

It will belong to you as of now

קנויה¹ לך מעכשיו –

OVERVIEW

ר' ruled that if ר'אובן said to שמעון (and wrote in the מכירה) when I will buy the field (from לוי) it will be belong to you as of now, it will belong to שמעון when ר'אובן buys it from לוי. This ruling is valid only if we maintain אדם מקנה דשלב"ל. Our תוספות explains why the מעכשיו is necessary to effectuate the trade.

תוספות asks:

תימה מה צריך מעכשיו כיון דאדם מקנה דבר שלא בא לעולם² –

It is astounding! Why is it necessary to mention מעכשיו?! Since ר' maintains **that אדם מקנה דשלב"ל** then even without saying מעכשיו, the sale will be become effective when the current seller will purchase the field from the current owner.

תוספות anticipates a possible solution, but rejects it:

דאי לעניין חזרה³ הא כל זמן שלא בא לעולם יכול לחזור אף על גב דאמר מעכשיו⁴ –

For if the difference whether one says מעכשיו or not, is **regarding retracting** the deal, this is not true since there is no difference **for as long as** the item is **לא בא לעולם** either party **can retract even if he said מעכשיו** (and once the item is **בא לעולם** neither can retract [since we maintain **ל' דשלב"ל**]). The question remains; what does מעכשיו accomplish.

תוספות answers:

ויש לומר דנפקא מינה אם נקרע השטר או שאבד קודם שלקחה זה –

And one can say that the difference (whether he said מעכשיו or not) will be in a case **where the שטר was torn or lost before this** current seller **bought** the field; so when he said מעכשיו the ruling will be -

דקני כיון דאמר מעכשיו:

That the current buyer **will acquire** the field **since** the seller **said** the sale is

¹ This תוספות references the גמרא on the following עמוד ב'.

² If we would maintain that א"א מקנה דשלב"ל, then even if he said מעכשיו, the sale would not be effective.

³ One might have argued that (even if we maintain אדם מקנה דשלב"ל) if מעכשיו was said, then as soon as the קנין was made, even though it is a דשלב"ל neither party can retract as of now (מעכשיו accomplishes that the קנין is completed); while if מעכשיו was not said, then the קנין will become effective later as long as neither party retracts, however they have the right to retract as long as it is not **בא לעולם**. תוספות rejects this assumption.

⁴ תוספות does not cite a source for this ruling. Others say that this is indicated in the words of ר' הונא later on (דף סו, ב) that המוכר פירות דקל עד שלא בא לעולם יכול לחזור בו (דף סו, ב) indicating that you can retract before it is **בא לעולם**, however it is possible that ר' הונא is discussing where he did not say מעכשיו.

effective **as of now**, and now there is a שטר which will effectuate the sale retroactively; however if he did not say מעכשיו and the sale is to become effective later when he buys the field from the current owner, the sale will not be effective since at this later date there is no שטר to effectuate the sale.⁵

SUMMARY

If we maintain לא בא אדם מקנה דשלב"ל, either party can retract when it is still לא בא (regardless if מעכשיו was said or not). If the קנין of a דשלב"ל was made with a שטר and the שטר does not exist when the item is בא לעולם, there will be no effective קנין, unless מעכשיו was mentioned originally.

THINKING IT OVER

What would be the ruling if the קנין was with money (באתרא דקני בכספא) and the money was lost before the field was בא לעולם; is there a difference whether or not מעכשיו was said (assuming that אדם מקנה דשלב"ל)?

⁵ See סוכ"ד אות מא and בל"י אות תקנ-נא.