

From where do we know this; ממאי מדקתני תנו ולא קתני כתבו – since the משנה taught ‘give’ and it did not teach, ‘write’.

OVERVIEW

does agree with רב פפא, for if the משנה was discussing a מרע, שכיב, why does the משנה state מיתה, which implies that it is given, it we are discussing a שכ"מ then it is given מחיים even if he merely said כתבו.¹ Our תוספות explains that we cannot argue that תנו was written for a different reason.

asks:

ואם תאמר הא דקתני תנו אשמעינן דאפילו הכי אין כופין את היורשים לשחרר² - And if you will say; the משנה teaches us by stating תנו, that (even if the שכ"מ said תנו), nevertheless we do not force the heirs to free the slave; as the view - כרבי דפליג בירושלמי³ אדרבנן ואמר דתנו לא הוי כשיחררו אלא ככתבו ואין כופין - Of רבי who argues on the רבנן in ירושלמי and maintains that saying תנו is not the same as saying ‘free him’, but rather תנו is like כתבו where we do not force the heirs to free the slave.

answers:

ויש לומר דמתניתין לא אתא לאשמועינן בדין מצוה לקיים דברי המת⁴ - And one can say; that our משנה is not coming to teach us regarding the rule of ‘it is a מצוה to fulfill the words of the deceased’, meaning - אם כופין היורשים לקיים אם לאו - Whether we force the heirs to fulfill the deceased wishes or not - אלא לאשמועינן דאין גט לאחר מיתה⁵ -

¹ However if we are discussing a בריא then it is understood, for we give it מחיים only if he said תנו, but not by כתבו.

² There is a reason for the משנה to write כתבו for that teaches us that even by כתבו we give the שחרור if the master is alive. There is also a reason to write תנו for that teaches us that even if he said תנו the יורשין are not obligated to free the slave (there is no rule of המת דברי לקיים in this case [according to רבי]). The novelty of תנו (that the יורשין are not required to free the slave) seems more in line with the teaching of the משנה (that לאחר מיתה) than the novelty of כתבו (that it should be given מחיים).

³ In our (דף ה,א) פרק הלכה ה. When the master said שחרר then all agree that we coerce the יורשין to free the slave. If he said כתבו שחרר then all agree את היורשין אין כופין; however if he said תנו the רבנן maintain את היורשין אין כופין את היורשין רבי maintains את היורשין אין כופין.

⁴ See ‘Thinking it over’.

⁵ Therefore there is no point in writing תנו to teach us that the יורשים are not required המת דברי לקיים, since our משנה is not discussing that issue at all. [Our משנה however is discussing when a גט may be given over (מחיים, but not לאחר מיתה), therefore the novelty of כתבו would be (more) appropriate, that we give the גט (מחיים) even by כתבו.]

But rather the משנה teaches us the rule that 'there is no גט after death'.⁶

תוספות offers an alternate answer to the initial question:

ועוד דמסתמא כרבנן אתיא:

And furthermore our משנה **presumably is according to the רבנן** who argue with רבי and maintain that we do force the יורשים to free the slaves (if the master said תנו). Therefore we cannot say that there is a novelty by תנו that we do not force the heirs.

SUMMARY

Our משנה discusses the rule of גט לאחר מיתה, but not whether לקיים דברי המת. According to the רבנן we force the heirs to free the slaves (even if it is a גט לאחר גט) since לקיים דברי המת (מיתה).

THINKING IT OVER

However⁷ מצוה לקיים דברי המת משנה is not discussing תוספות states that our משנה previously⁸ asks (on the question of משך), why did not רב explain the תוספות⁹ because of מצוה לקיים דברי המת, which seems to contradict our משנה!

⁶ This means we cannot use this גט, however it is possible that we force the יורשים to free him with a new גט.

⁷ See footnote # 4.

⁸ יג,א תוס' ד"ה והא.

⁹ See סוכ"ד אות סה (הא') בד"ה ותירצו and מר דרור (לר' מרדכי עטייה).