

והא אידי ואידי דייתיאות קתני –

But this one and this ones mention *Daytikoh'oy*s

Overview

רב זביד did not accept the resolution which רב אבא בר ממל offered (that the משנה [which indicates] is discussing a מרע, and the ברייתא [which states] is discussing a בריא), since both in the משנה and it the ברייתא it clearly states (which refers to a שכ"מ). Therefore רב זביד maintains that both the משנה and the ברייתא are discussing a שכ"מ. Our תוספות addresses the obvious question; how can we say that they are both discussing a שכ"מ, when in both the משנה and the ברייתא it states explicitly מתנות (which means a בריא).

תוספות asks:

ואם תאמר ולפרוך נמי והא מתנות קתני¹ -

And if you will say; but let the גמרא ask on ר"ז as well; but it mentions מתנות, both in the משנה and the ברייתא –

תוספות answers:

ואומר רבינו תם דמיירי מתניתין שפירש שנותן לו גוף ופירי מהיום -

And the ר"ת says that the משנה (when it states מתנות) is discussing a case where the grantor stated explicitly (in the שטר) that he is giving the recipient the ‘body’ (the land) and its produce as of today, with the stipulation that it will belong to the recipient - **אם לא יחזור עד לאחר מיתה² דמצי הדר ביה³ -**

If the grantor will not retract this gift until after he dies; in this case the grantor may retract (this gift), therefore תנו נותנין; אם אמר תנו נותנין however the ברייתא is discussing a ‘regular’

¹ We infer from the משנה that by מתנה the rule is אמר תנו נותנין, however the ברייתא clearly states that by מתנות the rule is לא יחזור. The contradiction still remains. We cannot give the answer of בריה והא בבירה for by a בריא מתנת there is no difference between the grantor and his son.

² This means that the grantor reserved the right to invalidate this gift as long as he is alive..

³ The ברייתא says לא יחזור out of concern that perhaps he wrote two שטרות; the found one was written first but was never delivered, and the later written שטר was delivered, therefore the true owner is the second, but if we will return the earlier dated lost שטר, he will illegally oust the true owner from the property since his שטר predates the other. In our משנה however the case is where in this lost שטר there was this stipulation that he is giving him the property as of the date on the שטר as long as he does not retract. Therefore if the subsequent שטר was a regular בריא מתנת without any stipulation, there is no concern, for the second person will show his שטר, indicating that the grantor retracted his gift to the first person (by giving the gift to the second person at a later date), and so the second one will retain ownership. Similarly if the second שטר was written in the same manner as the first שטר, and the owner says give it to the first one; it rightfully belongs to the first one, since he is now retracting from the second one. In short this (first) שטר is just like a דייתיקי, for the owner reserved the right to retract this gift.

without any stipulation therefore we do not return it. forced

ורש"י דחק לפרש⁵ דגבי מתנות אפילו אם אמר תנו אין נותנין -

And (רש"י), with difficulty, interpreted the משנה that regarding מתנות, even if the grantor said, 'give', we do not give (and the inference from 'וכו' שמה נמלך does not apply to מתנה) -

והכי פירושא דמתניתין שאני אומר כתובין היו ונמלך עליהם שלא ליתני -

And this is the explanation of our משנה regarding מתנה (according to רש"י); 'for I say, they (the שטרי מתנה) were written, but he reconsidered not to give them', meaning not to give the gift to the original recipient -

ויהיב לאיניש אחרינא ועתה רוצה לחזור בו מן השני וליתנה לראשון -

But rather to give it to another (second) person, but now (when the שטר was found), the grantor wants to recant from giving it to the second person and wants to give it to the first (original) person -

לפיכך אפילו אם אמר תנו אין נותנין⁶ -

Therefore (by מתנות) even if the grantor said, תנו, we do not give it. This is regarding מתנה, where the נותן cannot retract (from the second person) -

אבל דייתיקי אם אמר תנו נותנין דאפילו נמלך ונתן לאחר יכול לחזור⁷ -

However regarding דייתיקי (which are שכ"מ) in the משנה, if he said תנו, we give it, for if he reconsidered and gave this שכ"מ to another, he can recant.

פרש"י has a difficulty with תוספות:

וקשה לפירוש דאם כן פירוש דנמלך דמתניתין יהיה בשני עניינים⁸ -

And there is a difficulty with פרש"י for if indeed נמלך by שמה נמלך means that he changed his mind to give it to someone else, it will turn out that the explanation of נמלך in our משנה will be of two types; by גט it will mean he changed his mind not to give it all (to her), and by מתנה ודייתיקי it means he changed his mind to give it to another person –

פרש"י asks an additional question on תוספות:

ותו לעיל גבי גט דדייק הא אמר תנו נותנין אפילו לזמן מרובה -

⁴ There is also an inherent difficulty in the פירוש ר"ת, for he is qualifying the משנה that it is valid only in a specific case, even though the משנה makes no mention of it. See 'Thinking it over'.

⁵ בד"ה קמא זכה.

⁶ The gift belongs to the second person and he cannot recant. Therefore by a מתנה there is no contradiction between the משנה and the ברייתא; both maintain תנו אין נותנין.

⁷ Therefore there is contradiction between the משנה which maintains תנו נותנין and the ברייתא which maintains לא תנו נותנין. ר"ז resolved it by saying, the משנה is by the grantor and the ברייתא is by his son.

⁸ Additionally, according to רש"י by דייתיקות if he says תנו נותנין, however by מתנות even if he says תנו אין נותנין. According to תוספות the ruling is always the same; תנו אין נותנין.

And additionally, previously⁹ regarding גט where the גמרא inferred 'but if he said תנו we give it even מרובה', however -

לפירוש רש"י זכרנו לברכה מנא לן לפרושי הכי¹⁰ -

According to the פירוש of רש"י ז"ל, how do we know to explain and infer from the משנה in this manner (that [ואפילו לזמן מרובה] - (אם אמר תנו נותנין

דלמא הכי פירושו משום דנמלך איכא למיחש שמא לא ניתן הגט עדיין -

Perhaps this is the understanding of the משנה, since it was נמלך, there is the concern that perhaps the גט was still not given -

ולכך אפילו אם אמר תנו אין נותנין -

So therefore even if he said תנו we do not give it, because it may be the wrong גט.

אלא לשון ונמלך משמע שעתה אינו רוצה כדפרישית לעיל (י"ח,א דיבור המתחיל הא"י):

Rather we must say, that the expression ונמלך indicates that he does not want to give it now, as I explained previously.

Summary

The case of מתנה in the משנה is where he stipulated that he can retract the gift (therefore it is like a דייתיקי so נותנין תנו אמר. According to רש"י the ונמלך (by מתנה means that he reconsidered and gave it to someone else (not like the ונמלך (ודייתיקי by גט), so therefore by דייתיקי if נותנין תנו אמר, but by מתנה even if נותנין תנו אמר.

Thinking it over

What are the relative advantages of פירוש ר"ת and פירוש רש"י?

⁹ יח,א.

¹⁰ The inference that אם אמר תנו נותנין is valid if we interpret שמא נמלך to mean that he does not want to give it now; therefore we can infer that if he does want to give it now (אמר תנו), then נותנין. However according to רש"י the term ונמלך (does not mean he does not want to give it now, but rather it) means that he does not want to give it to him but rather to someone else, so therefore by גט we can also say that perhaps he never gave her the גט (as by the case of מתנה [where he did not give the מתנה to the (first) recipient]), so therefore even if אמר תנו, nevertheless אין נותנין, because perhaps it is not the right גט.

¹¹ TIE (there) footnote # 6.