that he agrees to the documentation as well.

5.
 קיום שטרות בשלשה
 A הנפק, a document affirming the authenticity of the signatures on a document, can only be written by a בית דין, a court of three judges.
 =====

3

4

קנין בפני שנים ואינו צריך לומר כתובו

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קיום שטרות בשלשה

A הנפק, a document affirming the authenticity of the signatures on a document, can only be written by a בית דין, a court of three judges.

4 The Gemara digresses to discuss the Halachos of a מודעה:
 רבה ורב יוסף דאמרי תרוייהו
 לא כתבינן מודעה
 אלא אמאן דלא ציית דינא
 We only write such a document if the buyer, who is
 coercing the seller to sell, known to ignore דין.
 Otherwise, we do not believe the seller, because ®
 אמאי לא תבעת ליה בדינא
 He could have merely brought his claim to court.
 However,
 אביי ורבה דאמרי תרוייהו
 אפילו עלי ועליך
 We write a מודעה even if the buyer is דינא, because ®
 זימנין דאין ב"ד מזומן מיד
 דין בית דינ is not always available.
 =====

Another ruling regarding a מודעה:

כל מודעה דלא כתיב בה
 און ידעינן ביה באונסא דפלניא
 לאו מודעה היא
 The witnesses must testify that they know the specific
 circumstances of the duress.
 And the Gemara elaborates:
 אי דגיטא ודמתנתא
 גלויי מילתא בעלמא היא
 A מודעה regarding a forced Gett or gift surely does not
 require this measure, and the witnesses may believe him
 that he is being coerced even if they don't know the
 circumstances,

4 **Halachos of a מודעה**

רבב ורב יוסף דאמרי תרוייהו
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 We only write such a document if the buyer,
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 Otherwise, we do not believe the seller,
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 אומאי לא תבעת ליה בדינא
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 A מודעה regarding a forced Gett or gift
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 and the witnesses may believe him that he is being coerced
 even if they don't know the circumstances,

5 because as the Rashbam explains;
 אינו מקבל ממוון במתנה או בגט
 The person claiming to be coerced does not stand to gain
 financially from the gift or the Gett. Therefore,
 אי ניחא ליה
 ליתנה מדעתו
 למה לו למסור מודעא
 If he wants to give the gift or the Gett, he can do so; why
 would he write the מודעא? And
 אי לא ניחא לו ליתן
 למה לו ליתן
 If he does not want to, he wouldn't write a מודעא, he
 simply would not give the Gett or the gift in the first
 place?
 Therefore, we can believe him and assume
 ודאי נאנס
 He is indeed being coerced. ®

Therefore, this ruling must be referring to a מודעא
 regarding
 זביני

In the case of a forced sale, ®
 איכא למימר דלא אניס
 We suspect that he is not being coerced. Rather
 השתא למעות צריך
 והיום ולמחר ליבעי למיחרט
 He only sold it now because he needed the money, and he
 is looking for a way to invalidate the sale later and recover
 his item when he procures some money. ®

Although רבא said
 לא כתבינן מודעא אזביני
 We do not write a מודעא regarding sales at all, because as
 the Rashbam explains, it either does not help, or is not
 necessary, as follows:

בשדה זו
 תלוהו וזבין
 לא הויא זביניה זביני
 If he was coerced to sell a particular field, he can simply
 bring witnesses that he was coerced and invalidate the
 sale, even without a מודעא. And
 בשדה סתם
 תלוהו וזבין
 זביניה זביני
 If he was coerced to sell any field and he chose to sell a
 particular field, the sale is binding, even with a מודעא.

5
As the Rashbam explains;
 אינו מקבל ממוון במתנה או בגט
*The person claiming to be coerced does not stand to gain
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 אי ניחא ליה ליתנה מדעתו
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*If he wants to give the gift or the Gett, he can do so;
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*If he does not want to, he wouldn't write a מודעא,
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6 Nevertheless, the Gemara explains

מודה רבא היכא דאניס

We do write a מודעא when there is a suspicion of coercion, and he has no other way of proving the coercion; and the Gemara cites an example:

ההוא גברא

דמשכין פרדיסא לחבריה לתלת שנין

Someone gave a field to his debtor as collateral for three years, during which the debtor would keep the produce as payment of the loan. At the end of the three years the debtor said;

אי מזבנת לי מוטב

ואי לא

כבישנא לשטר משכנתא

ואמינא לקוחה היא בידי

You either sell me the land, or I will hide the document of the collateral and say that I bought the land, and the חזקה of three years of usage will support my claim.

כה"ג כתבין מודעא

In this case, we write a מודעא, because as the Rashbam explains

אונס גמור הוא

He was truly coerced and had no other option, because he had no proof of the coercion; as the רשב"ם explains at length in the name of חננאל

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6



The Gemara explains

מודה רבא היכא דאניס

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7 The Gemara discusses a related matter:

האי מתנתא טמירתא
לא מגבינן בה
A gift document that was written in secret is not valid,
because we suspect
שמא נתנה לאחר כבר
או לעשותה מודעא לחברתה נתכוין
The owner wants it written in secret because, either, he
already gave it to someone else earlier, or he wants this
document to void a later gift.

The Gemara cites two definitions of מתנתא טמירתא, a
'secret document':

1.
דאמר להו לסהדי
זילו אטמורו וכתבו ליה
He told the witnesses to hide when they write the
document. However,
סתמא כשר
If he did not give them any specific instructions, the
document is valid.
2.
דלא אמר להו
תיתבו בשוקא ובבריתא ותכתבו ליה
He did not tell them to write it in public. Therefore,
סתמא פסול
If he did not give them any specific instructions, the
document is also not valid. He must tell them explicitly to
write it in public.

The Gemara rules
הלכתא חיישינן
Even if he does not give any specific instructions, we
suspect he may intend to keep it hidden. Therefore, the
Rashbam explains,
ספק הוא
והיכא דקיימא ארעא תיקום
The Halachah is unclear, and so the property remains with
its current owner:
לא מגבינן בה
ואי מגבינן לא מהדרינן
We do not collect the land with this document, but if he
took it, we do not compel him to return it.

7

האי מתנתא טמירתא לא מגבינן בה

A gift document that was written in secret is not valid,
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The owner wants it written in secret because,
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“מתנתא טמירתא”

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