אבל מתנה מועטת כולי – However a small gift, etc.

OVERVIEW

The גמרא explained that it was necessary for רב to state that he cannot retract a מתנה מועטת, only if it was given במע"ש (otherwise he would be able to retract), for we may have thought that מעמ"ש is necessary (for the transfer to be effective) only for a מתנה מרובה.[1] Our תוספות explains why we cannot derive this from another statement of רב.

תוספות asks:

ואם תאמר הא נמי שמעינן לה דאמר רב בפרק הזהב (בבא מציעא מט,א) –

And if you will say; but we know this as well (that one can retract even a מתנה מועטת [unless it was given במע"ש {or some other קנין}]), **for רב stated in פרק הזהב - דברים אין בהן משום חיסור אמנה ומדמי התם מתנה מועטת למכר דליכא מעות בהדי דברים 'There is no lack of trust by** mere **words',[2] and[3]** the גמרא **there compares** granting **a מתנה מועטת[4], to a sale where no money was** transferred[5] **at the time there were words** that there is an intent to make a sale. The question is why it was necessary for רב to teach us this rule again (by קבא דמוריקא).

תוספות answers:

ויש לומר דהכא שאומר לנפקד או לבעל חוב שיתן לו סלקא דעתין דקני טפי –

And one can say; that here (by קבא דמוריקא) **where the** original owner **says to the נפקד or the to the לוה that he should give it to** the recipient **we would have**

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[1] It is more readily understood why the grantor can change his mind by a מתנה מרובה since the recipient did not really expect to receive it (even after he was told by the grantor that he will give it to him), since it is a large gift which people usually do not give. The חידוש is that even by a מתנה מועטת where the recipient assumes that he will receive it, nevertheless if there was no קנין or מעמ"ש, the grantor may retract and not give it.

[2] The case is where two people agreed to a sale transaction verbally but no קנין was made and no money was transferred. רב maintains that either party may cancel the sale and they will not be considered as untrustworthy people. רב יוחנן argues with רב and maintains that מחוסרי אמנה דברים יש בהן משום.

[3] תוספות needs to prove that this rule by מכר applies to a מתנה מועטת as well.

[4] ר' יוחנן ruled there that one may retract when granting a gift (as opposed to a sale [see previous footnote # 2]). However if it was a מתנה מועטת, then he may not retract (just as one may not retract from a sale where no money was transferred); indicating that מתנה מועטת is the same as a מכר without כסף. According to ר' יוחנן in these two cases it is considered מחוסרי אמנה and according to רב (since the cases are similar) it is not מחוסרי אמנה. We derive from that גמרא that according to רב one may be חוזר even from a מתנה מועטת and not be considered מחוסרי אמנה. See (however) 'Thinking it over' # 2.

[5] If money was transferred from the buyer to the seller the rule is that (even though מעות are not קונה, nevertheless) there is a מי שפרע for whoever retracts from the sale. However if no money was transferred; it was merely 'words' then there is no מי שפרע (and he will be considered מחוסרי אמנה according to ר' יוחנן, but not according to רב).

assumed that the recipient **would by more likely to acquire it** in this case - **מכשאמר מתנה אני נותן לך:**[6]

Than in a case **where** the grantor merely **says I am giving you a gift.** רב taught us (in the case of קבא דמוריקא) that even when the item to be transferred is no longer in the possession of the grantor, he may still retract unless he gave it over במעמ"ש.

Summary

According to רב one may retract even from a מתנה מועטת, even if it is no longer in his possession, if it was not transferred במעמ"ש.

Thinking it over

1. תוספות is comparing our גמרא here to the rule of מחוסרי אמנה. Our גמרא is discussing whether or not there is a קנין by a מתנה מועטת, and it is obvious that even if we maintain דברים יש בהן משום מחוסרי אמנה, nevertheless there is no קנין with words alone, and one is permitted to retract according to everyone. These (קנין and מחוסרי אמנה) are two separate issues. What is תוספות question and (more importantly) what is the answer?![7]

2. It appears from תוספות that just like according to ר"י we say that מתנה מועטת is like מכר without כסף, the same applies to רב.[8] However it is possible to assume that by מתנה מועטת there is more reason not to be חוזר than by מכר בלי כסף. Therefore ר"י certainly maintains that by מתנה מועטת he is מחוסרי אמנה, but perhaps רב also agrees that by מתנה מועטת it is מחוסרי אמנה (and not like מכר בלא כסף)!

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[6] It is easier (and therefore more assumable) to part with an item which is no longer in your possession than to part with an item which is currently in your possession. [In addition when the grantor tells the נפקד to transfer the item we are fairly certain that [he intends to transfer it and that] it will be transferred for there is no reason that the נפקד should retain the item (as opposed to when the item is in the possession of the grantor).] Therefore from the גמרא in ב"מ we would only know that if the item is in the possession of the grantor, he may retract even after he offered it as a gift. However we might have thought that once the item is no longer in the possession of the grantor (but it is by the נפקד or the לוה), then if the grantor offers it to the recipient he cannot retract even though it was not said במעמ"ש. Therefore רב teaches that even in such a case (like קבא דמוריקא) where it was no longer in רב's possession, nevertheless רב would have been able to retract if he had not given it במעמ"ש.

[7] See בל"י אות שכב.

[8] See footnote # 4.