

And by three there is publicity

ובי תלתא אית להו קלא -

OVERVIEW

A lender may collect his debt from the borrowers 'real' property, even if the borrower sold them. The lender may collect from the buyers, provided there is a written note signed by witnesses testifying to the loan. If there is no note, however, then he cannot collect his debt from the buyers, only from the borrower himself. The difference is that when there is a note with witnesses, then presumably people know about the loan and the lien on the properties, and they can take the proper precautions before buying from the borrower. If however there is no note then the consumers do not know that there is a lien on the properties. The חכמים chose to protect the consumers from being unwittingly deprived of their purchases. This law applies even if there were witnesses to this oral loan. In our גמרא we are taught that if the husband is גט in the presence of three people there is sufficient publicity. These two laws seem to contradict each other. תוספות will resolve this apparent contradiction.

anticipates a difficulty:

ואף על גב דמלוה על פה לא גבי ממשעבדי אפילו הלוהו בפני כמה עדים -

And even though that an unwritten loan cannot be collected from encumbered¹ properties even if he lent him the money in the presence of many witnesses. We do not say that since there were three or more witnesses then there is sufficient publicity that the buyers of the borrower's properties are aware of the lien. This seems to contradict what the גמרא states here that if three people witness the ביטול then there is sufficient publicity to alert the woman.

responds that there is a difference between הגט ביטול and a loan –

דמאן דיזיף בצנעא יזיף – כדאמרינן בחזקת הבתים (בבא בתרא מב,א) -

For he who borrows, borrows stealthily, as the גמרא says in פרק חזקת הבתים אין רגילות להודות לבני אדם אלא כופר לכל השואלים ממנו -
And it is not usual that the ליה should admit to people that he owes money, rather he denies everything to all that ask him if he borrowed money. The ליה does not want anyone knowing that he is in debt. Therefore even if many witnesses saw the

¹ Real properties that the borrower sold after the loan are indentured to the lender, if the loan was secured by a note. An oral loan can be collected only from unencumbered properties.

loan he will continually deny it and discredit them. However, by הגט no one, neither the husband not others, have any cause to deny that the husband was מבטל the גט. Therefore three people produce a קול.

תוספות poses another question:

והא דאמר הכא דבי תרי לית להו קלא -

And concerning that which the גמרא says here that by two there is no publicity –

וגבי מוכר שדהו בעדים אמרינן בחזקת הבית (שם דף מא,ב) דגובה מנכסים משועבדים -
However, concerning one who sells his field² with witnesses, but without a note, the גמרא says in פרק חזקת הבתים that if the field was taken away from the buyer (on account of the seller), the buyer **can collect** his due even **from נכסים משועבדים** of the seller. This is true even if there were only two witnesses testifying that he purchased the field, nevertheless there is a sufficient קול notifying all later purchasers that this seller's properties have a lien on them. Why by הגט is there no קול if there were only two עדים?³

תוספות answers:

הכא בעינן גילוי מילתא טפי:

Here by הגט ביטול we require that there be a greater notification of the incident. By הגט ביטול there is a serious concern of ממזרות, therefore the usual publicity is not sufficient for us to allow the ביטול to continue. By monetary issues a usual and customary amount of publicity is sufficient⁴.

SUMMARY

By מלוה ע"פ three witnesses do not provide a sufficient קול because the לזה attempts to deny the loan. By הגט however no one is trying to deny the ביטול.

By המוכר שדה two witnesses are sufficient to create a קול. However by ביטול we want to be certain that there is an abundance of publicity.

² The seller of the field (generally) has the responsibility of standing behind his sale. The buyer has recourse to collect from the seller and his (other/later) sold properties for any damage he incurred by this purchase.

³ See 'Thinking it over' # 2.

⁴ In addition, by monetary issues, the customer that is buying usually makes an intensive inquiry (title search) to assure himself that there are no liens on the property (for it is very common that people have liens on their properties). When a woman receives a גט, however, there is no reason for her to suspect that the husband will be מבטל the גט. Therefore she makes no inquiries and a greater גילוי מילתא is required. See however, 'Thinking it over' # 3.

THINKING IT OVER

1. Why by a written loan can the מלוה collect ממשעבדי? The לווה will deny this loan just as he denies the unwritten loan?
2. Why did not תוספות ask the contradiction between מוכר שדהו and בי תרי לית בי תרי לית in the previous תרי ובי תרי where it seemingly belongs?⁵
3. Explain why תוספות perhaps demurs from offering the distinction mentioned in footnote # 4.

⁵ See footnote # 3. See מהר"ם שי"ף.