

18.01.09

13a (משנה 2) → 14a (קנאו - קנאו)

Note: in order to allow someone to comfortably "put his affairs in order", רמב"ם mandated that a **שכיב מרע** (someone on his potential deathbed) may make incomplete declarations, or directed gifts without a formal קנין, and they may be completed by his agents. In some cases, they may even be completed on his behalf posthumously. For example, whereas a proper קנין must be made to acquire מטלטלין, if a **מרע שכיב** orders that some money be given to someone, it may be done so even if the money is currently out of sight.

רמב"ם הלכות זביה ומתנה פרק ו הלכה ט
 המשיא בנו גדול לבתולה בבית קנה הבית, והוא שיהיו נשואין ראשונים לזה הבן, ולא השיא האב בן אחר קודם לו ולא שייר האב בזה הבית שייחד לו כלום, ודברים אלו כהלכה שאין להם טעם הם, ונגעו חכמים בדבר הזה מאומדן הדעת, שמרוב שמחתו ואהבתו גמר והקנהו הבית, שהרי לא שייר בה לעצמו כלום, לפיכך אם שייר שם אפילו פך אחד לא קנה הבית, ייחד לו בית וכלי בית אע"פ ששייר בבית כלי אחד לעצמו או היה לו שם אוצר וכיוצא בו, קנה כלי הבית אבל הבית לא קנה.

- I 21 משנה 20: completing a death-bed order posthumously
- a if someone orders a **גט** or **שטר שחרור** be given but dies before its completed – it may not be given
 - b *however*: if he ordered a gift of money and died before it was given – it may be given
 - i *limitation* (רב): this is only if the money is bound and in a discernible place (e.g. under the bed)
 - 1 *question*: what is the case?
 - (a) *If*: it is a **בריאה**, how does it help to have the money bound up – there was no **משיכה**
 - (b) *If*: it is a **מרע**, why the need for the money to be bound – (see note)
 - 2 *Answer1* (רב זביד): it's a **בריאה** - based on ruling #1 of רב:
 - (a) *Rule of מעמד שלשתם*: if A owes B money and B orders it be transferred to C – if A, B and C are all present at the time, the transfer is valid
 - 3 *Answer2* (רב פפא): - it's a **שכ"מ** – based on ruling #2 of רב:
 - (a) *Limitation of מתנת של"מ*: if he gifts a specific **מנה**, it is valid; if an unspecified **מנה**, they may not give it, as he may have intended a specific, inaccessible one **Rejected**
 - (b) *reason for not accepting רב זביד*: he believes that רב's limitation applies equally to **מלוה** and to **פקדון**
 - (i) *explanation*: in neither case, do the moneys need be bound together and present
 - (c) *reason for not accepting רב זביד*: **פפא** cannot be referring to **שכ"מ**, since had he lived, they could have given the **גט**, but the **משנה** added in "תנו" in the husband's order; in the case of **שכ"מ**, **תנו** is unnecessary, as we employ the rule that **כתבו** is good enough
 - (i) *source*: **משנה ו**: **משנה ו** – original ruling – someone who is about to be executed and orders a **גט** be written for his wife, they may write **and** give
 1. *extension*: **ר"ש שזורי** includes a **שכ"מ** in this ruling
 - (ii) *rejection* (ר' אשי): perhaps our **משנה** doesn't follow **ר"ש שזורי** (and a **שכ"מ** still must say **תנו** for them to give the **גט**)
- II Revisiting רב's ruling of **מעמד שלשתם**
- a It is valid even in case of **הלוואה** (certainly in case of **פקדון**)
 - i *Explanation #1* (אמימר): it is as if at the time of the loan, the debtor accepted responsibility to pay the lender – or anyone who comes to collect on his account
 - 1 *Challenge*: then if he tried to transfer it to someone who wasn't yet born at the time of the original loan, it shouldn't be valid
 - (a) *Note*: even ר"מ who maintains that **דבר שלבל"ע** – **אדם מקנה דבר שלבל"ע** – that's if the recipient is "in this world"
 - ii *Explanation #2* (ר' אשי): with the benefit he gains by turning this loan into a newer note and he gains time to pay back, he is **מקנה** the debt to the new creditor
 - 1 *Challenge*: if it is transferred to a strong man who will force immediate collection, it shouldn't work
 - (a) *Note*: this cannot be figured in Halakhically, due to the concern of **נתינת דבריך לשיעורים** (the legal standard is subjective and non-standardized)
 - iii *Explanation #3* (מר זוטרא): this, along with 2 other laws, are considered "laws without rationale"
 - 1 *1st*: **מעמד שלשתם בהלוואה**
 - 2 *2nd*: if a man writes all of his possessions over to his wife, he is simply making her executrix over the estate
 - 3 *3rd*: if someone marries off his adult son in a special house he built for it, the son acquires the house
 - (a) *note*: see ruling of רמב"ם above