תנו מנה לפלוני ומת יתנו לאחר מיתה –

'Give a מנה to him', and he died; they should give it after death

Overview

Our משנה distinguishes between גט אשה and שטר שחרור (on one hand) where there is no giving לאחר מיתה, and regarding money (on the other hand) where we give it לאחר מיתה. There is a dispute in the גמרא regarding the סיפא (concerning money), whether the משנה is discussing a בריא with מעמד שלשתן[1] (the view of רב זביד), or whether the משנה is discussing a שכיב מרע (the view of רב פפא). Our תוספות discusses whether this dispute is also in the רישא regarding עבד ואשה.

למאן דמוקי לה בבריא ובמעמד שלשתן[2] אין צריך לומר -

It is not necessary to assume, according to the one (רב זביד) **who establishes this** case (of תנו מנה לפלוני), **by a healthy person and** it was given **במעמד שלשתן -**

דלדידיה רישא נמי איירי במעמד שלשתן[3] –

that according to רב זביד**, the רישא** regarding עבד ואשה **is also in a case of מעמד ג'**.

תוספות explains how the רישא could have been a case of מעמ"ש:[4]

ומיירי שהגט כבר בעין[5] דאם אינו בעין אפילו בממון לא שייך מעמד ג'[6] -

And we would need to **be discussing** a case **where the גט is already present, for if** the גט **is not present,** then **even by money** the rule of **מעמ"ש is not applicable** in a similar case (where the money is not בעין) –

תוספות adds an additional requirement for it to be considered מעמ"ש:

ואיירי שהאשה רוצה בכך[7] -

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[1] מעמד שלשתן (in the presence of all three) is a method by which one may transfer his assets (which are in the possession of a third party) to another, without the recipient making a קנין; provided that the benefactor, recipient and the one possessing the item are all present at the transfer. See the גמרא later (on עמוד ב').

[2] If the benefactor did not say תנו מנה לפלוני in the presence of all three, the benefactor may rescind the transfer since he is a בריא and no קנין was made (it was merely a statement); however if the transfer took place במעמד שלשתן, then it effectively belongs to the recipient from that moment onwards.

[3] One might assume that the רישא and the סיפא are all discussing the same situation (except [obviously] the explicit differences), therefore since the סיפא is במעמד ג' the רישא is במעמד ג' as well. תופות negates this.

[4] If the רישא could not be (even conceptually) in a case of מעמ"ש, then there is no point in negating it.

[5] It is (already) in the possession of the שליח (to whom he is saying תנו).

[6] There is a dispute later in the גמרא (on the עמוד ב') whether מעמ"ש is only by פקדון where there is a tangible object to be transferred, or it applies even to a מלוה where we are merely transferring the שעבוד (the obligation of the לוה to pay), however here by גט if there is no גט in the hand of the שליח (and certainly if the גט was not written yet), then there is nothing at all that can be transferred through מעמ"ש.

[7] There cannot conceivably be a קנין of מעמ"ש if the recipient does not want it. See 'Thinking it over'.

And we are also **discussing** a case **where the woman wants this;** she wants the גט.

תוספות explains in such a case why indeed is מעמ"ש not effective by (ועבד) אשה:

ואשמעינן דלא תקון מעמד ג' בשטר אלא בממון[8] -

And the משנה **teaches us that** the חכמים **did not institute מעמ"ש by** a transfer which requires a **שטר,** they **only** instituted מעמ"ש **by** transferring **money –**

All this could have been assumed; however תוספות rejects this:

דאין נראה[9] שיחלקו האמוראיםברישא דמתניתין -

For it does not seem likely **that these אמוראים should argue regarding the רישא of our משנה -**

דמר מוקי לה במעמד שלשתן ומר בכתבו ותנו אלא בסיפא דוקא פליגי -

Where רב זביד **would establish** the רישא also **במעמ"ש and** רב פפא would establish it **in** a case of **כתבו ותנו** (by a שכ"מ and no מעמ"ש), **but rather they argue only in the סיפא** exclusively -

ומיירי רישא לכולהו בכתבו ותנו אפילו למאן דמוקי לה בבריא דלא שייך מעמד שלשתן -

And according to all the אמוראים the **רישא is discussing** a case of **כתבו ותנו (even according to** רב זביד **who established** the סיפא **by a בריא), where** the concept of **מעמ"ש is not applicable.[10]**

תוספות responds to an anticipated question:

ואף על גב דלא הוי רישא דומיא דסיפא[11] אין לחוש -

And even though the רישא is not similar to the סיפא (according to רב זביד), **it** should be of **no concern -**

דהכי נמי למאן דמוקי לה בשכיב מרע לא הוי רישא דומיא דסיפא מכל וכל -

For this is also true **according to** רב פפא **who established the** סיפא **by a שכ"מ,** where **the רישא is not completely similar to the סיפא,** either -

שהשטר אינו בעולם[12] כשמצוה ליתן והמנה הוא כבר בעולם[13] -

Since in the רישא **the** (גט ושחרור) **שטר does not exist when** the שכ"מ **commands to**

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[8] The גמרא will later (on the עמוד ב') state that מעמ"ש is a הלכתא בלא טעמא; it was made to facilitate business arrangements, however it is limited to money transactions only.

[9] We find the מחלוקת of the אמוראים (namely רב זביד and רב פפא) only in the סיפא; indicating that in the רישא there is no dispute. תוספות previously taught the we are not 'זה גורס'; it cannot therefore be discussing מעמ"ש, for it is not בעין.

[10] כתבו ותנו means that the גט does not exist yet and the concept of מעמ"ש is totally inapplicable (even if it was money).

[11] The סיפא is in a case of מעמ"ש as opposed to the רישא (see footnote # 3).

[12] See previous תוספות ד"ה האומר, that we are not 'זה גורס'; meaning that the שטר is not present. See 'Thinking it over' # 2.

[13] See our גמרא where רב qualifies the משנה that the money is present.

give it, however in the סיפא, **the money already exists –**

תוספות anticipates a difficulty:

אף על גב דבגמרא מוכח מרישא דסיפא אייריי בבריא[14] -

Even though the גמרא proves from the רישא that the סיפא is discussing a בריא -

אלמא בעי דלהוי סיפא דומיא דרישא –

It is evident that we require that the סיפא be similar to the רישא!

תוספות responds:

היינו משום דאית לן לאוקמי כולהו בחד גברא -

This is because it is proper that we establish the entire משנה **with the same person** (he is either a בריא or a שכ"מ) **-**

אבל מכל מקום לא בעי לאשוינהו לגמרי:

However it is not necessary to make them completely similar; that both are by מעמ"ש (and that the שטר is present)!

Summary

מעמ"ש is effective only by ממון but not by שטר.

Thinking it over

1. תוספות states that the purported case of מעמד שלשתן by אשה would be (only) in a case where the woman wants the גט.[15] Seemingly this is not understood,[16] why is it necessary that she should agree, since גירושין can take place even against her will?!

2. תוספות states that according to ר"פ that we are discussing a שכ"מ, the סיפא (where the money is בעין) is not similar to the רישא where the שטר is not בעין.[17] Why is it more assumable that the רישא is discussing a case where the שטר is not בעין, according to ר"פ, than it is according to רב זביד?[18]

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[14] רב זביד on the עמוד ב' proves that the משנה is not discussing a שכ"מ. For in the רישא it states that we do not give it לאחר מיתה, inferring that מחיים we do give it, provided that he said תנו. However if it was a שכ"מ then we should give it מחיים even if he only said כתבו, since דברי שכ"מ ככתובים וכמסורים דמו. This however merely proves that the רישא is not discussing a שכ"מ, it seemingly does not prove anything regarding the סיפא unless we maintain that the רישא and סיפא have to be similar. This contradicts what תוספות maintains.

[15] See footnote # 7.

[16] Regarding a transfer of money it is understood that the recipient must agree for one cannot force anyone to accept money against his will; however גירושין is effective even בע"כ.

[17] See footnote # 12.

[18] See נח"מ and בל"י אות רצז.