

## והרב שמחל על גרעונו - And the master who forgave his deduction

### Overview

רבא taught the since the גוף of the עבד is קנוי to the master, therefore a master who merely forgave the remaining money owed to him;<sup>1</sup> that debt is not forgiven. (אין גרעונו מחול and גופו קנוי) connects these two concepts and attempts to derive a ruling from this גמרא.

אבל אם לא היה גופו קנוי היתה מחילה מועלת<sup>2</sup> -

However (we can derive from רבא), if it were not גופו קנוי, the מחילה would be effective.

ויש לדקדק מכאן דמחילה לא בעי קנין<sup>3</sup> -

One may infer from here that מחילה does not require a קנין.

תוספות rejects this inference:

ומיהו יש לדחות דכיון שהוא מוחזק בגופו אין לך קנין<sup>4</sup> גדול<sup>5</sup> מזה:

Perhaps however, we can reject this inference, for since the עבד is in possession of his body, there is no greater קנין than this. Therefore even though by an עבד there is no need for (an additional) קנין, but by a debt there may be a need for a קנין in addition to the מחילה.

<sup>1</sup> The עבד was purchased for six hundred זוז (for instance) to work six years for his master (one hundred זוז per year). After working two years (for instance) the עבד owes his master four more work years (or four hundred זוז) – the גרעון רבא explains that since the master has a קנין הגוף in the עבד (not only a debt owed to him by the עבד), therefore מחילה (forgiving the debt) would not be effective. One can only be מוחל something which he is owed, but not something which he owns.

<sup>2</sup> The relationship of the עבד to the master (if we assume אין גופו קנוי) would merely be a monetary obligation (he owes him [four years of] work). Therefore the master can forgive this monetary obligation. Saying צא would be a proper מחילה.

<sup>3</sup> This means that when a lender says that he forgives a borrower his debt, the debt is cancelled (even though no formal קנין [חליפין] was made to finalize the מחילה). The מלוה cannot retract this מחילה. The inference that מחילה אין גופו קנוי is from the fact the רבא stated the reason צא (or מחילה) is insufficient is because גופו קנוי, but if אין גופו קנוי, then מחילה (or צא) is effective. However if מחילה צריך קנין then even if גופו קנוי the עבד should be freed without a שטר, since there was a קנין (which is effective [even] by an כנעני). Therefore we must conclude that the מחילה here is without a קנין and it would be effective if אין גופו קנוי (like a debt). See תוס' ב"מ קיב, א ד"ה חזור. [An alternate (simpler) explanation is that since if would maintain that אין גופו קנוי then צא (or מחילה) alone would be sufficient, this proves that מחילה א"צ קנין.]

<sup>4</sup> The servitude of the עבד to his master (even if we maintain אין גופו קנוי) is that he will work for him physically with his body [not that he owes him 'money'], therefore as soon as the master is מוחל (that the עבד's body need not work for him), the עבד קונה his body that it need not work for the master anymore. However by a loan, there is nothing physical which the לווה owes the מלוה (the money of the loan is long gone – מלוה להוצאה ניתנה), there is merely 'an obligation' to pay back the loan; therefore even though the מלוה was מוחל the debt, there is nothing tangible which the לווה acquires, and perhaps the מחילה requires a קנין to validate it.

<sup>5</sup> See 'Thinking it over'.

## **Summary**

There is no need for a קנין if the אדון was מוחל the ע"ע to make the שחרור effective (if we assume גופו קנוי), because the עבד is מוחזק בגופו; however by other debts perhaps מחילה requires a קנין as well.

## **Thinking it over**

<sup>6</sup> אין לך קנין גדול מזה therefore מוחזק בגופו, since he is עבד, writes that by an תוספות implying that even if מחילה צריך קנין, nevertheless there is no need for an additional מוחזק בגופו of קנין (if we assume גופו קנוי), since there is already the קנין by עבד. What therefore is s'רבא answer that ע"ע גופו קנוי; even if גופו קנוי, nevertheless there is a קנין (of מוחזק בגופו) that annuls the קנין הגוף of the master;<sup>7</sup> it is not merely מחילה, but there is a קנין which allows the עבד to acquire himself from the אדון?<sup>8</sup>

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<sup>6</sup> See footnote # 5.

<sup>7</sup> See footnote # 3 (from 'מ"מ in תוס').

<sup>8</sup> See (בד"ה והנה לפי) שם בית לחם יהודה אות שס (בד"ה והנה לפי).