

Like a ruling without a reason

כהלכתא בלא טעם –

OVERVIEW

There are three rulings in the גמרא which are referred to as a טעם. Our תוספות explains that nonetheless there is a טעם for these rulings.

פירוש מה שמועיל לקנות¹ אבל טעם יש למה תקנו חכמים –

The interpretation of טעם is in reference as to **how** these three rules are **effective in their acquisition** (for this there is no explanation), **however there is an explanation why the חכמים instituted** these three rulings.

הלכתא בלא טעמא enumerates and explains each of the three

מעמד שלשון תקנו שלא יצטרך לטרוח² ולעשות קניינים –

1. They instituted מעמ"ש in order that it should not be necessary for people to be bothered and make קניינים -

ובהכותב נכסיו לאשתו משום דלא שביק לבריה³ ויהיב לאחריו –

2. And in regards to the ruling of one who writes his whole estate to his wife (where the rule is that she does not acquire it), that is **because a man will not forsake his son and give his estate to others** -

ואין דרך לעשות כן אלא לחלק לה כבוד⁴ ולמנותה אפיטרופיא –

And it is not usual to do so (to grant the estate to the wife) **but rather** the purpose why he wrote over the estate to his wife is in order **to honor her and appoint her as an executrix** for the estate -

ומשיא אשה לבנו כשהאב מסיר כל מה שיש לו מן הבית סמכא עליה דעתא דבן⁵ –

3. And one who marries off his oldest son in a specified house, it is assumed that when the father removes all that he owns from the house, the son depends on this house that it is being gifted to him -

כדמפרש⁶ בפרק מי שמת (בבא בתרא דף קמד, א):

As the גמרא explains in פרק מי שמת.

¹ See 'Thinking it over' # 2.

² לא רצו חכמים להטריח להביא עדים ולעשות קנין ב"ב קמד, א ד"ה כהלכתא in תוספות.

³ If the father truly intended to grant his estate to his wife, he would nevertheless leave something over for his children. The fact that he left nothing over for his children indicates he is merely appointing her as an אפיטרופיא. See 'Thinking it over' # 1.

⁴ See ש"י there אפיטרופא ד"ה that על ידה שמוכרין ממה שאוכלין על ידה.

⁵ See תו"ר who writes: ליתנו לבן שדעתו היה ליתנו לבן.

⁶ The גמרא there states that the son receives the house only if the father removed all of his belongings from the house.

SUMMARY

There is a reason why the חכמים instituted these three בלא טעמא; however there is no explanation how they are effective legally.

THINKING IT OVER

1. דלא because she is only an אפטרופא כל נכסיו לאשתו explains that by תוספות. ⁷ This would seem to be a valid reason why she does not acquire the estate. Why is this considered a בלא טעמא?⁸

2. תוספות explains that there is a reason for these הלכות; however there is no reason how they are קונה.⁹ Seemingly if there is a reason for the תקנה then it is understood that they are effective since הפקר בי"ד הפקר as we find in many other instances. Why are these three considered a בלא טעמא?!¹⁰

⁷ See footnote # 3.

⁸ נח"מ See.

⁹ See footnote # 1.

¹⁰ See זיו הים.