

מנה אין כאן משכון אין כאן –

There is no מנה here; there is no collateral here

OVERVIEW

ruled in a case where a man said to a woman, 'become מקודשת to me with a מנה'; however he did not give her a מנה, rather he gave her an object to hold as collateral until he will give her the מנה; she is not מקודשת, because מנה אין כאן משכון אין כאן. Our תוספות will discuss this rule and its application. A משכון is generally associated with a guarantee of the לזה to the מלוה that the loan will be repaid. It does not create any obligation; it merely secures the existing obligation. This תוספות discusses whether a משכון can create an obligation where none existed prior to the giving of the משכון.

פירוש¹ ואינה מקודשת לפי שהאשה נקנית בכסף והכסף אינו בעין –

The explanation of the phrase מנה אין כאן משכון אין כאן is that she is not מקודשת, since a woman is acquired with money, and the money is not forthcoming, therefore -

היאך יקנה שאין המשכון תחת הכסף כיון שלא ישאר ביד האשה –

How can the man acquire the woman with a משכון, since the משכון is not in place of the money, for it will not remain in the woman's possession!

explores an alternate situation:

ודאי אי אמר לה התקדשי לי במשכון זה והמשכון יהיה שלך² פשיטא דמקודשת –

Certainly, if he said to her, 'become מקודשת to me with this משכון and the משכון will be yours', then it is obvious that she is מקודשת. However in the case of רב נחמן where he was מקדש her with the money and not the משכון; she is not מקודשת.

continues:

וכמו כן אם אדם אומר לחבירו אתן לך מנה במתנה³ והניח לו משכון עליה –

¹ The term פירש is (usually) used to denote that תוספות is rejecting another (perhaps more obvious) explanation. It is possible that תוספות is rejecting (בד"ה מנה) פירש"י. See אות ה (על הרא"ש) אות ה.

² This would seem to be a case where he initially intended to be מקדש her with a מנה. However since he has no מנה presently, he is giving her a משכון (to guarantee that he will eventually give her the מנה), and is saying to her that the קידושין should be effective through this משכון, which will belong to her (until he pays her the מנה). See footnote # 5.

³ The (mere) fact that he told him he would give him a gift, certainly does not obligate him monetarily to owe him a gift. There is no commitment by just promising a gift. תוספות teaches that even the giving of a

And similarly if a person says to his friend, 'I will give you a מנה as a gift', and he left over a משכון to assure that he will give him the מתנה; the ruling is that the recipient -

לא קנה המנה במשיכת המשכון⁴ ואין לחלק בין מתנה לקידושין⁵ – did not acquire the gift through the משיכה of the משכון. And one should not differentiate between a מתנה and קידושין; the ruling is the same in both that מנה אין כאן משכון אין כאן. A משכון is not an obligation to pay.

offers an alternate view:

ורבינו חיים כהן בשם רבינו תם אומר שאם אדם לחבירו אתן לך מנה במתנה – And ר"ה כהן says in the name of the ר"ת, that if a man says to his friend, 'I will give you a מנה as a gift -

והילך משכון עליו ואל תחזיר לי המשכון עד שאתן לך המנה – And here is a משכון to guarantee it, and do not return the משכון to me unless I give you the מנה -

דאז ודאי יכול לעכב המשכון עד שיתן לו המנה⁶ – Then the recipient may certainly retain the משכון until he gives him the מנה.⁷

משכון to guarantee his promise is insufficient to obligate him for the gift. The משכון must be returned and there is no obligation concerning the gift.

⁴ קידושין is introducing a novelty in the ruling of א"כ משכון א"כ; not only is the משכון ineffective by קידושין since it is not considered as a transfer of funds, but in addition a משכון cannot create an obligation in a situation where there was no obligation prior to the giving of the משכון. [Even if we maintain that a משכון is ineffective by קידושין (because קידושין requires an actual transfer of funds from the man to the woman), we could have maintained that a משכון can create an obligation on the benefactor to honor his words, since he gave the משכון. However תוספות rejects this distinction. See (however) following footnote # 5.]

⁵ It would seem that תוספות maintains that if a משכון could create an obligation by מתנה, there is reason to assume that a משכון would be effective by קידושין as well. The reason a משכון would be effective by מתנה would be that by giving the משכון, the נותן is granting the מקבל a specific monetary right in the משכון; thereby obligating himself to redeem the משכון (if he wants it returned). Therefore by קידושין it would be very similar to (if not the same as) the case of במשכון לי (see footnote # 2) where תוספות maintains that she is מקודשת since she has rights to the משכון (even though she does not own it [since he can have her return it when he redeems it with the monies promised]). [This may be the reason תוספות mentions the case of ודאי אי אמר וכו'.]

⁶ There are different interpretations as to the meaning of ר"ה כהן. Some maintain that generally he is in agreement with תוספות that a משכון cannot create a new obligation. However if the benefactor specifically told the beneficiary that he should not return the משכון until the benefactor honors his pledge, then the beneficiary is entitled to keep the משכון, until he receives the funds promised. Others maintain that ר"ה כהן disagrees with תוספות and maintains that if a משכון was given, it creates an obligation on the benefactor, even if he did not specifically state, 'do not return the משכון until I give you the money'. (Those words were mentioned by ר"ה כהן [merely] as an explanation why the beneficiary may keep the משכון; since this is the essential meaning of every משכון, so it is considered as if he specifically told him so.)

(תוספות according to) מנה אין כאן משכון אין כאן that רב נחמן asks on the ruling of תוספות

ותימה מהא דאמר בהשוכר את האומנין (בבא מציעא דף עה, ב) –

And there is astonishment on this ruling of מא"כ מא"כ based on that which the גמרא states in פרק השוכר את האומנין –

גבי השוכר את הפועלים להעלות פשתן וכל דבר שהוא אבוד –

Concerning the משנה which states, one who hires workers to remove the flax (from where it is soaking) or any type of work which is timely⁸; if it is a place –

מקום שאין שם אדם⁹ וחזרו בהן שוכר עליהן או מטען¹⁰ –

Where there no other people to hire and the workers retracted, the owner may hire other workers on their expense, or the owner may deceive them. This concludes the משנה.

וקאמרין¹¹ עד כמה שוכר עליהן אמר רב נחמן עד כדי שכרן¹² –

And the גמרא discusses there and asks, 'up to how much can he hire new workers at the expense of the original workers'? רב נחמן ruled up to the amount of wages that that he owes them. The גמרא continues –

איתיביה רבא לרב נחמן עד ארבעים וחמשים זוז –

challenged רבא that we learnt in a ברייתא that he can hire new workers up to forty or fifty זוז; an amount that is greater than what he would (usually) owe the original workers. Why does רב נחמן limit the amount to the wages which he owes them? רב נחמן responded. That ברייתא –

התם כשבאת חבילה בידו פירוש שבאו כלי אומנות של פועל ליד בעל הבית¹³ –

there, is discussing a case where the owner has the worker's bundle in his possession, meaning that the workman's tools were in the possession of the owner, and therefore he can sell those tools and increase the pay of the new workers up to the amount of these tools. This concludes the citation from ב"מ. Now concludes his question:

והשתא כי באת חבילה בידו מאי הוי הא מנה אין כאן משכון אין כאן –

⁷ By מקודשת however קידושין ר"ה כהן obviously agrees ([even] in this case) as רב נחמן ruled that she is not מקודשת since מא"כ מא"כ (even though [in the case of ר"ה כהן] she may need not return the משכון unless he pays her [notwithstanding that she will not be מקודשת to him]). See (however) footnote # 47 and onwards.

⁸ A loss will be incurred if the work is not completed immediately.

⁹ There were no workers who were willing to do the job for the same wages as the original workers.

¹⁰ The employer may tell the workers that he will raise their wage, and when they finish, he is only obligated to pay them the original wage; not what he added to induce them to continue.

¹¹ ב"מ עה, א.

¹² If the original workers quit after working three hours (for instance), he can add the pay of those three hours to the new workers regular pay (to induce them to come) and not pay the original workers anything.

¹³ The owner (usually) requires that the workers deposit their tools by him to assure their coming to work (the workers agree for otherwise they would not be employed). See footnote # 15.

But now that we maintain א"כ משכון א"כ מנה, even if the bundle is in his possession what of it! For we should apply the ruling of מא"כ מא"כ¹⁴ He should have no right to sell their bundle even if we consider it to be a משכון for their work.

answers: תוספות

ויש לומר דלא דמי דהתם גרמו לו הפסד¹⁵ –

And one can say; that the cases are not comparable, for there by the workers, they caused him a loss, therefore he can be compensated from whatever they deposited as a משכון.

offers an alternate explanation: תוספות

ועוד שאין החבילה בתורת משכון אלא קנוייה לו לשכור פועלין¹⁶ –

And in addition; the bundle is not merely given as a משכון, but rather it is acquired by the owner to hire other workers.

הלכה: תוספות finds a practical application of this

וכשרגילין לעשות שידוכין צריך ליזהר בדבר יפה –

And when marriages are arranged one must be extremely careful when accepting financial repercussions should they recant on the שידוך -

שיאמר הרי אני מקנה לך כך וכך בגוף החפץ –

That each of the committing parties should say I am granting to you (the other party) such an amount of money in this object which is held in escrow (if I should recant on the שידוך) -

דאם אמר אם אחזור בי אתן לך כך וכך והא לך משכון –

For if the party will (merely) say, ‘if I recant I will pay you this sum, and here is the משכון to guarantee it, then the ruling will be that -

מנה אין כאן משכון אין כאן –

מנה אין כאן משכון אין כאן and he will not be liable for his commitment of payment.

offers a possible alternate view: תוספות

ושמא בשדוכין לא אמרינן מנה אין כאן משכון אין כאן –

¹⁴ Granted (even) that the workers deposited their tools by the employer as a guarantee of their working; however as stated above a משכון cannot create an obligation. The rule of מא"כ מא"כ should apply

¹⁵ There can be no comparison between a משכון which is given to create an obligation regarding a gift (where it is ineffective, for we can assume that the whole transaction was not taken seriously by the benefactor), to a משכון which guarantees protection from a loss (which is effective, since all the parties involved, including the workers, realize its importance [it assures the workers of their employment, and protects the owners from loss]). See footnote # 13. See ‘Thinking it over’ # 1.

¹⁶ There is a tacit understanding when the workers deposit their tools by the owner, that the employer has the right to sell them in order to procure new laborers if they do not finish the work.

- מא"כ מא"כ we do not rule שידיוכין That perhaps by

כיון שכשהאחד מהן חוזר בו השני מתבייש בדבר:

For since if one recants, the second party is embarrassed in this matter.¹⁷

SUMMARY

If a man intends to be מקדש a woman with a מנה and tells her that he will (eventually) give her the מנה, and now he is giving her a משכון as a guarantee of his intention she is not מקודשת since מא"כ מא"כ; meaning that since he did not give her the מנה with which he intends to be מקדש her, rather he merely gave her a guarantee, it is ineffective קידושין, since קידושין requires a transfer of כסף. However if he gave her the משכון as קידושין and stipulates that when he has the money she will return the משכון, then she is מקודשת, since he is giving her something of value at the time of the קידושין.

Concerning promising a gift, the same rule applies that a משכון cannot create an obligation where none existed before, and the intended beneficiary is required to return the משכון to the owner. However if the benefactor clearly stipulated that the beneficiary should not return the משכון until the benefactor gives the promised gift, then he may keep the משכון.¹⁸

There are exceptions to this rule of מא"כ מא"כ, notably where the משכון is given to prevent a possible monetary loss or embarrassment to the recipient as in the cases of workers (leaving their jobs) and (recanting) שידיוכים.

THINKING IT OVER

1. ¹⁹ explained תוספות that since the workers caused a loss, therefore he can collect from their חבילה (משכון). Seemingly if they caused a loss, why cannot he collect from them even they gave no משכון?²⁰

2. What is the דין if one is מקדש a woman by giving her his check?²¹

¹⁷ It is not considered a משכון which creates an obligation but rather it is a guarantee of payment for the embarrassment caused to the other party; similar to the case of the workers (who cause a loss). See footnote # 15.

¹⁸ See footnote # 6 for an alternate view.

¹⁹ See footnote # 15.

²⁰ נה"מ בד"ה בא"ד דהתם

²¹ On one hand giving a check (seemingly) creates an obligation, on the other hand he is not giving her anything of actual value at this time (a check is merely a right to collect funds from the writer's assets).