

Let him say to him in the presence of two; Go! - לימא ליה באפי תרי זיל -

Overview

Our גמרא cites a ברייתא which states that an עבד עברי goes free with a שטר. The גמרא asks if the ברייתא means a שטר שחרור, why is it necessary to write a שטר? When the master wants to free the ע"ע, all he needs to do is to tell the ע"ע in the presence of two people;¹ 'Go; you do not owe me anything anymore'. תוספות explains why the גמרא chose this method of freeing the עבד as opposed to another method.

תוספות asks:

תימה אמאי פריך גמרא לימא ליה באפי תרי זיל אמאי לא פריך ויפקירנו?² -

It is astounding! Why does the גמרא ask, 'let him say to him in the presence of two witnesses; "Go!"' (instead of writing a שטר); why does not the גמרא ask, 'and let him (the master) be מפקיר him (the ע"ע)' -

שהרי אפילו עבד כנעני³ שגופו קנוי יצא בהפקר⁴ לשמואל דאמר -

For even an עבד כנעני whose body is owned by the master, goes out free through הפקר according to שמואל who maintains -

המפקיר עבדו יצא לחירות ואין צריך גט שחרור בפרק השולח (גיטין דף לח, א) ולמה לי שטרא -

In עבד כנעני his מפקיר, פרק השולח, one who is מפקיר the עבד, goes out to freedom and does not require a note of emancipation, so why is a שטר שחרור necessary?!

תוספות clarifies that his question is even according to the מ"ד that גט שחרור is:

ואפילו למאן דאמר⁵ (שם, ב) דהמפקיר עבדו יוצא לחירות וצריך גט שחרור⁶ -

And even according to the one who maintains that one who is מפקיר עבדו even though he goes out free, nevertheless he still requires a שטר שחרור -

¹ The need to tell him in the presence of two is that they should be witnesses so that the master will not be able to deny it later. See (ד"ה גרסי) ר"ן.

² By saying 'זיל', the owner is forgiving the obligation the ע"ע owes to his master (it is considered a מחילה); when he is מפקיר the ע"ע, the אדון is releasing completely his rights over the עבד. One difference will become apparent shortly.

³ An עבד כנעני is a non-Jew who is a slave by a Jew.

⁴ responded to the גמרא's question (זיל) (ולימא וכו' זיל) that since an ע"ע therefore זיל (which is מחילה [see footnote # 2]) would not be effective (you can only be מוחל something which is owed to you, but not something which you own); however הפקר is effective [even] for something which you own (that is the meaning of הפקר). Therefore תוספות asks if the גמרא would have asked, 'ויפקירנו', there could not be the response of רבא that ע"ע גופו קנוי. [It would appear then that 'תוס' question is not merely on the ה"א of the גמרא, but even according to the מסקנא; why do we need a שטר (even though ע"ע גופו קנוי, nevertheless) הפקר is effective even if ע"ע גופו קנוי (as תוספות explains). See מהרש"א.]

⁵ רב אבין אמר רב.

⁶ Perhaps that is the reason the גמרא did not want to ask ויפקירנו, because it still requires a שטר שחרור.

responds: תוספות

היינו משום הפקעת איסור⁷ כדי להתירו בבת ישראל -

That requirement for a גט שחרור is in order to remove the prohibition, so that he be permitted to marry a בת ישראל (for initially he was forbidden since he is an ע"כ -

ואם כן בעבד עברי למה לי שטרא דבלאו הכי מותר -

So therefore by an ע"ע there is no need for a שטר להתירו בבת ישראל, for without the שטר an ע"ע is permitted בבת ישראל. The question remains why did the גמרא ask ולימא (for which רבא would have no answer), when the גמרא should have asked, (which רבא answers), וכו' זיל (which רבא would have no answer).

answers: תוספות

ויש לומר דאין הכי נמי ומיהו לא הוה קשה למה לי שטרא ליפקוה בהפקר -

And one can say; that indeed it is so (that he can be מפקיר the עבד and there is no need for a שטר); **however there was never a question why do we need a שטר, let the master free him through הפקר**; that is no question -

דפשיטא דיש יציאות אחרות לבד משטר⁸ -

For it is obvious to the גמרא that there are other ways of freeing the ע"ע besides שטר -

אלא הכי קשיא ליה אף כשבא להוציאו בשטר למה לי שטר אותו לשון הכתוב בשטר -

But rather this was the difficulty the גמרא had; even when the master wants to release the עבד with a שטר, why do we need a שטר; the same language which is written in the שטר -

דהיינו הרי את בן חורין הרי את לעצמך כדתנן בהמגרש (שם דף פה, ב) -

Which is - as we learnt in the משנה in המגרש - 'you are a free man', 'you belong to yourself' -

אותו לשון עצמו יאמר לו בעל פה -

That very same language the master can tell the ע"ע orally, without writing it in a שטר -
דסלקא דעתין דאין צריך אלא מחילה כמו מחילת חוב בעלמא⁹ -

For we assumed that all that is necessary for the עבד to be freed, is only מחילה, like the forgiveness by any kind of loan; a lender may forgive the borrower the loan by merely stating it, without writing it; the same should apply to the ע"ע -

⁷ An ע"כ is a non-Jew (see footnote # 3). A בת ישראל is forbidden to marry an ע"כ.

⁸ Just like there can be no question why do we need that he redeems himself with כסף, when he can be freed through שטר (or vice versa); similarly we cannot ask why שטר when there is הפקר. They are two separate ways in which an ע"ע can gain his freedom.

⁹ The גמרא initially assumed that the ע"ע owes his master so many hours/years of work, which is a monetary obligation only. The owner has no rights (besides this monetary obligation) over the עבד. Therefore מחילה (forgiving this obligation) should be effective just as it is effective by any loan which is owed to someone.

ולבסוף דמסיק עבד עברי גופו קנוי לשון הכתוב בשטר אין מועיל בעל¹⁰ פה :

However at the end where רבא concluded that עבד עברי גופו קנוי (it is not merely a monetary obligation), therefore **the language which is written in the שטר** (and is effective to remove this קנין הגוף) **is not effective orally.**

Summary

An ע"ע can be freed through הפקר. The question of לי שטרא is that the very same written words can be said orally (since we assumed that there is only a monetary obligation owed to the master). The conclusion is that גופו קנוי requires a שטר to nullify the קנין הגוף.

Thinking it over

1. The rule is that הפקר needs to be done in the presence of three people. Perhaps that is why the גמרא said תרי זיל באפי תרי וכו' ולימא, that by מחילה even two is enough?!¹¹

2. What is the meaning of גופו קנוי?¹²

¹⁰ We require a קנין to remove the גופו קנוי; this cannot be accomplished orally (for an oral statement is not considered a קנין [merely a מחילה]); however when this very statement (of מחילה) is written in a שטר it has the power of a קנין.

¹¹ See נחלת משה.

¹² See בית לחם יהודה אות שנה (See also יבמות ע, ב ד"ה אלמא in תוס' and רש"י ד"ה גופו).