

And what is it; חליפין

ומאי ניהו חליפין –

OVERVIEW

The תוספות teaches that we derive from the פסוק¹ of מכסף מקנתו, that an עבד may be acquired with כסף but cannot be acquired וכלים ובואה, which is interpreted (by some) to mean that he cannot be acquired through חליפין. Our תוספות discusses the various laws concerning the acquiring and freeing of an עבד כנעני and an עבד עברי through חליפין

אין עבד עברי נקנה בחליפין² ולא קונה עצמו בחליפין –

An עבד עברי cannot be acquired as an עבד with חליפין, and in addition an עבד cannot acquire himself to be freed from his master with חליפין.

חליפין explains how we know that an ע"ע cannot acquire himself with חליפין:

דמה שהוא קונה בכסף נפקא לן מהאי קרא דמכסף מקנתו³ לקמן (דף יד, ב) –

For since that which an ע"ע can acquire his freedom with כסף is derived later in the גמרא from this very פסוק of מכסף מקנתו, therefore just as this פסוק excludes acquiring an ע"ע with חליפין, it also excludes an ע"ע from acquiring his freedom through חליפין

עבד כנעני and an ע"ע distinguishes between an ע"ע and an עבד כנעני:

אבל עבד כנעני נקנה בחליפין כדנתי⁵ בפרק השולח (גיטין דף לט, ב) –

However an ע"ע is acquired [and can acquire himself] with חליפין as we learnt in פרק השולח –

גבי שקל כומתא ושדא בה אמר לה קני האי וקנה נפשך –

concerning the case of a slave owner who grabbed his hat and threw it to his (female) slave, saying to her 'acquire this hat and with it acquire yourself to be free'. ruled that she does not go free –

ומשמע משום דהויא ליה כליו של מקנה⁶ לא עשה ולא כלום –

¹ ויקרא (בהר) כה, נא.

² This is what this תוספות teaches us (according to those who interpret תבואה וכלים to mean חליפין).

³ מכסף מקנתו teaches us (not only) that an ע"ע is בכסף (for this is the simple meaning of the פסוק), but also that he acquires his freedom with כסף as the פסוק states מקנתו מכסף.

⁴ Others amend this to טז, א.

⁵ Others amend this to read כדאמרין, since it is a מימרא (and not a ברייתא or משנה), while others read כדנתי. The גמרא cites a ברייתא on כב, ב, which states that an ע"ע is acquired לקמן (כב, ב) וקונה עצמו כדאמרין בפרק השולח. אף בחליפין, and from the גמרא in גיטין we can infer that he is ע"ע בחליפין. See the רש"י that in this תוספות the words קונה or נקנה (by וע"כ) mean both קונה and נקנה.

⁶ In חליפין where the seller (or giver) wants to transfer an item to a buyer (or recipient), the buyer hands the seller any article (of clothing, etc.) and when the seller takes this article, the item to be sold is

And it appears that the reason she is not freed (as a result of this קנין חליפין) is **because** when חליפין are done **using the utensils of the מקנה**, **nothing is accomplished** –

– אבל בכליו של קונה קנתה ומתורת חליפין משמע ולא בתורת כסף⁷

However if it were done **with the utensils of the acquirer** (if the חליפין would belong to the שפחה who is acquiring her freedom) then **she would acquire** herself. **And it seems** that this acquisition of her freedom would be as a result of **the rules of חליפין**, **but not** the she is acquiring her freedom under **the rules of כסף**. This proves that קנין חליפין is effective by an ע"כ.

וכך פירש רבינו חננאל שם:

And the ר"ח there, also explains it in this manner.

SUMMARY

An עבד כנעני cannot be נקנה or קונה himself through חליפין; however an עבד כנעני can be נקנה through חליפין as well as with חליפין את עצמו.

THINKING IT OVER

According to those who do not interpret תבואה וכלים to mean חליפין, what is the ruling concerning קנין חליפין by an עבד עברי⁸?

transferred to the ownership of the buyer (even if physically it is still in the domain of the seller). However, the article which is handed to the seller must belong to the buyer; otherwise the קנין חליפין is not effective. In this case the hat belonged to the owner (who is the מקנה; he is gifting the slave her freedom), not to the קונה (the slave who intends to acquire her freedom), therefore the חליפין is ineffective and she remains a slave. (In addition the מקנה made the חליפין and not the קונה.)

⁷ One may think that if the article would belong to the שפחה then she would be free as a result of פדיון through כסף and there would be no proof she can acquire herself through חליפין. Therefore תוספות states that the indication of the גמרא is that if it would have belonged to her she would be freed as a result of קנין חליפין, for if we will assume that קנין חליפין is always ineffective for freeing a ע"כ, then why does the גמרא state that she is not freed since it is של מקנה, כליו של מקנה, the גמרא should have simply said she is not free since חליפין is ineffective by a ע"כ. This proves that חליפין is effective for an ע"כ, however in this case it was ineffective since it was של מקנה and not של קונה.

⁸ See נח"מ.