

שמע¹ מינה דלית דינא דגוד או אגוד –

It can be derived from here that there is no rule of גוד או אגוד

OVERVIEW

The גמרא attempted to derive from the ruling regarding a חצי עבד וכו' that there is no rule of גוד או אגוד. The only way the עבד can be פו"ר is by coercing the master (because of תיקון העולם) to free the slave. However the slave cannot force the master (by גא"א) to allow the slave to buy himself out; proving that דלית דינא דגא"א. Our תוספות first challenges and then explains the proof.

תוספות asks:

ואם תאמר שאני הכא שאין העבד נותן לו דמים מיד² אלא כותב לו שטר על דמיו³ –

And if you will say; perhaps generally there is דלית דינא דגא"א, however, here by חצי עבד it is different, because the עבד does not (cannot) give to the master the money for his half immediately, but rather he (merely) writes a note that he owes the master the money. However where the money is given immediately there may be דלית דינא דגא"א.

תוספות answers:

ויש לומר דמשמע משום דלא יבטל הוא דכופין –

And one can say; that it seems from the גמרא that we force the master to free the slave only because we do not want the slave to nullify the מצוה of פו"ר –

הא לאו הכי אין כופין בכל ענין⁴ אפילו יתן⁵ דמים:

But otherwise if it were not for פו"ר ביטול we would not coerce the master to relinquish his ownership of the חצי עבד in any manner at all even if the עבד would give money immediately; this proves that דלית דינא דגא"א.

SUMMARY

¹ This Tosפות references the גמרא on the previous עמוד regarding the חורי בן חורי (where 'תוס' seemingly had the [see טעמא מפני תיקון העולם הא לא מפני תיקון העולם לא ש"מ דלית דינא דגוד או אגוד] [וחזרו ב"ה להורות כדברי ב"ש] גירסא [after "ש"ג]).

² An עבד does not own any money, for whatever he has belongs to his master. See 'Thinking it over # 2.

³ We can understand that when the money is offered immediately, it is possible to force the other partner to release his ownership for he is receiving full compensation (and he also has the option to buy out his partner); however here the master is only receiving a note that he is owed the money and he is losing his asset (the חצי עבד), in such a case it is understood that we cannot implement גא"א forcibly.

⁴ Since the כופין מפני תקון העולם או אם יש לו דמים and it did not say כופין מפני תקון העולם כופין לשון.

⁵ Someone would give money on his behalf to free him, for instance.

The implication of the גמרא is that even if the עבד would offer money presently to the master, he could not buy himself out through גא"א.

THINKING IT OVER

1. It is evident from תוספות (question) that if the money was available now and we would maintain גא"א, then the חצי עבד would be able to free himself by גא"א. Seemingly we can answer תוספות question that if there is דגא"א then (why should we force the אדון to free the slave and merely receive a דמיו) the community who is charged with providing the needs of the poor should pay the master and free the slave through גא"א (in order for the עבד to meet his need of קיום). The fact that the community does not do so indicates that there is no דגא"א.⁶

2. Why does תוספות (and the גמרא) assume that the חצי עבד וחצי בן חורין has no money to offer the master;⁷ since he is 'עובד עצמו יום א', he may have money for גא"א?!

⁶ See סוכ"ד אות עז and חת"ס.

⁷ See footnote # 2.