

## ובתר אביו כתבה איהו לאיניש אחרינא –

### And after the father, he wrote it for another person

#### Overview

ר"ז explained that the ברייתא (which states לא יחזיר) is in a case where the father (who wrote the דייתקי) died, and the son claims that this מתנה belongs to the claimant. We do not return it out of concern that the father wrote this דייתקי (to the first person) but did not give it to him; the son (after the father's death) may have written a שטר מתנה to a second person (who legally owns this gift), however the son wants to retract, for the son made a swindle with the first person that the son will receive half the gift if he can transfer it to the first person. Therefore the son claims that the father indeed gave the דייתקי to the first person (when in fact it may not be so), however if we will give it to the first person we may be causing the second person to lose the gift (since the דייתקי predates the שטר מתנה), which is rightfully his. תוספות asks why we cannot offer another cause for concern.

תוספות asks:

תימה אמאי לא אמרינן נמי שנתנה האב תחלה במתנת שכיב מרע -

**It is astounding! Why do we not also say, that the father gave it initially as a מתנת שכ"מ** to person A (who acquires this gift legally with the death of the father) –

ואחר כך האב עצמו כתבה להאי ולא יהבה ליה ומת האב ונתקיימה המתנה לראשון -

**And afterwards the father himself wrote the same gift to this person B, but did not give it to him (and this is the שטר which was found), and when the father died, the gift to the first person A was validated -**

והבן רוצה שתהיה לשני:

**But the son wants the gift should belong to the second** person B, so he claims that his father gave it to B after A and by a שכ"מ it belongs to the last recipient. תוספות does not answer this question.<sup>1</sup>

#### Summary

Instead of saying the son wrote it to a second person we could also say the father wrote it to a second person.

#### Thinking it over

What is the advantage of תוספות explanation over the גמרא's explanation?<sup>2</sup>

<sup>1</sup> See רש"י ש.

<sup>2</sup> See נחלת משה.