

כי קאמר רב בפקדון אבל במלוה לא –

When did Rav say it, by a deposit, but not by a loan

Overview

The גמרא established that the dispute between ר"מ ורבנן regarding ע"פ is dependent whether the ruling of רב regarding מעמד שלשתן is only by a deposit (the גמרא or also by a loan (ר"מ).¹ Our תוספות derives a certain ruling from this.

asks: תוספות

ואם תאמר אמאי לא קאמר דכולי עלמא כי קאמר רב אפילו במלוה -

And if you will say; why did not the גמרא continue and say, it is possible that everyone agrees that רב said his ruling of מעמד שלשתן, even by a loan -

והכא מיירי במעמד שלשתן² וקמיפלגי בדשמואל דאמר אפילו יורש מוחל³ -

And here (in the dispute between ר"מ ורבנן by ע"פ) it is a case where he was מקדש her מעמד שלשתן, and they are arguing whether we accept the ruling of שמואל who maintains that even an heir can forgive the loan -

אי נמי סברי כשמואל ובסמכה דעתה קא מיפלגי וכדאמר לעיל⁴ -

Or the גמרא could have also said that both ר"מ ורבנן agree with שמואל, but they are arguing whether the woman trusts him not to be מוחל the loan, and as the גמרא said previously when we wanted to say (בדברי קמיפלגי, or) בדברי קמיפלגי, why here did not the גמרא do the same thing -

אלא מדלא קאמר הכי שמע מינה דאפילו שמואל מודה -

But rather since the גמרא did not say this, we can derive from this that even

¹ The rule of מעמד שלשתן is if ראוּבֵן has something of שְׁמֵעוֹן (either he is holding a deposit [or (according to ר"מ) he owes him money]), and שְׁמֵעוֹן says to ראוּבֵן (in the presence of לוי), whatever you have of mine give it to לוי. The rule is that לוי acquires this item. In our case שְׁמֵעוֹן owed ראוּבֵן money and ראוּבֵן said to שְׁמֵעוֹן in the presence of the woman, give her the money you owe me, as כסף קידושין according to ר"מ who maintains that מעמד שלשתן is effective even by a מלוה, she is מקודשת, but according to רבנן who maintain that מעמד שלשתן is effective only by a פקדון (but not by a מלוה), she is not מקודשת.

² תוספות may be explaining what purpose is there in saying that they argue in שמואל (or in דעתה), when we already mentioned that מחלוקת previously on this עמוד. Therefore תוספות adds that here we are arguing in a case of מעמד שלשתן, so there is some novelty here, firstly that מעמד שלשתן is effective by a loan, and secondly that there is מחילה (even) by מעמד שלשתן.

³ It is not clear (to the translator) why 'ואפי' יורש מוחל' (instead of just saying מחול).

⁴ It is always preferable (whenever possible) to keep as many options open as possible and not to restrict ourselves, like in our case where we said that רבנן maintain that מעמד שלשתן is not applicable by a loan, when it is possible to say that they can maintain either way. This is what the גמרא did previously, first we said that they argue in רבי (whether אוֹתוֹת נְקוּטוֹת במסירה) and then we said it is possible that all disagree with רבי. The same with רב פפא, initially we said they argue in ר"פ and then we said it is possible that all agree with ר"פ and are arguing in שמואל, etc. [Additionally the הלכה is that מעמד שלשתן is effective even by a loan, therefore this would make the רבנן in accordance with the הלכה.]

admits - (המוכר שט"ח לחבירו וחזרו ומחלו מחול (who maintains שמואל

דהמקנה לחבירו במעמד שלשתן ומחלו אינו מחול -

That one who gifts to his friend a loan and then was מוחל, it is not

מחול. Therefore the גמרא could not have said they are arguing in שמואל or in סמכה דעתה (since there is no ruling of שמואל by שלשתן).

clarifies an anticipated difficulty:

והא דקאמר לעיל המוכר שטר חוב לחבירו וחזר ומחלו מחול -

And this which the גמרא said previously (the ruling of שמואל) that המוכר שט"ח

- לחבירו וחזר ומחלו מחול

היינו דוקא כשאין הלואה בפנינו בשעה שמכר לו את השטר:

That is only if the לואה is not present at the time when the שטר sold the מלוה to the

buyer; however if all three were present, then as תוס' just said the rule of שמואל does not apply. There can be no מחילה afterwards by שלשתן.

Summary

The rule of שמואל (that לחבירו וחזר ומחלו מחול) does not apply to מעמד שלשתן.

Thinking it over

Previously⁵ explained the reason why לחבירו וחזר ומחלו מחול is because מכירת שט"ח is only מדרבנן. Now all agree that מעמד שלשתן is only a קנין⁶? מחל, so why here is the rule that he cannot be מחל?

⁵ (עמוד בד"ה המוכר (on this

⁶ See # 183-5. אוצר מפרשי התלמוד