

הואיל וכל קנינו בכסף - Since his entire acquisition is with money

Overview

The גמרא states that (even though) we derive that a Jewish slave can be acquired by a gentile with money since the פסוק states¹ מכסף מקנתו (from the money with which he was purchased); however regarding an עבד עברי who is sold to a Jew, we cannot derive that he too can be acquired through כסף, from an ע"ע who is sold to a gentile, since by a gentile 'his entire acquisition is with כסף'.² There is a dispute between הואיל וכל קנינו בכסף and תוספות רש"י.

פירש הקונטרס³ הואיל ולא נאמר בו משיכה בישראל -

קנין משיכה explained that we know that an עכו"ם is בכסף, כל קנינו בכסף, since the משיכה (pulling the object to acquire it) was not said in the תורה regarding an עכו"ם, as it is said regarding a ישראל -

דכתיב⁴ או קנה מיד עמיתך⁵ דבר הנקנה מיד ליד דהיינו משיכה -

As it is written, 'or buying from the hand of your friend'; the words קנה מיד עמיתך are understood to mean something which is acquired from the hand of the seller to the hand of the buyer, which is the קנין of משיכה.

In summation; רש"י maintains that (מה"ת) a ישראל is קונה with משיכה (but not with כסף), while an עכו"ם is קונה with כסף, but not with משיכה. [Therefore since the (only) קנין of an עכו"ם is with כסף, therefore he acquires an ע"ע also with כסף. However, a ישראל who has other קנינים can perhaps not be קונה an ע"ע with כסף.]

פרש"י asks on תוספות:

וקשה לרבינו תם לפי שיהא סתמא דגמרא כדריש לקיש⁶ -

And the ר"ת has a difficulty with פרש"י, since according to פרש"י it will turn out that this anonymous גמרא will be according to ר"ל -

דלרבי יוחנן דאמר בפרק הזהב (בבא מציעא דף מז, ב) דבר תורה מעות קונות⁷ -

For according to ר"י, who maintains in פרק הזהב that money is קונה מה"ת by a

¹ ויקרא (בהר) כה, נא

² However by a ישראל his קנין is not (only) with כסף.

³ בד"ה הואיל

⁴ ויקרא (בהר) כה, יד

⁵ מיד עמיתך (from the hand of your friend) indicates that we are discussing a sale between Jews; it is only by Jews that there is a קנין מיד ליד, the קנין of משיכה, but not by an עכו"ם (their קנין is only with כסף).

⁶ ר"ל maintains that מה"ת a ישראל is קונה במשיכה and an עכו"ם is קונה with כסף but not with משיכה.

⁷ ר"י maintains that מיד עמיתך refers to a קנין with money, which is given over from hand to hand.

- ישראל

דרשינן בפרק ב' דבכורות (דף יג, ב) מיד עמיתך בכסף הא לעובד כוכבים במשיכה⁸ -

We expound in the second פרק of בכורות 'from the hand of your friend',
you acquire with כסף, but by an עכו"ם you acquire it through משיכה -

וקיימא לן כרבי יוחנן לגבי ריש לקיש -

And we have established that the ruling is like ר"י against ר"ל; however here according to (בכסף קונה is נכרי ר"י (for we say that a נכרי is only according to פרש"י).

פרש"י has an additional question on תוספות:

ועוד דבמסכת עבודה זרה (דף עב, א) אמרינן דלכולי עלמא⁹ משיכה בעובד כוכבים קונה -

And furthermore, for in גמרא the מסכת ע"ז concludes that according to everyone
acquires by an עכו"ם. So how can רש"י state that an עכו"ם is only בכסף?!

כל קנינו בכסף offers his interpretation of תוספות:

לכך נראה לרבינו תם דהכי פירושו הואיל וכל קניינו דעובד כוכבים בעבד עברי בכסף -

Therefore it is the view of the ר"ת that this is the explanation of our גמרא; since
the only קנין of an עכו"ם by an ע"ע is with כסף. He cannot acquire an ע"ע in any other
manner except with כסף -

דכתיב ביה¹⁰ מכסף מקנתו לאפוקי שאינו קונה בשטר¹¹ -

For it is written regarding the acquisition of an ע"ע to a gentile (from
the money of his purchase) to exclude that the נכרי cannot acquire the ע"ע with
a שטר (a document) -

דישראל גופיה לא קני עבד עברי בשטר אלא משום דאיתקש לאמה¹² ואמה לאחרת¹³ -

For even a himself can acquire an ע"ע with a שטר, only since an ע"ע is
likened to an אמה and an אמה is likened to אחרת (the other) referring to a wife -
דדרשינן (לקמן דף טז, א) מה אחרת מקניא בשטר אף זו וכולי -

For we expound the פסוק of יקח לו אחרת, that just as אחרת is acquired with a

⁸ The view of ר"י is that a קונה ישראל (only) with money (מה"ת), and an עכו"ם is only with משיכה; the opposite of ר"ל (see footnote # 6).

⁹ See סתמא דגמרא states that this 'ועוד' is an additional proof that the ruling is like ר"י (and not like ר"ל) since the הלכה is like ר"י against ר"ל. [This is in addition to the accepted ruling that generally the הלכה is like ר"י against ר"ל.] However the ר"ל there does not include ר"ל (it can be referring to אשוי there.)

¹⁰ שם כה, נא.

¹¹ This does not mean that we derive from מקנתו מכסף that it excludes שטר (see א, ה that it excludes only שטר), rather תוספות means that we only know מכסף מקנתו and regarding שטר, the נכרי cannot be קונה the ע"ע as בשטר. [and מהרש"א continues to explain (see נחלת משה ובית לחם יהודה את שם)].

¹² The תורה writes (דברים [ראה] טו, יב) that העברי או העבריה (כא, י) comparing an עבד עברי to an אמה העבריה.

¹³ The תורה writes (שמות [משפטים] כא, י) regarding an אמה העבריה (whom the owner [or his son] was מייעד) that if יקח אחרת יקח, he will marry another women, etc. The פסוק compare the אמה to אחרת (a regular wife). See 'Thinking it over' # 1.

שטר,¹⁴ so too this one (the אמה), etc. is acquired with a שטר.

ובעובד כוכבים לא שייך האי טעמא שהרי אינו בתורת גיטין וקידושין¹⁵ -

However, by a gentile, this reason is not applicable, since he is not in the laws of קידושין and גיטין.

נכרי by a קנין שטר offers an additional comment regarding תוספות

ועוד נראה לרבינו תם דאפילו בקרקעות עובד כוכבים אינו קונה בשטר¹⁶ -

And furthermore it is the view of the ר"ת that gentiles, even regarding land, they cannot acquire them with a שטר; there is no קנין שטר to acquire real estate –

תוספות proves this:

כדאמר בחזקת הבתים (בבא בתרא דף נד, א) עובד כוכבים מכי מטא זוזי לידיה איסתלק ליה¹⁷ -

As a gentile as soon as the money comes to his hand, he removes his ownership from the property -

וישראל לא קני עד דמטא שטרא לידיה¹⁸ משמע דאין קנין שטר לעובד כוכבים¹⁹ -

However, the ישראל does not acquire the land until the deed of sale reaches his hand; it is apparent that there is no קנין שטר for an עכו"ם.²⁰

תוספות asks:

ואם תאמר לאו קל וחומר הוא -

And if you will say; but is it not a קל וחומר -

ומה עובד כוכבים שאינו קונה עבד עברי בשטר קונה בכסף ישראל כולי²¹ -

¹⁴ We derive (see לעיל ה, א) that a wife is נקנית בשטר from the פסוק (in כד, ב) (דברים [תצא] כד, ב) of ויצאה והיתה that just as she is sent away with a שטר she can be acquired with a שטר. We then derive אמה העבריה from אשה and ע"ע from אמה העבריה.

¹⁵ There is no lawful concept of גיטין וקידושין regarding the עכו"ם (they merely live with a woman [she is then considered married] or they simply separate). Subsequently there is no concept of קידושין בשטר and therefore no קנין שטר by a נכרי to acquire an אמה עבריה or עברי.

¹⁶ See עובד כד"ה עובד that a נכרי can acquire קרקע with כסף as we find by עפרון (see כג, טז) (בראשית [ח"ש] כג, טז), however we derive קנין שטר by קרקע from the פסוק of המקנה (in יא, א) (ירמיהו לב, יא) and there it was by a ישראל.

¹⁷ קנין כסף is effective by a נכרי, so as soon as the נכרי receives the כסף from the ישראל, he releases his ownership with the intent to transfer it to the ישראל.

¹⁸ A person who buys land does not finalize the purchase until he has the deed to the property (for only then is he assured that he will be able to retain the property). Therefore after the ישראל gave the נכרי the money (so the נכרי released his ownership), but before he received the שטר (the ישראל did not finalize the deal, and is not yet the owner), the property is הפקר, and whoever wants can be מחזיק in this property, עיי"ש.

¹⁹ If קנין שטר is valid by a נכרי (regarding קרקע) then the sale would not be finalized until the נכרי gave the שטר to the ישראל (and the נכרי would still own it until after the deed was delivered). The fact that the נכרי relinquishes his ownership right after receiving the money, even before transferring the deed, proves that regarding the נכרי, the שטר is meaningless; it is only the money that makes the נכרי relinquish his ownership.

²⁰ The meaning of קנין שטר by either of them. a נכרי has no קנין שטר; קרקע and עבד can now be broadened to include עבד.

²¹ The capacity of a נכרי to acquire an ע"ע is limited (for he cannot acquire him with שטר), but nevertheless he can acquire the ע"ע with כסף (showing that it is easy to acquire an ע"ע בכסף), so therefore if the capacity of a ישראל to

For what if by a נכרי who cannot acquire an ע"ע with a שטר, nevertheless he acquires the ע"ע with כסף, so a ישראל, etc. who can acquire an ע"ע with a שטר,²² should certainly be able to acquire an ע"ע with כסף!

answers: תוספות

ויש לומר דמסתברא דלכל אחד יש קנין לעצמו -

And one can say; that it is logical to assume that each one (the ישראל and the נכרי) has a separate קנין for himself -

כדאשכחן בפרק ב' דבכורות (דף יג, א) גבי מטלטלין מדישראל בחדא עובד כוכבים נמי²³ בחדא:

As we find in בכורות regarding the קנין מטלטלין where the גמרא states (according to ר"ל) since a ישראל has one קנין (namely משיכה) a נכרי also has only one קנין (namely כסף).

Summary

According to רש"י a נכרי can only be קונה with כסף (by all מטלטלין); according to a נכרי can be קונה an ע"ע (and קרקע) only with כסף (and not שטר).

Thinking it over

1. We know that an ע"ע is נקנה בשטר since דאיתקש לאמה ואמה לאחרת;²⁴ why does the גמרא ask how we know that ע"ע is נקנה בכסף, we can derive it in the same manner as we know that he is נקנה בשטר (from אמה and לאחרת), for an אשה (who is לאחרת) is נקנית?!²⁵ בכסף

2. Is the הנמכר לישראל final question (that we should derive קנין כסף by an ישראל through a ק"ו),²⁶ only on שיטת התוס' or according to רש"י as well?

acquire an ע"ע is greater than a נכרי (for the ישראל can acquire him בשטר), the ישראל should certainly be able to acquire the ע"ע בכסף. See 'Thinking it over' # 2.

²² אמה (see footnote # 12) and היקש through אמה העבירה from ע"ע we derive תוספות mentioned this previously that we derive ע"ע from אמה העבירה.

²³ נקנה בשטר (see footnote # 13) that they are אחרת from העבירה. The גמרא assumes there (based on the word עיי"ש) that there is a different mode of קנין for a ישראל and for a נכרי; the same distinction applies here, and we cannot derive a ישראל from a נכרי regarding כסף (or vice versa), even through a ק"ו. [Therefore the גמרא asks since a נכרי is קונה an ע"ע with כסף and a ישראל is קונה בשטר, perhaps it remains that way (as it is by מטלטלין) and a ישראל cannot be קונה an ע"ע with כסף.

²⁴ See footnote # 13.

²⁵ See מהרש"א.

²⁶ See footnote # 21.