Words in the heart, are not words - דברים שבלב אינם דברים

Overview

The גמרא related that a person sold his assets with the intent of going to live in ארץ ישראל, however when he made the sale he did not say anything to the buyer. He was not able to go to א"י and wanted to nullify the sale. רבא said that his intention was only in his heart; he did not verbalize it and דברים שבלב אינם דברים, the sale is valid. תוספות discusses what the rule would be had he verbalized his intent.

משמע דוקא משום שלא פירש דבריו[1] אבל אם פירש דבריו להדיא -

It seems that he cannot nullify the sale **only because he did not verbalize it, however if he explicitly stated his intention -**

ואמר בשעת המכר שהוא מוכרם לפי שהוא רוצה ללכת לארץ ישראל[2] הוה המכר בטל -

And would say at the time of the sale that he is selling his assets **because he wants to go to א"י, the sale would be nullified** (it is no longer דברים שבלב).

תוספות asks:

וקשה אמאי הא בעינן תנאי כפול[3] והרי לא התנה שאם לא ילך לא יתקיים המקח -

And there is a difficulty; why is the מכר בטל if he mentioned his intention to go to א"י, **but we require a 'double stipulation', and he did not stipulate that if he does not go, the sale is not valid,** therefore even if he indicated his intention to go to א"י, the sale should be valid since it is not a תנאי כפול.

תוספות offers an answer:

ורבינו שמואל בן מאיר פירש[4] (סוכה דף מא,ב) גבי אתרוג על מנת להחזיר[5] -

And the רשב"ם explained regarding giving **an אתרוג on the condition that it be returned,** the rule is -

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[1] רבא said the sale is valid since דברים שבלב אינם דברים; indicating that if it was verbalized it would void the sale.

[2] It appears from תוספות language that the sale would be בטל even if it was not a stipulation (I am selling my field with the condition that I am going to א"י), but rather he only mentioned it as information, nevertheless the מכר is בטל.

[3] תנאי כפול or double stipulation means that when one makes a stipulation (regarding a sale for instance) if he wants that the non-compliance with the stipulation should nullify the deal, he must state it both ways; the deal will be effective if the stipulation is met, and if it is not met the deal is voided. However a one sided stipulation (the deal is effective if the stipulation is met) will not void the deal if the stipulation is not met (see footnote # 17). This is the view of ר' מאיר later on סא,א. [Whenever a תנאי (stipulation) is not effective (it is not a תנאי כפול for instance) the deal is valid even if the תנאי was not fulfilled.]

[4] The רשב"ם can be found in ב"ב קלז,ב ד"ה ואם לאו.

[5] A person did not have an אתרוג (the ד' מינים) and asked someone to give him his. The giver gave it to him with the stipulation that he return it, after he finishes doing the מצוה.

אם החזירו יצא[6] לא החזירו לא יצא[7] -

If the borrower **returned** the אתרוג **he fulfilled** the מצוה of ד' מינים; however if **he did not return** the אתרוג **he did not fulfill** the מצוה of ד' מינים; the רשב"ם explains -

ואף על גב דבעינן תנאי כפול[8] הני מילי באיסור כגון התקדשי לי על מנת שתתני לי מאתים זוז -

And even though a תנאי כפול is required; that is only by prohibitions, for instance if a person says to a woman **become מקודשת to me with the stipulation that you give me two hundred זוז** (in such a case it needs to be a תנאי כפול, otherwise the תנאי is בטל and the קידושין is קיים, even if she gave him nothing) -

וכן בגט אתקין שמואל[9] בגיטא[10] דשכיב מרע[11] אבל בממון לא בעינן תנאי כפול[12] -

And the same by a גט (which is [also] איסור) we find that **שמואל instituted by a גט of a שכיב מרע** (that he should write if I do not die; it should not be a גט, and if I die it should be a גט as of now); **however regarding monetary** issues (like by the אתרוג and the same with our case here) **we do not require a תנאי כפול.**

תוספות disagrees with the רשב"ם.

ולא נהירא דהא כל תנאי[13] ילפינן מבני גד ובני ראובן[14] והתם דבר שבממון[15] -

And תוספות **does not agree, for all** the laws of **תנאי we derive from** the תנאי made with the **בני גד ובני ראובן, and there it was a monetary issue.** So how can we differentiate between איסור and ממון?!

תוספות offers his answer:

ואומר רבינו יצחק דצריך לחלק ולומר דיש דברים שאינם צריכין תנאי כפול -

And the ר"י says that it is necessary to differentiate and say that there are certain cases where a תנאי כפול is not required -

אלא גלוי מילתא[16] דאנן סהדי דאדעתא דהכי עביד[17] -

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[6] He fulfilled the תנאי and therefore it was a valid gift for that duration and he 'bentched' on his own ד' מינים.

[7] He did not fulfill the תנאי, so the 'gift' of the אתרוג is void and he 'bentched' on a stolen אתרוג.

[8] There was no תנאי כפול here, he merely said 'here is the אתרוג with the תנאי that you return it'; he did not say, 'if you do not return it, the gift is void'. Since it was not a תנאי כפול it is an ineffective תנאי, and by an ineffective תנאי the מעשה (the gifting) is valid, so why was he not יוצא the מצוה?

[9] גיטין עה,ב.

[10] A שכיב מרע, who had no children, did not want his wife to 'fall' into יבום if he dies. He also does not want to divorce her (which will free her from יבום), because he may recover. He gives her a גט with a תנאי; this תנאי needs to be a תנאי כפול as תוספות continues (see footnote # 11).

[11] The הגהות הב"ח inserts here, אבל אם לא מתי לא יהא גט אם מתי יהא גט וכו' מרע (instead of מרע אבל).

[12] Therefore here if he would have stipulated that he is selling to go to א"י the מכר would be בטל.

[13] There are other laws of תנאי (besides תנאי כפול) such as תנאי קודם למעשה and הן קודם ללאו, etc.

[14] משה stipulated (see במדבר [מטות] פרק לב) with the ר"ג וב"ב that if they will cross the ירדן and fight with the other שבטים, then they will receive their inheritance in עבר הירדן, however if they do not cross the ירדן and fight, they will not receive their inheritance in עבר הירדן. It was a תנאי כפול.

[15] It was about which property they would inherit (it was not מילי דאיסורא).

But even a גילוי מילתא is sufficient, **for we** (the בי"ד) **testify that he did it only if this** stipulation will be met -

וגם יש דברים דאפילו גילוי מילתא לא בעי -

And there also are cases where even a גילוי מילתא is not required -

כגון ההיא[18] דהכותב כל נכסיו לאחרים ושמע שיש לו בן שהמתנה בטלה -

For instance that case **where one wrote over all his assets to strangers, and he heard** afterwards **that he has a son,** in which case **the gift is voided -**

וכן הכותב[19] כל נכסיו לאשתו לא עשאה אלא אפוטרופא -

And similarly one who wrote over all his assets to his wife (ignoring his children), **he only made her an executor;** the reason for these two rulings is **-**

לפי שאנו אומדין שלכך היה בדעתו -

For we assume (in these two cases) **that this was his intention -**

וכמו כן אנן סהדי דלא זבן אלא אדעתא למיסק לארעא דישראל:

And the same thing here if he would have made his intention known, the sale would be void (even if there was no [כפול] תנאי), for **we are witnesses that he did not sell** all his assets, **only with the intent to go to א"י,** but not otherwise.

Summary

A תנאי כפול is required when we are not certain what is the intention of the one making the תנאי, if however he makes it clear what his intention is, we do not need a תנאי כפול; in fact sometimes we do not even need a גילוי מילתא if we are certain of his intentions.

Thinking it over

How do we explain all the cases in our משניות, which were not stated as a תנאי כפול (like ע"מ שאני עני ונמצא עשיר, etc.); why are they valid.[20]

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[16] גילוי מילתא (a revelation of the thing) means that we are made aware of the situation (in an informal manner).

[17] When a person makes a deal (a sale) with a stipulation, it is possible that he wants the deal regardless (whether or not the stipulation will be met), but he makes the stipulation hoping that it will be fulfilled (which will give him additional gain), therefore unless he is very specific and states the negative (that if the stipulation is not met, the deal is off), we assume that the תנאי is בטל and the deal is on. However there are certain situations where it is obvious that he wants the deal only if the stipulation is met (like here if he would have made it clear that he is selling only because he is travelling to א"י), in that case a תנאי כפול is not required. [In fact no תנאי is required, we only have to know his intent, as can be seen from the examples תוספות brings regarding הכותב כל נכסיו and הכותב נכסיו לאשתו.]

[18] ב"ב קלב,א. The case there is where someone's son traveled overseas and the father heard that he died so he wrote over all his assets to another party.

[19] ב"ב קלא,ב.

[20] See מהרש"א and נחלת משה.