

Bava Basra – Simanim

דף קמז – Daf 147

פרק ט – מי שמת

1. מתנת שכיב מרע... שמא תטרף דעתו עליו.

Amoraim offer various sources for מתנת שכיב מרע – *the gift of a gravely ill person*, which takes effect without a *kinyan* (Tosafos says these sources are an אסמכתא, because the law is *d'Rabbonan*). Rav says the word "והעברתם" written by inheritance teaches כזו – *there is another transferring that is like this one* (inheritance), which is מתנת שכיב מרע. Rabbah bar Avuha *darshened* the word "ונתתם" by inheritance that כזו – *there is another "giving" like this* (inheritance), namely מתנת שכיב מרע. Other Amoraim quote the instructions of Chizkiyah or אחיתפול to their respective households before dying, which indicates they took effect בעלמא – *with mere instructions*. Rava quoted Rav Nachman saying: מתנת שכיב מרע מדרבנן בעלמא היא – *a sick person's gift is only Rabbinical* in nature, without any source, and was enacted – שמא תטרף דעתו עליו – *lest his mental state worsen*. The sick person's agitation that his instructions will not be followed may exacerbate his condition, so the Rabbis enacted that his verbal instructions alone effect the transaction.

2. מתנת שכיב מרע, but not in the case of a המוכר שטר חוב לחבירו וחזר ומחלו מחול.

The Gemara questions the assertion that Rav Nachman holds that מתנת שכיב מרע is only מדרבנן. Shmuel said: המוכר שטר חוב לחבירו וחזר ומחלו מחול – *one who sells a document of debt to his fellow, and later forgives the debt, [the debt] is forgiven*. Since the money was owed to the seller, it remains in his power to forgive the debt. Moreover, even the seller's יורש can be מחול the debt after the seller's death. However, Rav Nachman said: מודה שמואל שאם נתנו במתנת שכיב מרע – *Shmuel agrees that if [the creditor] gave it as a sick person's gift, מתנת שכיב מרע, מחול, דאינו יכול למחול, that [his heir] cannot forgive it*. If מתנת שכיב מרע is effective מדאורייתא, it is understandable that the lender's heir cannot forgive the debt, which has been completely transferred to the recipient. But if Rav Nachman holds מתנת שכיב מרע is only מדרבנן, why can't the heir forgive the debt? The Gemara answers: אינה של תורה – *[this law] is not Biblical* in origin, ועשאוה – *but they treated it like something which is Biblical*, in order to assure the sick person that his instructions will be fulfilled.

3. A healthy person cannot transfer something that a בריא cannot transfer (e.g. "to live in this house")

Rav Nachman said that if a healthy person says, ידור פלוני בבית זה – *"Ploni shall have the right to live in this house,"* or יאכל פלוני פירות דקל זה – *"Ploni shall have the right to eat the fruits of this palm tree,"* it is ineffective. Living in a house is intangible and cannot be transferred by an ordinary *kinyan*. Fruit of a tree, which have not yet grown, are דבר שלא בא לעולם and cannot be transferred. However, if he said, תנו – *"Give this house to Ploni, and he will live in it,"* or תנו דקל זה לפלוני ויאכל פירותיו – *"Give this palm tree to Ploni, and he will eat its fruits,"* the transfer is effective. The Gemara asks that this demonstrates that Rav Nachman holds מילתא דברייתא – *something which is within the ability of a healthy person* to transfer, but מילתא דשכיב מרע – *is within the ability of a sick person* to transfer, but מילתא דברייתא – *something which is not within a healthy person's ability to transfer* (such as intangible rights), is not within a sick person's ability to transfer.

Siman - Kumzitz

At the kumzitz arranged to keep the mental state of the שכיב מרע stable as he promised presents to all the participants, including שטר חוב to the kumzitz leader which no one could be מחול, it was learned that he is unable to gift to the guitar player the right to live in his house to practice for a future kumzitz.



At the kumzitz arranged to keep the mental state of the שטר חוב stable as he promised presents to all the participants, including a שטר חוב to the kumzitz leader which no one could be מוחל, it was learned that he is unable to gift to the guitar player the right to live in his house to practice for a future kumzitz.

3 things to remember

- מתנת שכיב מרע... שמא תטרף דעתו עליו
- המוכר שטר חוב לחבירו וחזר ומחלו מחול, but not in the case of מתנת שכיב מרע
- A שכיב מרע cannot transfer something that a בריא cannot transfer (e.g. "to live in this house")

