

לבר מאשה לפי שאין אשה נקנית בחליפין¹ –

Aside from a woman, for a woman is not acquired with חליפין

OVERVIEW

concluded (that רבא meant to say) that a מתנה ע"מ להחזיר is always effective (by פדה"ב, מכר, תרומה and מוכר) except by קידושין because a woman cannot be acquired with חליפין. A cursory reading would indicate that מעמ"ל is equivalent to חליפין². Our תוספות explains it differently.

asks:

ואם תאמר במאי דמו לחליפין אי משום דחליפין הדרי –

And if you will say; in what manner is a מתנה ע"מ להחזיר similar to חליפין?

Is it because חליפין are returned to the original owner just as by a מעמ"ל, but this is not so -

– הא בחליפין גופיהו אמר בנדרים פרק השותפין (דף מה,ב) דאי תפיס לה מיתפסי –

For concerning חליפין itself (it is) רב אשי who rules in נדרים פרק מסכת נדרים פרק חליפין that if the recipient of the חליפין seized the חליפין as his own it is a proper seizure and he may keep it. It is evident that חליפין, which must not be returned, is different from a מעמ"ל which must be returned. What, therefore, does the גמרא mean that חליפין is not effective by a woman since a woman is not acquired with חליפין?!

answers:

– ונראה לרבינו יצחק דלאו חליפין הוא³ ומדרבנן הוא דלא הוה קידושין –

And it is the view of the ר"י that מעמ"ל is not חליפין and it is only מדרבנן that חליפין is not an effective קידושין and the reason is -

– לפי שדרך העולם להחזיר חליפין והני כעין חליפין דמי –

Because the universal custom is to return the חליפין and this מעמ"ל is therefore similar to חליפין because it is also returned -

– ואתי למימר אשה נקנית בחליפין הילכך אפקעינהו רבנן לקידושין מינה –

And people will mistakenly come to say that a woman is acquired with חליפין, therefore the רבנן nullified the קידושין from her, and declared the קידושין of מעמ"ל to be invalid.

proves his point that מעמ"ל is not actually חליפין:

– תדע דאי כחליפין דמו במכר היאך קנה בהאי מנה הא אין מטבע נעשה חליפין –

¹ See the גמרא on ג,א and the תוספות there ואשה ד"ה for a full explanation why a woman is not חליפין.

² See חליפין דמי כקנין סודר דאינו אלא אוהו בה ומחזירו רש"י ד"ה אלא.

³ Therefore if one gave a woman קידושין as מעמ"ל it would be a valid מדאורייתא.

You can know that מעמ"ל is not actually חליפין, for if מעמ"ל is similar to חליפין then by a sale how does he acquire the item with this מנה⁴ that he is giving the seller as a מעמ"ל, since we know that a coin cannot be utilized for חליפין.⁵

חליפין offers an additional; proof that מעמ"ל is distinct from חליפין:

וכן בפדיון הבן למה יהא בנו פדוי בחליפין הלא כסף ה' שקלים כתיב⁶ ולא חליפין:
And similarly by פדה"ב when he gave the כהן the חמש סלעים as a מעמ"ל, why should his son be considered redeemed with this חליפין, for it is written in the תורה that the father should give the כהן five שקלים of כסף, but not חליפין. These two גמרות prove that מעמ"ל is not considered חליפין at all. We must therefore say that the reason מעמ"ל is ineffective by קידושין is because to people it appears the equivalent of חליפין (since [customarily] they are both returned), and if we allow חליפין by מעמ"ל they will mistakenly also allow it with חליפין.

SUMMARY

קידושין with a מעמ"ל is not valid מדרבנן out of concern that people will mistakenly validate קידושין which are performed with חליפין, which appears similar to מעמ"ל.

THINKING IT OVER

If the חכמים saw fit to annul the קידושין by מעמ"ל because it can be confused with חליפין, why did they not also annul the פדה"ב that was performed with מעמ"ל out of concern that people would do it also with חליפין?⁷

⁴ previously said (as רב אשי explains it) that if someone says here is a להחזיר it is effective in a sale. However if מעמ"ל is considered חליפין there is no קנין, since מטבע cannot function as חליפין.

⁵ See ב"מ מה, ב.

⁶ The פסוק in יח, טז states concerning a בכור אדם that חמש שקלים וגו'.

⁷ See מהרש"א א.