

They should not give it after death

לא יתנו לאחר מיתה -

OVERVIEW

There is a rule that זכין לאדם שלא בפניו. One may acquire possession on behalf of another without the beneficiary's knowledge; provided that it is solely for his benefit. If for instance ראובן wants to gift a field to לוי; as soon as ראובן gives the שטר מתנה to שמעון and tells him to acquire it on behalf of לוי, then immediately לוי becomes the new owner of the field, since it is for לוי's benefit. The שטר does not have to reach לוי for him to become the new owner.

There is a dispute between ר' מאיר and the רבנן¹ if it is considered beneficial for a slave (עבד כנעני), to be freed. Consequently there is a difference if a third party can be שטר שחרור from the אדון on behalf of the עבד. According to the רבנן he may, since it is a זכות to be free. However according to ר"מ he cannot be זוכה since there is a down side for an עבד to become free². According to ר"מ the עבד will become free only when the שטר שחרור comes into his possession. Up to that point the master may change his mind and retract the שטר שחרור.

The משנה, which the גמרא quotes here, states that if someone said תנו שטר and the שטר did not reach the עבד until the master died; the rule is לא יתנו לאחר מיתה. Our תוספות will be discussing whether this משנה is according to both ר"מ and the רבנן or not.

פירש בקונטרס³ ואפילו רבנן דאמרי זכות הוא לעבד וזכין לאדם שלא בפניו -

explained that this דין of מיתה לא יתנו לאחר מיתה applies **even according to the רבנן who maintain that it is beneficial for the slave to become free and we may act beneficially for a person even not in his presence**, i.e. he has no knowledge of it. It would therefore seem that as soon as the agent received the שטר שחרור, the עבד is freed. There should be no דין of מיתה לא יתנו לאחר מיתה. Nonetheless, רש"י maintains that the agent of the שטר שחרור cannot acquire this שטר on behalf of the עבד to the degree that the עבד is freed immediately upon the agent's acceptance of the שטר. The explanation that רש"י gives is that –

נהי דלהכי זכה דלא מצי מיהדר ביה -

¹ לקמן יא, ב ויב, ב

² The עבד loses certain privileges.

³ בד"ה לא

granted that the agent does acquire the שטר on behalf of the עבד to the extent that the master cannot retract the שטר and the freedom associated with it⁴, since it is a זכות for the עבד to be free; nevertheless –

מודו רבנן דכל כמה דלא אתא גיטא לידיה לא הוי משוחרר -

The רבנן admit that as long as the שטר שחרור does not reach the hand of the עבד, the עבד is not freed. Therefore since the אדון died before the עבד actually received the שחרור שטר, he cannot be freed with this שחרור שטר. The heirs of the אדון have already acquired the עבד at the moment the אדון died. The שטר becomes worthless because the original אדון is no longer the owner of this עבד.

רש"י disagrees with תוספות.

ודבר תימה פירושו כיון דזכות הוא פשיטא דזוכה לאלתר -

And רש"י's explanation is astounding! Since it is beneficial for the עבד to become free, it is obvious that he acquires his freedom immediately; as soon as the שטר שחרור is delivered to the possession of the agent.

כיון דאמרין גבי שחרור תן כזכי כדאמר לקמן -

Since we maintain concerning the process of שחרור, that when the master tells the agent, ‘give this שטר שחרור to my עבד’, **it is as if he said, ‘acquire this שטר on behalf of the עבד’, as the גמרא states later on⁵.** How can רש"י claim that [the אדון cannot retract, but] the עבד is not yet free?!

רש"י bolsters his argument against תוספות.

ורש"י בעצמו חזר בו שפירש לקמן (דף יג,א) על משנה זו דהאומר תנו גרסינן -

And himself retracted this opinion for he explained later concerning this very same משנה that the text of the משנה should read ‘if one says תנו – give’ which is the plural form of ‘you (plural) give’, as opposed to תן which is the singular form -

ולא גרסינן תן גט זה -

however the text does not read ‘give this⁶ גט’ in the singular; which would

⁴ Once the agent was given the שחרור שטר, the אדון cannot change his mind. The agent may give the שטר שחרור to the עבד despite the protests of the אדון.

⁵ יא,ב. This rule of זכין לאדם שלא בפניו applies only when the intent of the giver is that the transaction takes place immediately; i.e. if he said specifically זכי – acquire the שטר for him. The giver, however, may decide to withhold the culmination of the transaction as long as he chooses, including that it become effective only after the intended recipient acquires it in his possession. However the גמרא maintains that (generally) the expression ‘תן’ – ‘give’, is equivalent to זכי. The transaction becomes effective immediately with the transference to the agent.

⁶ See the שם where he amends רש"י to read לתנו גט לאשתי רש"י where the הגהות ה"ה דף יג,א ברש"י שם. Omitting the word ‘זה’ also indicates that he is presently not transferring any document.

indicate that he is addressing his agent, and actually transferring the גט now to the agent with the intent that it be acquired for the עבד. Rather he said תנו in the plural; he was telling the people near him, that eventually [when he dies] they should present his עבד with the שטר שחרור -

שלא מסר ליד השליח בחייו -

for he did not transfer the שטר שחרור into the possession of the agent while he was living. On the contrary he told the people that only after his death should the שטר שחרור be given to the עבד -

לפיכך לא נחלקו חכמים בדבר לומר שמעשה ראשונה זכה לו השליח לעבד -

Therefore the חכמים did not contest ר"מ in this case to say that from the first moment that he said 'give', the agent acquired the שטר שחרור on behalf of the עבד -

להיות משוחרר:

that the עבד should be freed⁷. There was no transference of the שטר שחרור during the lifetime of the אדון. The entire concept of זכין לאדם שלא בפניו does not apply here. The אדון did not transfer the שטר to anyone while he was alive, that he should be זוכה it for the עבד. We see from this רש"י that had the אדון actually transferred the שטר שחרור to the שליח and told him לעבדי זה שטר שחרור זה then this would depend on the מחלוקת between ר"מ and רבנן if it is a זכות for the עבד to be משוחרר, and consequently according to the רבנן he becomes משוחרר immediately.

SUMMARY

explains the דין of מיתה לא יתנו לאחר in a case where the גט was given over to an agent to deliver it to the עבד. Nonetheless, even according to the חכמים who maintain that it is a זכות for the עבד to be משוחרר, we cannot give the שטר שחרור to the עבד after מיתת האדון. The חכמים agree that even though while the אדון is alive he cannot retract the גט, once he gave it to the agent, since it is a זכות for the עבד, nevertheless the עבד does not become משוחרר until the שטר שחרור is in his possession.

maintains that this cannot be. If we maintain that שחרור is a זכות for the עבד, then as soon as the agent receives the שטר שחרור the עבד is משוחרר.

That explanation of the משנה is, as רש"י himself states later on, that the אדון never relinquished the שטר. He told people that eventually they should give the שטר to the עבד. Since the אדון never transferred the שטר while he was

⁷ This culminates the quote from רש"י on this גא, יג, א. See תוספות there האומר ד"ה for various ways to interpret this משנה.

alive, there can be no זכיה for the עבד. After he dies, there is no מיתה.

THINKING IT OVER

1. How does תוספות interpret this משנה of מיתה?⁸
2. How do some commentaries explain רש"י in our גמרא?⁹

⁸ See footnote # 7.

⁹ See גמרא ד"ה האומר, ואילך (on the נח"מ).