Does telling the truth put you at a disadvantage? The case of מודה בשטר שכתבו

Bava Batra 154a discusses the following case: Where a signed shtar (contract) has not been verified as genuine by witnesses, does admitting being party to it give you an advantage (i.e., we accept your version of events), or does it put you at a disadvantage (i.e., we now take the shtar seriously on its own, independent of your events). This is called מודה בשטר שכתבו, and in this shiur we will consider what this case tells us about the relative power of admission, possession and signed contracts.

Questions? Comments? Email dinanddaf@gmail.com

How strongly do we consider their admission? **vs**.
How strongly do we consider the power of a signed contract? **Vs.**
How strongly do we consider the fact that the creditor is still in possession of the contract?

1. בבא בתרא קנג.

מַתְנִי׳ לֹא כָּתַב בָּהּ שֶׁכִּיב מְרַע, הוּא אוֹמֵר ״שֶׁכִּיב מְרַע הָיִיתִי״, וְהֵן אוֹמְרִים ״בָּרִיא הָיִיתָ״ – צָרִיךְ לְהָבִיא רְאָיָה שֶׁשֶּׁכִּיב מְרַע הָיָה, דִּבְרֵי רַבִּי מֵאִיר. וַחֲכָמִים אוֹמְרִים: הַמּוֹצִיא מֵחֲבֵרוֹ – עָלָיו הָרְאָיָה.

MISHNA: If one did not write in the deed that one was on one's deathbed, and one then recovered and wished to retract the gift, and says: I was on my deathbed, and since I recovered, I can retract the gift, but the recipients say: You were healthy, and the gift cannot be retracted, the giver must bring proof of being on their deathbed in order to retract the gift. This is the statement of Rabbi Meir. While the Rabbis say: The burden of proof rests upon the claimant.

2. בבא בתרא קנד.

רְאָיָה – בְּמַאי? רַב הוּנָא אָמַר: רְאָיָה בְּעֵדִים. רַב חִסְדָּא וְרַבָּה בַּר רַב הוּנָא אָמְרִי: רְאָיָה בְּקִיּוּם הַשְּׁטָר…

The Gemara asks: With regard to the proof that the recipients must bring, in what manner is it brought? Rav Huna says: The proof is presented by bringing witnesses who testify that the giver was healthy. Rav Ḥisda and Rabba bar Rav Huna say: The proof is presented by the ratification of the deed, i.e., the recipients are required only to ascertain that the signatures of the witnesses on the deed are authentic in order to prove that it is not forged…

רַב חִסְדָּא וְרַבָּה בַּר רַב הוּנָא אָמְרִי רְאָיָה בְּקִיּוּם הַשְּׁטָר – קָא מִיפַּלְגִי בְּמוֹדֶה בִּשְׁטָר שֶׁכָּתְבוֹ צָרִיךְ לְקַיְּימוֹ; דְּרַבִּי מֵאִיר סָבַר: מוֹדֶה בִּשְׁטָר שֶׁכָּתְבוֹ – אֵינוֹ צָרִיךְ לְקַיְּימוֹ. וְרַבָּנַן סָבְרִי: מוֹדֶה בִּשְׁטָר שֶׁכָּתְבוֹ – צָרִיךְ לְקַיְּימוֹ.

Rav Ḥisda and Rabba bar Rav Huna say that the proof is presented by the ratification of the deed. The Gemara explains: Rav Ḥisda and Rabba bar Rav Huna maintain that Rabbi Meir and the Rabbis disagree with regard to whether when there is a debtor who admits that he wrote a promissory note, the creditor must ratify it in court in order to collect payment. The same ruling would apply to a case where the person on his deathbed admits that he wrote the deed granting the gift. They explain that Rabbi Meir holds that when there is a debtor who admits that he wrote a promissory note, the creditor need not ratify it in court in order to collect payment, and in this case the giver cannot invalidate the deed by claiming that he was on his deathbed. But the

Rabbis hold that even when there is a debtor who admits that he wrote a promissory note, the creditor must ratify it in court in order to collect payment.

3. בבא מציעא ז.

תָּנוּ רַבָּנַן: שְׁנַיִם אֲדוּקִין בִּשְׁטָר, מַלְוֶה אוֹמֵר: שֶׁלִּי הוּא, וְנָפַל מִמֶּנִּי וּמְצָאתִיו, וְלוֶה אָמַר: שֶׁלְּךָ הוּא, וּפְרַעְתִּיו לָךְ – יִתְקַיֵּים הַשְּׁטָר בְּחוֹתְמָיו, דִּבְרֵי רַבִּי.

The Sages taught in a *baraita* (*Tosefta* 1:8): In a case where two people, a creditor and a debtor, are grasping a promissory note, and the creditor says: The promissory note is mine, as the debt has not yet been repaid, and I merely dropped it and I subsequently found it, and the debtor says: The promissory note was once yours, i.e., you lent me the money, but I already repaid you, and you therefore gave me the note, in that case the promissory note must be ratified through its signatories for the creditor to collect the debt. In other words, the court must first ascertain the validity of the promissory note by verifying that the signatures of the witnesses are authentic. This is the statement of Rabbi Yehuda HaNasi.

רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר: יַחְלוֹקוּ.

Rabban Shimon ben Gamliel says: The creditor and the debtor divide the debt attested to in the promissory note, i.e., the debtor is liable to pay half the amount, due to uncertainty as to who is telling the truth.

נָפַל לְיַד דַּיָּין – לֹא יוֹצִיאוֹ עוֹלָמִית. רַבִּי יוֹסֵי אוֹמֵר: הֲרֵי הוּא בְּחֶזְקָתוֹ.

If a promissory note fell into the possession of a judge and the two parties do not agree as to which of them it belongs, either to the creditor, and the debt has yet to have been repaid, or to the debtor, and the debt was repaid, it may never be removed from the judge's possession to collect the debt until proof is provided. Rabbi Yosei says: The promissory note retains its presumptive status of validity and the litigants proceed in accordance with its contents.

…

אָמַר רָבָא אָמַר רַב נַחְמָן: בִּמְקוּיָּם – דִּבְרֵי הַכֹּל יַחְלוֹקוּ, כִּי פְּלִיגִי בְּשֶׁאֵינוֹ מְקוּיָּם.

Rava says that Rav Naḥman says: In a case where the promissory note was ratified by the court, everyone agrees that the litigants divide it, and the debtor repays only half of the debt. They disagree with regard to a case where it was not ratified.

רַבִּי טָבַר: מוֹדֶה בִּשְׁטָר שֶׁכְּתָבוֹ – צָרִיךְ לְקַיְּימוֹ. וְאִי מְקַיֵּים לֵיהּ פָּלֵיג, וְאִי לָא מְקַיֵּים לֵיהּ לָא פָּלֵיג.

Rabbi Yehuda HaNasi holds that even when a debtor admits that he wrote a promissory note, the creditor must ratify it in court in order for the creditor to collect the debt. And therefore, if he ratifies the promissory note in court he divides it with the debtor, and if he does not ratify it he does not divide it with the debtor. If he is unable to ratify the signatures of the witnesses, he receives nothing even if the debtor admits that he borrowed the money.

מַאי טַעְמָא? חַסְפָּא בְּעָלְמָא הוּא, מַאן קָא מְשַׁוֵּי לֵיהּ לְהַאי שְׁטָרָא – לְוֶה, הָא קָאָמַר דִּפְרִיעַ.

What is the reason for Rabbi Yehuda HaNasi's opinion? He holds that an unratified promissory note is merely a shard. Who renders this document a valid promissory note? The debtor does.

The validity of the note is solely dependent on the corroboration of the debtor, and doesn't the debtor say that the debt mentioned in the promissory note was repaid? Therefore, the note is worthless unless it is ratified by the witnesses in court.

וְרַבִּי שִׁמְעוֹן בֶּן גַּמְלִיאֵל סָבַר: מוֹדֶה בִּשְׁטָר שֶׁכְּתָבוֹ אֵין צָרִיךְ לְקַיְּימוֹ, וְאַף עַל גַּב דְּלָא מְקַיֵּים לֵיהּ – יַחְלוֹקוּ.
And Rabbi Shimon ben Gamliel holds that if a debtor admits that he wrote a promissory note, the creditor is not required to ratify it in court in order for the creditor to collect the debt. And therefore, even if the creditor does not ratify it, the promissory note is valid, and they divide it.

<u>אין צריך לקיימו:</u>

4. תוספות כתובות יט. ד"ה מודה

וא"ת ומ"ט לא מהימן במגו דאי בעי אמר מזויף?
And if you ask: why don't we believe the borrower because of *migo* - i.e., they could have said the document was a fake (but chose to make a less advantageous claim)?

וי"ל דשמא ירא לוה לומר מזויף פן יכחישוהו וליכא מגו
One could answer that perhaps the borrower would be too afraid to claim that the contract is a fake in case witnesses might counter, and therefore there is no *migo*.

ופירש הקונט' במקום אחר דטעמא משום דדבר תורה א"צ קיום דעדים החתומים על השטר נעשה כמי שנחקרה עדותן בב"ד ורבנן הוא דאצרכוהו קיום כי טעין מזויף הוא אבל בשאר טענות כגון פרוע הוא לא הצריכוהו קיום וכן נראה לר"י
And Rashi explained elsewhere that the reason is because Biblically, there is no need to verify the document, as witnesses signed on a document it is as though their testimony has been investigated in court, and it is only the rabbis who required verification when the other party claims it is a fake document. But if the other party makes different claims - e.g., I already paid it - the rabbis did not require document verification. And this seems to Rabbeinu Yitzchak to be the answer.

אבל אין לפרש דלא מהימן במגו לומר פרוע הוא משום דאי פרעיה שטרא בידיה מאי בעי דהא כי טעין נמי אמנה הוא מסקינן בסמוך אמילתיה דרב דלא מהימן והתם לא שייך האי טעמא:
But we should not explain that the reason the borrower isn't believed via *migo* to say "It is already paid" is because if the debtor paid, why does the creditor still have the document in their possession - because this logic would not apply to the next case where the borrower argued that the contract was just for credibility purposes, and yet the borrower is still not believed.

<u>צריך לקיימו:</u>

5. רמב"ם הלכות מלוה ולוה יד:ה The borrower could have made a better claim, but didn't

הוֹצִיא עָלָיו שְׁטַר חוֹב שֶׁאֵינוֹ יָכוֹל לְקַיְּימוֹ וְאָמַר הַלְוֶה אֱמֶת שֶׁאֲנִי כָּתַבְתִּי שְׁטָר זֶה אֲבָל פְּרַעְתִּיו אוֹ אֲמָנָה הוּא אוֹ כָּתַבְתִּי לִלְווֹת וַעֲדַיִן לֹא לָוִיתִי וְכָל כַּיּוֹצֵא בָּזֶה הוֹאִיל וְאִם רָצָה אָמַר לֹא הָיוּ דְּבָרִים מֵעוֹלָם וַהֲרֵי מִפִּיו נִתְקַיֵּם הָרֵי זֶה נֶאֱמָן וְיִשָּׁבַע הֶסֵּת וְיִפָּטֵר. וְאִם קִיְּמוֹ הַמַּלְוֶה אַחַר כָּךְ בְּבֵית דִּין הֲרֵי הוּא כִּשְׁאָר הַשְּׁטָרוֹת:
The following rules apply when a lender produces a promissory note whose authenticity he is not able to verify, and the borrower says: "It is true that I wrote this promissory note, but I repaid

it," "It was given on faith," "I wrote it with the intention of borrowing, but I never took the loan," or another claim of this nature. Since the borrower could have claimed, "This never happened," and our acceptance of the promissory note is dependent on his statements, his word is accepted. He may take a *sh'vuat hesset* and be freed of responsibility.
If the lender is able to verify the authenticity of the promissory note afterwards in court, it is considered as any other promissory note.

6. רשב"א בבא בתרא ע. ד"ה ולימא ליה

Because the shtar is not mekuyam, it is considered worthless until the borrower admitted to writing it**.**

…דמאן קא משוי ליה שטרא האי, הא קאמר דפריעא הוא…

…Because who is making this a contract? The person who said that it's already been paid!

7. תוספות בבא בתרא ע. ד"ה או

The fact that the shtar is in the hands of the lender is not so damning

…משום דזימנין אפשיטי דספרא זייר ליה דעל הלוה ליתן שכר כתיבת השטר ופעמים כשאין לו ללוה נותן המלוה בשבילו…

…Because sometimes might be given to whoever paid for it: the creditor should pay for the writing of the contact, but sometimes if the creditor doesn't have the money, the creditor might pay on their behalf…

https://etzion.org.il/he/talmud/seder-nashim/massekhet-ketubot/borrower-who-admits-he-wrote-note

הרב שמואל שמעוני, מודה בשטר שכתבו

אם כן ישנו בסיס רב לומר שהמחלוקת האם מודה בשטר שכתבו צריך לקיימו אינה נעוצה בגדרי טענת פרעתי בשטר ולא בשאלת מיגו מול "שטרך בידי מאי בעי" אלא היא משקפת באופן קיצוני את האפשרויות השונות לראיית מעמדו של שטר שאינו מקוים לאחר התקנה שהצריכה קיום: מ"ד שצריך לקיימו סובר ששטר זה הוא נטול כל מעמד משפטי ואף אם אין חולק על כך שהוא כשר, הרי הלווה שמכשיר אותו טוען שהוא פורע (ע"פ הספר הרשב"א) וניתן אף להוסיף ש'קיום' שכזה על ידי הלווה כלל לא נקרא קיום שלו (רש"י). לעומתו מ"ד שאין צריך לקיימו סובר שהשטר הוא שטר כשר ואיננו מאמינים ללווה הטוען שהוא מזויף, אלא שכאשר טענה זו מועלית, אנו מקפיאים בפועל את ההלכים ואיננו עושים שימוש מעשי בשטר (ע"פ הסבר הרשב"ם והתוספות אצלנו בשפ הקונטרס).