

מה אשה איסורא ולא ממונא –

Just as by a woman it is prohibitory but not monetary

OVERVIEW

ריב"ל that ריב"ל derived from a (separate) statement of ר' זירא assumed that ריב"ל maintains כל the rule is גר שמת of a (regarding the הלכה כאבא שאול יתומים קטנים). The statement ר"ז was referring to is where ריב"ל taught in the name of רבי that if a master said 'I have given up on my slave'; the slave is not completely freed unless he receives a שחרור first.¹ ר' יוחנן explained² because we derive³ עבד from אשה that just as an אשה leaves her husband only⁴ with a שטר (גט), similarly an עבד cannot be completely freed unless he receives a שחרור.⁵ This (concludes ר"ז) is from where ריב"ל possibly derived that ריב"ל rules like אבא שאול, for we derive from the לה לה (in addition), that just like by a woman, the גט merely releases her from her איסור relationship with her husband, but not from a monetary relationship (which does not exist), similarly the שטר שחרור of the עבד releases him from the איסור עבדות, but cannot release him from the ממונות relationship with his master. רבי must be discussing an עבד who (after the יאוש) has only an איסור relationship with his master, but not a monetary one (since the master was מפקיר him through the יאוש, the עבד acquired his 'monetary' freedom). However by an עבד קטן where there still remains a monetary connection to the master (even after the יאוש/הפקר, for the קטן cannot acquire himself), there is no freedom at all and he is still כנענית and the שטר will not be effective since it can only release him from the איסור aspect but not from his ממון aspect. This proves that ריב"ל who cites רבי agrees with אבא שאול.⁶

¹ There are two aspects this this ruling. One, that יאוש (or הפקר) is not sufficient to allow the עבד to marry a בת חורין (he was מתיאש from him); and two, that even though the owner has no longer any monetary rights in the עבד (he was מתיאש from him); nevertheless the שטר is effective to emancipate the עבד completely (affecting the איסור aspect exclusively).

² How we know these two aspects (mentioned in footnote # 1) are valid.

³ There is a גזירה שוה of אשה and עבד with the words לה לה. By an אשה it is written (א, כד, א) and by a (דברים [תצא] כד, א) and by a (ויקרא [קדושים] יט, כ) it is written (עבד) או חפשה לא נתן לה (ויקרא [קדושים] יט, כ).

⁴ The husband cannot be מפקיר his wife (he has no monetary ownership in his wife. The laws of ידה לבעלה are מעשה ידה לבעלה in exchange for מזונות, etc.; however מועיקר הדין a woman can say עושה (איני גוזנת ואיני עושה).

⁵ A גט שחרור is sufficient to release him from the איסור status of עבד (exclusively, there is no ממון status), just as a גט is sufficient to release the woman from her exclusive איסור status as an אשת איש (the second aspect in footnote # 1).

⁶ גט (just like גט) can only release איסורא but not ממונא, therefore the קטן who still retains a ממון status as an עבד cannot be released through הגר מיתת. However the רבנן, who maintain that the עבד קטן is released, cannot agree to this comparison of אשה to עבד, for they maintain that the עבד קטן is freed even though לזכות אין לו יד לזכות, this proves that מיתת (אשה) are effective for both איסור and ממון (not like an אשה). Therefore the רבנן can maintain that there is no (שטר) האדון

asks: תוספות

ו**אם תאמר היאך עבד משתחרר בשטר לאבא שאול⁷ אם לא יפקירנו תחלה –**
And if you will say; according to שאול how can an עבד be emancipated with a שטר, unless the master first frees him -

דמה אשה איסורא ולא ממונא אף כולי –
For just like a woman (who is divorced by a גט), it is only איסורא and not ממונא similarly, etc. an עבד who is freed by a שטר the שטר can only effect איסורא but not ממונא, this can be accomplished only by the master first being מפקיר the עבד and then giving him the שטר שחרור. This seems to be too far-fetched.

considers a possible solution: תוספות

וכי תימא דלשון הכתוב בשטר כגון הרי את בן חורין הרי את לעצמך הוי לשון הפקר –
And if you will say that the language which is written in the שטר, for instance; ‘you are a free man’, or ‘you belong to yourself’, these are expressions of הפקר, therefore it is indeed considered as if he is (first) מפקיר the עבד and consequently משחרר him, which would seemingly answer our question –

negates this solution: תוספות

אם כן לשמואל למה לי שטרא יפקירנו⁸ –
If this is indeed so, why, according to שמואל is a שטר necessary to be משחרר the עבד, he can just be מפקיר him, since the expressions of שחרור, namely את בן חורין, etc. are really expressions of הפקר!

continues to ask: תוספות

ועוד⁹ דאפילו על ידי הפקר היאך משתחרר קטן לאבא שאול¹⁰ –
And in addition, even with הפקר how can one emancipate an עבד קטן according to אבא שאול (who maintains that a קטן has no זכות and therefore is not הפקר even from a monetary standpoint)?!

need for a שטר שחרור. This entire explanation is based on (and according to) וקא רש"י ד"ה וקא.

⁷ We are now assuming that אבא שאול (and רבי) maintain that a שטר שחרור can only release the איסור aspect but not the ממון aspect (just like אשה גט). See ‘Overview’.

⁸ See המפקיר עבדו יצא לחירות שמואל who maintains תוספות states that (even) according to, where תוספות לחא, ד"ה המפקיר, and ווא"צ גט שחרור, etc. (the expressions used in a קנין (or מחילה) and are not valid unless they are written in a שטר (עיי"ש)). If we assume however that the לשונות of הפקר are לשונות של הפקר (according to שמואל) then they should be valid בע"פ as well, just like any other לשון of הפקר (according to שמואל).

⁹ There is a difficulty even if we assume (the far-fetched notion) that every שטר must be preceded by הפקר as תוספות suggested in his initial question.

¹⁰ אבא שאול maintains that regarding the בהם זכה בהם כל הקודם קטנים indicating that they are not free at all!

answers: תוספות

– ואומר רבינו יצחק דדוקא בקנין דמיתה דילפינן מאשה¹¹ –

And the ר"י explains that only regarding acquiring oneself through death of the master which we derive from אשה -

אמרינן איסורא ולא ממונא דומיא דאשה¹² -

Do we say that the power of the master over the עבד need be ממונא ולא איסורא just like אשה (and it can only release the איסור aspect but not the ממון aspect) -

אבל שטר שכתוב בהדיא בקרא¹³ או חופשה לא ניתן לה (ויקרא יט) משוחררת בשטר לחודיה¹⁴ –

However regarding emancipation by שטר, which is written explicitly in the פסוק that 'או חופשה לא ניתן לה'; she is emancipated with a שטר alone without needing איסורא וממונא to precede it, even though it is -

דמקרא מלא דיבר הכתוב¹⁵ –

Since it is an explicit verse, that a שפחה/עבד can be emancipated (with a שטר) –

offers an additional explanation that שטר is effective for ממונא as well - תוספות

– ועוד דאיתקש שטר לקנין כסף¹⁶ דכתיב (שם) והפדה לא נפדתה¹⁷ –

And furthermore, שטר was likened to קנין כסף as is written, 'and [redeemed] she was not redeemed' -

ועיקר קנין כסף מפקיע ממון כדאמר הכא נתייאשתי מפלוני עבדי אין לו תקנה אלא בשטר –

And the main aspect of קנין כסף (to redeem the slave) is that it removes the

¹¹ We derive from the גז"ש לה לה לה that just as an אשה is יוצאה במיתה הבעל, similarly an עבד is יוצא במיתה האדון.

¹² Therefore the עבדים גדולים who have a יד acquire their ממונות status and the מיתה releases them from the איסור status; however regarding עבדים קטנים who have no יד and cannot acquire their ממון release, the מיתה הגר cannot provide for them a release from their ממון obligation.

¹³ We derive that a שפחה/עבד is freed with a שטר from the גז"ש לה לה לה (see footnote # 2), however once there is a גז"ש this teaches us that the phrase או חופשה לא נתן לה is referring to a שטר. Therefore it is considered שכתוב בהדיא. However regarding the freeing of an עבד through מיתה האדון, while it is (also) derived from the גז"ש לה לה לה, nonetheless there is no פסוק which we interpret to mean מיתה האדון (as there is by יציאה בשטר). This is not considered כתוב בהדיא.

¹⁴ It will be necessary to say that when the גמרא states אשה בשטר אף עבד בשטר it does not mean just like by אשה where the שטר effects only איסור, the same is by עבד, but rather just as by אשה she needs a שטר and הפקר is insufficient, similarly an עבד needs a שטר and הפקר alone is insufficient. Nonetheless a שטר alone is certainly sufficient by an עבד to release him from both איסור and ממון.

¹⁵ It is only regarding the יציאה through מיתה האדון that זירא ר' assumed that we derive from אשה that it is effective only for איסור but not for ממון, and therefore this explains אבא שאול that regarding the adults who are עצמון, from the ממון aspect, and there only remains only איסורא, they are released though מיתה האדון; however concerning the עבדים קטנים who have no יד and they are still bound by both איסורא and ממונא therefore the מיתה האדון cannot release them from this bondage. Regarding a regular שטר שחרור however; that is effective in any event, even by וממונא (by a regular עבד [whether a קטן or a גדול]), or only איסורא (by an עבד גדול that was made הפקר).

¹⁶ An עבד can redeem himself by paying off the master his value as an עבד. He then becomes totally free and is מותר without a שחרור. We derive this from הפדה לא נפדתה.

¹⁷ The פסוק reads והפדה לא נפדתה (referring to בכסף), (שטר שחרור) או חפשה לא נתן לה', (פדיון בכסף), (referring to הפדה) and יציאה בשטר (חפשה).

money obligation to the master, as the גמרא states here, if the master said, 'I have abandoned my slave', there is no recourse for the עבד except for a שטר שחרור -

אבל בכסף לא¹⁸ דפקע ליה כספיה מכי אפקריה:

However (in this case of יאוש בעלים), the עבד will not be redeemed with כסף (the עבד cannot pay the master his value and become a בן חורין [as he usually can]), for the monetary connection to the master has been removed when he was מפקיר the עבד (at the time of יאוש); the only solution is a שטר שחרור. Therefore, just as כסף is מפקיע ממון עבד, so too a שטר שחרור is also מפקיע ממון עבד.

SUMMARY

The comparison of איסורא ולא ממונא עבד is referring only to the שחרור העבד through מיתת האדון, but not through שחרור בשטר.

THINKING IT OVER

asks since we assume עבד וכו' אף עבד וכו' מה, how can an עבד be freed with a שטר שחרור. Seemingly, just as the master can sell the עבד with a מכר, where he transfers the ממון and איסור to the buyer, why cannot we say the same when gives the שטר שחרור to the עבד that he is transferring to the עבד the complete ownership of the עבד?¹⁹

¹⁸ כסף can usually redeem the עבד (see footnote # 16), but not in this case, for here there is no דין ממונות on this עבד since the master was מתייאש from him. We must conclude that the main purpose of פדיה בכסף (קנין כסף) is to release the עבד from the ממונות aspect of his עבדות and (as a result [based on a גזיה"כ]) it also releases him from the איסור aspect). In this case since there is no ממונות aspect, כסף is meaningless. All this proves that כסף removes the ממונות aspect. Since there is a היקף from כסף to שטר (see footnote # 17), we can conclude that just as כסף releases ממונות (and איסורא) so too שטר releases ממונא and איסורא.

¹⁹ See נח"מ.