



בס"ד Intro

Today we will מסכת כתובות דף כ וearn מסכת כתובות of מסכת כתובות Some of the topics and concepts we will learn about include.

שטרות שטרות, validation of a שטר by

עדים שאמרו כתב ידם הוא זה

Two עדים who testify that they recognize the אחתימה, the signature of the signed עדים;

OR

כתב ידם יוצא ממקום אחר

The signatures of these עדים are compared to their signatures found on other authenticated documents ====

The Halachah of תרי ותרי

A situation in which the קיום תרים, עדים המקיימים, performing קיום, are שטרות, contradict the עדים החתומים, the signed witnesses, as to the authenticity of the שטר Therefore, אוקי ממונא בחזקת מריה אוקי ממונא בחזקת מריה

The money or item remains with the one in possession. In the case of a הלואה, a loan, the הלו, the borrower, is the מוחזק, the possessor; and in the case of a מחקה, a sale, the מוכר, the seller is the מוחזק. The טוען, the claimant, cannot collect with this שטר .

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The Gemara will discuss whether

כותב אדם עדותו על השטר

ומעיד עליה אפילו לאחר כמה שנים

Whether a witness may record his testimony in writing and use it to testify in the future. There is a Machlokes as to how much he must remember from memory.

Otherwise, there might be an issue of

מפיהם ולא מפי כתבם

We only accept oral testimony, but NOT written testimony.

Since one relies completely on a שטר, it may be considered מפי כתבם

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The Gemara will also discuss whether there is a limit to the length of time that a person can remember events.











So let's review ...

The Gemara continues with a Braisa

ת"ר

שנים חתומין על השטר ומתו

In a case in which the עדים החתומים, the signed witnesses, died:

ובאו שנים מן השוק ואמרו

ידענו שכתב ידם הוא

אבל אנוסים היו

קטנים היו

פסולי עדות היו

And two other עדים who recognized the חתימות performed קיום שטרות, but added that the שטר is invalid, because the signed עדים were either coerced to sign, or were minors or disqualified for עדות at the time of חתימה.

הרי אלו נאמנים

Their testimony to disqualify the שטר is accepted, because of

הפה שאסר הוא הפה שהתיר

אסר, the עדים who authenticated the שטר by stating מחב ידם הוא

שטר שהתיר, they can disqualify the שטר, by stating אנוסים היו

However, the Braisa continues;

ואם יש עדים שכתב ידם הוא זה

When קיום שטרות was performed through other עדים who recognize these signatures;

OR

או שהיה כתב ידם יוצא ממקום אחר

משטר שקרא עליו ערער והוחזק בב"ד

Through another שטר bearing these signatures, which was challenged, and validated, in Bais Din; אין אלו נאמנין

Their testimony to disqualify the שטר is NOT accepted, because there is no

הפה שאסר הוא הפה שהתיר

Since, these עדים did NOT authenticate the שטר, they CANNOT disqualify the שטר

The Gemara explains that although

אין אלו נאמנין, that they cannot disqualify the שטר,, the שטר אלו, the שטר is also not valid to collect the loan with it; because,

תרי ותרי נינהו

This is a situation of Two vs. Two - in which the עדים עדים are עדים החתומים - they contradict the מכחיש as to the authenticity of the שטר - which is enough to create a - שטר - doubt as to the validity of the שטר. Therefore, ואוקי ממונא בחזקת מריה

The money or item remains with the one in possession. In the case of a הלואה, a loan, the לוה , the borrower, is the מוחזק, the possessor; and in the case of a מקה, a sale, the מוכר, the seller is the מורט. The טוען, the claimant, cannot collect with this שטר .

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The Gemara discusses the above-mentioned קיום through כתב ידם יוצא מומקום אחר

Comparing their signatures to another document - In which there are several conditions;

1.

משטר שקרא עליהם ערער

והוחזקו בב"ד

It must be compared to a שטר whose authenticity was challenged, and validated in Bais Din.

OR

2.

משתי כתובות או משתי שדות

והוא שאכלום בעליהן ג' שנים ובשופי

Two Kesubos of two married women, or two שטר מכירות, sale contracts, where the buyers used the field at least three years without challenge - The marriage or the usage verifies the authenticity of the documents.

3.

וביוצא מתחת יד אחר

The comparison is valid only if these שטרות were furnished by others.

אבל מיד עצמו לא

The comparison is NOT valid if the other שטרות were furnished by the current בעל השטר, because, he could have used those שטרות.

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3 The Gemara continues with a Braisa:

כותב אדם עדותו על השטר

ומעיד עליה אפילו לאחר כמה שנים

A witness may record his testimony in writing and use it to testify in the future. His testimony will be valid.

However, רב הונא says

והוא שזוכרה מעצמו

His testimony based on the writing is valid only if he remembers the basic story from memory, and uses the writing to remind him of the details. However,

אינו זוכרה מעצמו

His testimony based on the writing is NOT valid if he does NOT remember the basic story from memory, and needs the writing to remind him of the basic story.

Because the Pasuk states

על פי שנים עדים

By the mouths of the two witnesses; from which Chazal derive

מפיהם ולא מפי כתבם

We only accept oral testimony, but NOT written testimony.

Since he is relying completely on the שטר, it is considered מפי כתבם, are one of the מפי כתבם









רבי יוחנן disagrees and says; אע"פ שאין זוכרה מעצמו

His testimony based on the writing is valid EVEN if he does NOT remember the basic story from memory, and needs the writing to remind him of the basic story. In other words, he remembers the story from memory after reading it. Rebbe Yochanan holds that since after reading it he recalls the יכתבת it is NOT considered מפני כתבם. However, as Rashi adds;

אבל אינו נזכר לגמרי לא

If even after reading it he still CANNOT recall the עדות, this IS considered מפי כתבם, because his testimony is based on the written record.

The Gemara adds that according to רבי יוחנן מדכר חד לחבריה

One עד may remind the other עד. However,

וצמו

Regarding the עד himself reminding the עד himself reminding the עד, there is a Machlokes;

רב חביבא אמר

אפילו עצמו

Even this is permitted, because he won't testify unless he recalls the עדות.

מר בריה דרב אשי אמר

עצמו לא

This is prohibited, because he might testify without recalling the עדות. However,

ואי צורבא מרבנן הוא

אפילו עצמו

If the ע is a Talmid Chacham even מותר, because he certainly won't testify unless he recalls the עדות.

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The Gemara continues with a Machlokes which discusses the length of time of which a person can recall:

The Mishnah in מסכת states;

התלוליות הקרובות

בין לעיר הסמוכה לבית הקברות

ובין לדרך בית הקברות

A mound of earth which is in the vicinity of a city that's near a cemetery or on a road that leads to a cemetery; אחד חדשות ואחד ישנות

טמאות

Whether it is a recent or old א, it is considered אטמא, because there is a possibility that a מת was buried in the π .

However,

הרחוקות

If the היה is distant from the דרך, there is less probability of a מת, therefore,

חדשות טהורות

A recent אח is considered טהור, because people would remember if a מת was buried there.

ישנות טמאות

An old אות is considered טמא, because people may have forgotten if a מת was buried there.



איזוהי קרובה חמשים אמה ואיזו היא ישנה ששים שנה דברי ר"מ

רבי מאיר says that קרובה, means within a distance of fifty אמות, and ישנה means from more than sixty years ago.

רבי יהודה אומר

קרובה שאין קרובה הימנה

ישנה שאין אדם זוכרה

רבי יהודה says that קרובה means the closest תיל to the עיר סי α and ישנה means that no one can recall when the α was yet non-existent.

The Gemara explains that which רבי מאיר said that a person generally recalls only up to sixty years applies only to matters

דלא רמיא עליה

That are not incumbent upon him to remember - However, regarding עדות,

כיון דרמי עליה

אפילו טובא נמי

Dedicated By: _

Since it is incumbent upon him to remember so that he will be able to testify, he can recall for many more years.

The Sugya of קיום שטרות continues in the next Daf.





