

**We derive from this; שמע מינה התופס לבעל חוב קנה –**  
**one who seizes on behalf of a creditor, acquires it for him**

### **OVERVIEW**

משנה רב explained that we can derive from the ruling of the חכמים in our (that once the אדון transferred the שטר שחרור to a third party to give it to the עבד, he can no longer retract and take back the שטר), that if an outside party seizes the assets of a debtor on behalf of a creditor, the creditor acquires these assets, and the debtor has no recourse. It is apparent that the manner in which רב derived this ruling, is because he viewed the master as the debtor, the third person as the seizer, and the עבד as the creditor. Just as here by the עבד, when the third party receives the שטר from the master (the debtor) for the benefit of the slave (the creditor), the rule is that the master (the debtor) has no recourse, similarly when one is תופס לבע"ה, the מלוה acquires the assets and the לוה has no recourse. תוספות argues that the analogy is far from perfect, and subsequently resolves the difficulties.

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תוספות asks:

**תימה לרבינו יצחק אפילו אי תופס לבעל חוב קנה –**  
**The ר"י finds this comparison astounding! Even if we were to assume that a קונה is תופס לבע"ה -**

**היינו משום שהוא שליח וקונה אפילו בעל כרחו –**  
**That is because the תופס is considered an agent on behalf of the מלוה and therefore the תופס is קונה even against the will of the לוה -**

**לפי שהוא חייב כאילו תפס הוא עצמו –**  
**Since the לוה owes the מלוה, and the תופס is considered to be a שליח of the מלוה therefore it is considered as if the מלוה himself seized the assets of the לוה -**

**אבל כאן אפילו העבד עצמו אינו יכול לעכב את האדון מלחזור בו –**  
**However here even the עבד himself (whom we are comparing to the <sup>1</sup>מלוה) cannot prevent the master (whom we are comparing to the לוה) from retracting, for instance -**

**אם היה נותן גט שחרור לדעת כן שלא ישתחרר בקבלה זו<sup>2</sup> –**

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<sup>1</sup> See 'Overview'.

<sup>2</sup> The אדון gave the גט to the עבד and stipulated that it should not be effective for another thirty days (for instance). The אדון may retract the שחרור any time before the thirty days.

**If the master would give the עבד a שחרור with the understanding that he should not be freed with the acceptance** of this שטר שחרור, then the master would be able to retract this שטר שחרור, the reason is -

**כי אינו חייב לשחררו –**

**Because the master is not obligated to free the עבד**, as opposed to a לווה who is obligated to repay the מלוה -

**אם כן למה יעכב המקבל את האדון מלחזור –**

**If this is indeed so, why should the receiver of the שטר שחרור prevent the master from retracting -**

**כיון דהשתא סלקא דעתין דהאומר תנו לאו כזכי דמי<sup>3</sup> –**

**Since as of now we are assuming that one who says 'give' is not as if he said 'זכי'.**

תופס לבע"ה By a תופס לבע"ה, the question is that our case is not comparable to a תופס לבע"ה, the מלוה can certainly seize the assets of the לווה, and therefore the תופס who is considered to be the שליח of the מלוה (if we assume that קנה לבע"ה קנה), can also seize. However, here the עבד (who is compared to the מלוה) cannot seize the שטר from the master (even if the master gave it to him), so how can the receiver seize it on behalf of the עבד.

Tosfos has an additional question:

**ועוד מה חייב האדון לעבד דחשיב ליה תופס לבעל חוב<sup>4</sup> –**

**And furthermore, what does the master owe the עבד that we refer to the receiver that he is seizing for a creditor; what debt does the master owe the slave-**

Tosfos anticipates a possible solution:

**ואי חשיב משום דעבד ליה ניח נפשיה –**

**And if you will say that the master is considered in debt to the עבד because the עבד pleased the master** (since the master is now freeing him) -

**כמו שפירש רבינו תם לקמן<sup>5</sup> על מילתא אחריתא –**

**As the ר"ת explains later regarding a different matter –**

Tosfos rejects this solution:

<sup>3</sup> The אדון merely told the receiver to deliver the שטר שחרור to the עבד; indicating that the שחרור take place when the עבד receives it, therefore if the עבד cannot prevent the master from retracting (if the שטר is not yet effective [see previous footnote # 2]), then certainly the receiver cannot prevent the אדון from retracting.

<sup>4</sup> The first question of Tosfos is how can we compare the תפיסא for a בע"ה to the תפיסא for an עבד, since the עבד cannot even by תופס for himself. This question merely asks how we can refer to the עבד as a בע"ה since the master owes him nothing (see נח"מ).

<sup>5</sup> See following תוס' ד"ה כל (on the top of יבא, [footnote # 21]).

אם כן היכי חשיב ליה חב לאחרים<sup>6</sup> –

**If this is indeed so** (that the master received a benefit from the slave and in turn he is freeing him), then **how is this case considered ‘damaging others’**; who is being damaged here?!

תוספות offers his explanation:

ונראה לרבינו יצחק דחשיב קצת חוב משום דעבד ליה נייח נפשיה –

**And it is the view of the ר"י that it is considered** that there is somewhat of a debt from the master to the עבד, **since the עבד pleased** the master (to the extent that he is willing to free him) -

ומכל מקום חשיב ליה חב לאחרים שהרי אינו חייב לו האדון כלום –

**But nonetheless it is also considered חב לאחרים** (meaning the master), **since the master does not really owe the עבד anything**. This resolves the second question of תוספות.

והכי פירושו בשלמא אי תופס לבעל חוב קנה –

**And this is the explanation**; the משנה will be properly understood if we maintain that a קונה is תופס לבע"ח – for then -

אין תימה אם גם כאן קנה בקבלה זו לענין שלא יוכל לחזור<sup>7</sup> –

**It will not be surprising if here** (by the עבד) as well, the עבד will acquire the שטר שחרור **through this reception**, at least to the extent that the master cannot retract -

דמשום דעבד ליה נייח נפשיה –

**Because since the עבד pleased him**, the master -

רוצה הוא שיהיה בעל חוב בכך שיוכל לעכבו מלחזור –

**Is willing that the עבד should be a creditor to the extent that the receiver** (as a תופס) **can prevent him for retracting the שחרור** –

תוספות responds to an anticipated difficulty:

ואף על פי שלא נתכוון לכך המקבל דעתו הוא לקבל כמו שרוצה האדון –

<sup>6</sup> responded to ר' יצחק בר יוסף that if our משנה teaches that קנה is תופס לבע"ח, then it would seemingly also teach that קנה is תופס לבע"ח even in a case where it is חב לאחרים; if there are other creditors and by seizing it for one creditor, the others will lose out on it, for here too the תופס for the עבד is חב the אדון for he is losing an עבד. However since תוספות said (according to the פירוש ר"ת) that the אדון owes the עבד since he pleased him and therefore he is freeing him, so the אדון is not really losing anything; he is merely freeing the עבד in exchange for the favor he received from him. Why is this referred to as חב לאחרים?!

<sup>7</sup> There is no thought (at this point) that the עבד should become freed when the third party receives the שטר שחרור (for now we maintain that תן is not like זכי), however the commitment of the master to free the עבד in exchange for the נפשיה ליה נייח, עבד, should have the effect that the receiving of the שטר שחרור by the third party should prevent the master from retracting (for this is the master's will).

**And even though the receiver had no such intentions,<sup>8</sup> nevertheless we assume that the intention of the receiver is to accept the שטר שחרור as the master wishes.<sup>9</sup>** Therefore the משנה is understood if we maintain קנה

**אבל אם התופס לבעל חוב לא קנה –**

**However, if קנה, then -**

**כל שכן זה שאינו בעל חוב אלא דעבד ליה ניח נפשיה שיוכל האדון לחזור בו<sup>10</sup>:**

**here where the עבד is not the creditor of the master, it is only that he pleased the master, then certainly the master can retract the שטר שחרור.**

## **SUMMARY**

The אדון, in return for the נפשיה grants the עבד the status of a בע"ח.

## **THINKING IT OVER**

in his question argues that there is more reason for a תופס לבע"ח to be קונה, than for the אדון not to be able to retract. תופסות question is well understood if we were attempting to derive the דין of our משנה from the דין of תופס לבע"ח, for then we can argue that we cannot derive עבד from תופס לבע"ח. However רב הונא said the reverse; since we know from our משנה that even by עבד he cannot retract, then certainly תופס לבע"ח is קונה, for as תוספות points out that by תופס there is more reason to be קונה than by עבד! What is תוספות question?<sup>11</sup>

<sup>8</sup> The receiver is not aware that the אדון is granting the עבד the rights of a בע"ח. He is not aware that he can be in a position to be תופס on behalf of the עבד. Seemingly the אדון should be permitted to retract.

<sup>9</sup> The אדון is משחרר the עבד because of the נפשיה which the עבד caused the אדון. The אדון in his gratitude to the עבד is not only prepared to be משחרר the עבד, but also to grant the עבד the rights of a בע"ח in relation to the אדון. If we maintain that a תופס לבע"ח is קונה, therefore here too the third party receiver is קונה the שחרור for the עבד to the extent that the אדון cannot retract. This case is not comparable to the case תוספות cited in his question, that if the אדון gave a שטר שחרור to the עבד and stipulated that it is not effective yet, then the אדון can retract; for there the אדון clearly stipulated that the שחרור should not be effective currently. However, here where no stipulation was made, it is assumed that the אדון is implicitly granting the עבד the rights of a בע"ח. On the other hand, however, the אדון (despite the נפשיה) is not obligated to free the עבד; he still retains full right over the עבד, therefore if the master cannot retract, it is considered a חב (meaning the master), proving that a תופס לבע"ח is קנה even if it is חב לאחרים. [It is almost as if we divide the אדון into two people; the part of the אדון which received the נפשיה is like the ליה and he implicitly grants the עבד the rights of a בע"ח; however the part of the אדון which owns the עבד is like another מלוה who is losing out to the תופס who is seizing the assets for another מלוה (in this case the עבד).]

<sup>10</sup> Granting the עבד the status of a בע"ח, cannot make the עבד 'stronger' than a regular בע"ח, for whom תפיסא will not help by a third party, and the תופס will be required to return the assets to the ליה. Similarly here the third party receiver will be required to return the שטר שחרור to the אדון, should the אדון so desire.

<sup>11</sup> See אמ"ה # 145-46.