The Geller Edition

שרשרת זהב

It's the Thought That Counts?

דברים שבלב

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שמואל יעקב בן רחל

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These booklets are called **Sharsheres Zahav** (*Golden Chain*), based on the verse describing the golden chains of the Choshen (Shemos 28:13–14). Just as those chains connected the Choshen to its proper place, so too these works are intended to be small links in the golden chain of Torah transmission, connecting the learner to the teachings of Chazal, the Rishonim, the Acharonim, and the great Torah scholars of every generation.

In particular, these booklets seek to connect the reader to the illuminating Torah of the **Ketzos HaChoshen**, whose teachings serve as a central foundation throughout. Everything written here is based on the sacred words of our sages and was prepared through sincere effort to clarify and understand the sugyos in the light of their teachings.

May Hashem grant that these words find favor among those who study Torah, and may these works become worthy additions to the eternal chain of Torah transmission from generation to generation.

Amen.

How to Read This Sheet?

Each source appears first in the original Hebrew or Aramaic, with a plain English version directly underneath. A Sugya Note helps explain the source in everyday words.

A Term Note defines an important word or idea. A Takeaway sums up the main point in a line or two.

You do not need any background to follow along. Read each source, then the English, then the note. The sheet is built to walk you through the discussion one step at a time.

Do not worry if you do not finish the sheet in one sitting. A good Torah session is not measured only by how much you finish, but by how deeply you learn to think through the discussion.

דברים שבלב
It's the Thought That Counts?

Part 1

Opening Frame

Reuven lends Shimon a large sum of money, and Shimon signs a loan document. Years pass. Shimon's business fails and the money seemingly will never come back. Reuven watches all of this and decides in his heart that he is not going to collect. He tells nobody. He does not tear up the document; it stays where it has always been, in his drawer.

Some years later the two men fall out badly. Reuven takes the document out of the drawer and sues for the full amount.

Shimon has no defense; he cannot prove that Reuven forgave the loan. There were no witnesses, there was no receipt, and there was nothing in writing. But something did happen between the two of them: Reuven let the debt go.

Did anything happen when Reuven decided to forgive the debt, or does a decision no one heard simply not exist?

I. Can a Debt Be Forgiven Without a Word?

שו"ע (סי' י"ב, סעי' ח') | Shulchan Aruch, CM 12:8

Rabbi Yosef Karo (1488 to 1575), Spain, Portugal, Turkey, and Tzfas. He was a small child when his family was driven out of Spain in the Expulsion, and he spent decades moving through the Ottoman Empire before settling in Tzfas. There he composed the Beis Yosef and then the Shulchan Aruch, the code that became the working text of practical Jewish law.

Forgiving a debt does not require an act of acquisition. מחילה אינה צריכה קנין.

Term Note

מחילה | *Mechilah* | **Forgiving a Debt**

The lender gives up his right to collect what he is owed.

Term Note

קנין | *Kinyan* | **Act of Acquisition**

A formal act that makes a transaction or a commitment legally binding.

No formal act is needed.

כתובות (ק"ד.) | Mishna, Kesubos 104a

The Mishna is the earliest code of Jewish law, set down in compressed Hebrew by Rabbi Yehuda HaNasi in the Land of Israel around the year 200.

Masechta Kesubos treats the marriage document and what a wife may claim under it.

Background:

A husband commits himself in writing to a sum of money that his wife collects from his estate if he dies or divorces her. For a first marriage that sum is fixed at two hundred zuz — the zuz being a silver coin, the Roman denarius, about four and a quarter grams of silver. Two hundred zuz is the Mishna's own benchmark for a year's food and clothing for one person, and batei din today generally price the obligation that way rather than by the weight of the metal, at somewhere between fifteen and fifty-five thousand dollars.

The Mishna here is discussing a widow who has not yet come forward to collect it, and it asks how long she may wait.

כל זמן שהיא בבית אביה, גובה כתובתה לעולם. כל זמן שהיא בבית בעלה, גובה כתובתה עד עשרים וחמש שנים, שיש בעשרים וחמש שנים שתעשה טובה כנגד כתובתה, דברי רבי מאיר שאמר משום רבן שמעון בן גמליאל.

וחכמים אומרים: כל זמן שהיא בבית בעלה – גובה כתובתה לעולם, כל זמן שהיא בבית אביה – גובה כתובתה עד עשרים וחמש שנים.

As long as she is [living]in her father's house, she collects her marriage document forever. As long as she is in her [deceased] husband's house, she collects her marriage document only up to twenty-five years, since within twenty-five years she will have conferred benefit corresponding to her marriage document. These are the words of Rabbi Meir, who said them in the name of Rabban Shimon ben Gamliel.

And the Sages say: as long as she is in her husband's house, she collects her marriage document forever; as long as she is in her father's house, she collects her marriage document only up to twenty-five years.

Does the rule still hold if she is holding the document?

כתובות (ק"ד.) | Gemara, Kesubos 104a

The Gemara is the record of how the Mishna was studied and argued in the academies of Babylonia over the three centuries that followed, written largely in Aramaic and brought to its final form around the year 500. Its rabbis are called Amoraim, and its habit is to press a statement – asking what it rests on, where it would fail, and whether a second opinion survives it.

אמר רב יהודה אמר רב: העיד רבי ישמעאל ברבי יוסי לפני רבי, שאמר משום אביו: לא שנו אלא שאין שטר כתובה יוצא מתחת ידיה, אבל שטר כתובה יוצא מתחת ידיה – גובה כתובתה לעולם. ורבי אלעזר אמר: אפילו שטר כתובה יוצא מתחת ידיה – אינה גובה אלא עד עשרים וחמש שנים.

Rav Yehudah said in the name of Rav: Rabbi Yishmael the son of Rabbi Yosei testified before Rabbi [Yehudah HaNasi], saying it in the name of his father: They taught [that twenty-five years of silence end her claim] only where the marriage document is not produced from her possession. But where the marriage document is produced from her possession, she collects it forever.

And Rabbi Elazar said: Even where the marriage document is produced from her possession, she collects only up to twenty-five years.

Term Note

כתובה | *Kesubah* | **Marriage Document**

The sum a husband commits to his wife in writing, collected from his estate if he dies or divorces her.

Term Note

שטר | *Shtar* | **Promissory Note**

A signed document recording a debt, which the holder produces in order to collect on it.

According to Rabbi Elazar's view if she said nothing, did nothing, even if she still held the document, the debt is forgiven.

מהרש"ל (בביאורו לסמ"ג, עשין מ"ח) | The Maharshal

abbi Shlomo Luria (1510 to 1573), Poland and Lithuania. He headed yeshivos in Ostrog and Brisk and finally in Lublin, where he built his own yeshiva and taught until his death. His Yam Shel Shlomo declined to rule from the codes and insisted on deciding the law by returning to the Talmud itself. He and his younger contemporary the Rema corresponded about that method, at times sharply.

המהרש"ל מחדש דמחילה בלב הויא מחילה, ואפילו נקיט שטרא בידיה. ולכן

The Maharshal rules that forgiving in the heart is considered a complete forgiving, even where the lender

has the note in his possession. Therefore, if he says that he forgave in his heart, and now wishes to retract and sue, his retraction is of no effect, because the forgiving already took effect in his heart.

The proof for this is the ruling that a woman has forgiven her marriage document by not having claimed it for twenty-five years (Kesubos 104a): if forgiving in the heart were not effective, what would her silence accomplish? She did nothing and said nothing. It must therefore be that forgiving in the heart is a forgiving, even where he has the note in his possession.

אם אמר שבלבו מחל, ועכשיו רוצה לחזור בו ולתובעו – לא מהני חזרתו, דכבר חלה המחילה בלבו. וראיה לזה מהא דמחלה כתובתה מדלא תבעה כ"ה שנים (כתובות ק"ד), ואי לאו דמחילה בלב מהניא, מאי הוי בשתיקתה, הא לא עבדה ולא אמרה מידי – אע"כ מחילה בלב הויא מחילה אף דנקיט שטרא.

Takeaway

According to the Maharshal, Reuven's suit fails, since he forgave the borrower even if he did not verbally forgive him and kept it in his heart.

II. Does a Thought Ever Do Anything on Its Own?

קצוה"ח (שם, סק"א) | Ketzos HaChoshen 12:1

Rabbi Aryeh Leib Heller (1745 to 1812), Galicia. He served as rav of Rozdol and later of Stryi, and lived in such poverty that it is told of him that he sold his few possessions in order to print his work. The Ketzos HaChoshen became one of the two or three books through which the laws of Choshen Mishpat are argued in every yeshiva.

The Misgeres HaShulchan, who cited the Maharshal (in his commentary on the Semag, Asin 48): if [the lender] says that in his heart he had forgiven him, and now, for some reason, wishes to take revenge on him and sues him, [the suit] is of no effect, because forgiving in the heart is a forgiving, even where he has the note in his possession. And the Semag likewise proved it: for if this were not so, how has she forgiven her marriage document merely by not having claimed it for twenty-five years (Kesubos 104a)? She said nothing at all. It must therefore be that forgiving in the heart is a forgiving, even where he has the note in his possession.

[The Ketzos objects:] The matter is astonishing to me, for we do not find anywhere that a thought is effective. Even for renouncing ownership, or dedication to the Temple, and for a vow, in all of them actual speech is required.

וע' מסגרת השולחן שכתב מוהרש"ל (בביאורו לסמ"ג, עשין מ"ח) דאם אומר שבלבו היה למוחלו ועכשיו רוצה להתקנם ממנו לאיזה סיבה ותובעו לא מהני, דמחילה בלב הוי מחילה, אף דנקיט שטרא בידיה, וכן הוכיח הסמ"ג דאם לא כן האיך מחלה כתובתה מדלא תביעה כ"ה שנים (כתובות, ק"ד.), הלא לא דיברא כלום, ע"כ מחילה בלב הוי מחילה אף דנקיט שטרא וע"ש. ובענייי יפלא הדבר דלא מצינו בשום מקום דמחשבה מועיל, ואפי' הפקר והקדש ונדר בכולהו בעינן דיבור ממש, לבד בקדשי מזבח מהני ביה מחשבה משום דכתיב קרא כל נדר לב כדאיתא בפרק שבועת שתים (שבועות, כ"ו:) וכו',

Term Note

הפקר | *Hefker* | **Renouncing Ownership**

An owner releases his property so that anyone at all may come and take it.

Term Note

הקדש | *Hekdesh* | **Dedicating to the Temple**

Transferring property to the Temple treasury, or designating an animal as an offering.

Term Note

נדר | *Neder* | **Vow**

A declaration that binds a person to an obligation or a prohibition he did not previously carry.

Sugya Note

So the Ketzos is arguing with the Maharshal — and he is arguing even though the Maharshal has a proof: the widow who never claimed for twenty-five years, who is treated as having forgiven without ever saying a word.

His objection goes to the foundation. Nowhere do we find that a thought on its own creates a legal effect in money matters — a result that has to be brought into being, the way ownership passes from one person to another. Renouncing ownership, dedicating to the Temple, vows: every one of them needs speech.

מבואר מהקצות דהוא לחלוק על דברי המהרש"ל, שנקט דמחילה שבלב הויא מחילה, ואף כשהמלוה עדיין אוחז את השטר בידו. ואף שהמהרש"ל הביא ראיה מסוגיית כתובות, דהאשה שלא תבעה כתובתה במשך כ"ה שנים חשיבא כמוחלת, אע"פ שלא הוציאה לשון מחילה בפיה.

אולם הקצות תמה על עיקר היסוד, דלא מצינו בשום מקום שמחשבה לבדה יוצרת חלות בדיני ממונות. אדרבה, בכל דיני התורה, כגון הפקר, הקדש ונדרים, בעינן דיבור, ורק בקדשי מזבח מצינו שמחשבה מועילה, משום דגלי קרא ד"כל נדיב לב", ומשמע דאלמלא קרא לא היתה מועילה מחשבה כלל.

III. What If Everyone Already Knows?

A distinction that would let the widow stand and the lender fall.

קצוה"ח (שם, סק"א) | Ketzos HaChoshen 12:1, continued

The Maharit is Rabbi Yosef of Trani (1568 to 1639), who served in Tzfas, Yerushalayim, and finally Constantinople.

שוב מצאתי במוהרי"ט ח"ב סימן מ"ה עמד בחקירה של המחשבה דכמה סוגי' מורה דמהני דברים שבלבו וכמה סוגי' מורות דלא מהני דברים שבלב, ולזה העלה דהיכא דידוע לכל העולם מה שבלבו כגון שלש שנים דחזקה מחיל (בבא בתרא, כ"ט.) לא הוי דברים שבלב, אבל היכא דלא ידוע לכל מחשבתו ה"ל דברים שבלב ולא מהני וע"ש, והוא אמיתי. וכן כתב במרדכי (כתובות, סי' רנ"ד) גבי נדרי אונסין דמחשב בלבו היום ולא הוי דברים שבלב לפי שידוע בלב כל אדם שזה מחמת אונס הוא נודר ובלבו היום וע"ש, והיינו נמי טעמא דשהתה כ"ה שנים דמחלה מדלא תבעה דהוא נמי ידוע מחשבתה לכל העולם ולא הוי שבלב כיון דידוע בלב כל אדם וכו', אבל זה שמחל בלב ואינו ידוע מחשבתו לשום אדם ואפי' כתב שובר נמי לא מוכח דמוחל עכשיו, דאפשר רוצה למוחלו אח"כ בנתינת השובר, א"כ דברים שבלב בלבד הוי ולא הוי דברים, וזה ברור.

I subsequently found that the Maharit (Choshen Mishpat, siman 45) took up this question and explained that we do find several passages in the Talmud indicate that what is in a person's heart is effective, and several passages in the Talmud that indicate that matters of the heart are not effective. He therefore concluded that wherever what is in his heart is known to the whole world, such as the three years of a *chazakah* (established possession, where three years of unchallenged use supports the occupier's claim), where a person forgives [another's use of his land] (Bava Basra 29a), it is not a matter of the heart; but wherever his thought is not known to all, it is a matter of the heart and is not effective.

And this too is the reason that a woman who waited twenty-five years has forgiven [her marriage document] by not having claimed it: there too her thought is known to the whole world, and it is not in the heart, since it is known in every person's heart, and so on.

But this one (the case of the lender), who forgave in his heart and whose thought is known to no person at all, in that case it is nothing but a matter of the heart, and matters of the heart are not matters.

Term Note

דברים שבלב | *Devarim SheBalev* | **Matters of the Heart**

An intention a person held but never expressed, which the law ordinarily treats as though it were not there.

Term Note

שובר | *Shovar* | **Receipt**

A document given to the borrower showing that the debt has been discharged.

Sugya Note

It is explained from the Ketzos that the Mahari"t addressed the contradiction among the sugyos as to whether *devarim shebalev* (matters in the heart) are effective or not, and he resolved it by drawing a distinction: where a person's intent is known to the entire world, it is not considered matters of the heart at all and is effective — for example, the three years of established possession, where it is known to all that [the original owner] has been forgiven and it is considered that he waived his claim, but where his intent is not known, it is matters of the heart and is not effective.

According to this, it emerges that the case of a woman who waited twenty-five years and thereby waived [her kesubah] is likewise because her intent is known to the entire world, since she did not make a claim [all that time], and therefore it is not considered matters of the heart — and there is thus no proof from here regarding forgiveness in the heart [in general].

And in our case, where he granted forgiveness in his heart and it is not known to any person, it is mere matters of the heart and is not effective. And even though he wrote a receipt/release, there is no proof that he waived [the debt] now, for perhaps he wishes to waive it later, at the time of the giving of the *waiver*. Therefore he may rightfully retract and sue [collect] again.

מבואר מדברי הקצות, דהמהרי"ט עמד על הסתירה שבסוגיות אם דברים שבלב מהני או לא, וחילק בין היכא שמחשבתו ידועה וניכרת לכל העולם, דאז לא חשיבא כלל כדברים שבלב ומהני, לבין היכא שאין מחשבתו ידועה לאחרים, דאז הוי דברים שבלב ולא מהני. ולפי זה ביאר, דהא דאמרינן באשה ששהתה כ"ה שנים ולא תבעה כתובתה דמחלה, אין זה משום שמחילה בלב מועלת, אלא מפני שהתנהגותה מגלה לכל העולם שכוונתה למחול, ושוב לא הוי בכלל דברים שבלב. משא"כ בנידון דידן, שמחל בלבו בלבד ואין מחשבתו ידועה לשום אדם, אין כאן אלא דברים שבלב גרידא, ודברים שבלב אינם דברים. ואף אם כתב שובר, עדיין אין בכך ראיה שמחל עתה, דשמא אין דעתו למחול אלא בשעת מסירת השובר. ומשום הכי, כל זמן שלא גילה דעתו באופן המחיל את החוב, יכול הוא לחזור ולתובעו.

IV. Can an Inference Speak for You?

Chiddushei Rabbi Shimon, Bava Metzia 20

חידושי רבי שמעון (מהדורה חדשה בבא מציעא, סי' כ')

Rabbi Shimon Yehuda HaKohen Shkop (1860 to 1939), Lithuania and Poland. He taught for many years at Telz and then headed the yeshiva in Grodno, and his way of analyzing a sugya reshaped how Gemara is learned in yeshivos to this day. His Shaarei Yosher opens not with a legal analysis but with an essay on what a person owes to others. He died shortly after the outbreak of the Second World War.

The Ketzos pushes away the proofs of the Mahari"t, who holds that forgiving in one's heart does work. The Ketzos says it never really works on its own — and the reason it seemed to work in those cases is only because there was an *umdena* (a clear, obvious assumption about what the person meant). So it counts as real forgiving, and it is not actually just "in the heart."

ובעינן זה יש להעיר על הקצוה"ח בעינן מחילה בלב, דמדחה שם ראיות מהרי"ט דסובר דמחילה בלב מהני, דלעולם לא מהני והא דמהני שם

משום דהוי אומדנא ע"כ הוה מחילה, דלא בלב הוא. ולכאו' צ"ל דמהרי"ט יפה כיון, דהוא חוקר במחילה אי בעינן דיבור ממש או אפי' רצון סגי אלא דבעינן התגלות הרצון בדיבורו, ואם אמר אח"כ אני נתכונתי למחול החוב מחול, דברצון לחוד נגמר הדבר, ע"כ מביא ראיה שפיר דלא בעינן דיבור ממש, דאי בעינן דיבור ממש לא הוי מחילה אף דיש אומדנא, דאומדנא אינה יכולה לעשות אלא דידעינן מה שחשב בלבו, אבל אין יכול לעשות כדיבורו בפה ממש.

(The Mahari"t, on the other hand, still considered it forgiveness in one's heart, and creates an obvious assumption because what is in his heart is revealed to the world, and therefore it works. The Ketzos argues and says that this is not considered as being in one's heart, but rather is treated as though he spoke it out loud. Bottom line: the Ketzos considers this to be *not* in one's heart, while the Mahari"t holds that it still *is* in one's heart, but this is an exception.)

But it seems we should say that the Mahari"t was right on target. Because what the Mahari"t is really explaining is this: when you forgive a debt, do you need actual speech (saying words out loud), or is wanting it in one's heart enough — as long as that desire gets revealed somehow? According to this second idea, if a person later says "I meant to forgive the debt," it is forgiven — because the desire alone finished the job.

That is why the Mahari"t brings good proof that you do not need actual speech. Because if you did need actual speech, then it would not count as forgiving even when there is an obvious assumption. Why? Because an obvious assumption can only do one thing: let us know what the person was thinking in his heart. But an obvious assumption cannot act like actual spoken words.

Term Note

אומדנא | *Umdena* | **An Inference From the Circumstances**

What the circumstances show a person must have intended, without his having said it.

Sugya Note

מבואר דרבינו זצ"ל דס"ל דאומדנא אינו אלא גילוי רצונו ועדיין נחשב דברים שבלב ואע"פ כן מועיל במחילה, משא"כ הקצות ס"ל דאומדנא הוי כדברים דכיון ידוע לכל אדם ואינו נחשב דברים שבלב, וכיון ע"י אומדנא נחשב כדברים ממילא מועיל במחילה, אבל כל זמן דדברים היינו דברים שבלב אינו מועיל המחילה.

It emerges that [Rav Shimon Shkop zt"l] holds that an inference from the circumstances is nothing more than a revealing of the person's will, and that it is still considered a matter of the heart, and even so it is effective for forgiving a debt. The Ketzos, by contrast, holds that an inference from the circumstances is like [spoken] matters, since it is known to every person and is therefore not considered a matter of the heart; and once it counts as [spoken] matters by force of the inference, it is accordingly effective for forgiving. But so long as the matter remains a matter of the heart, the forgiving is not effective.

Takeaway

The Ketzos and Reb Shimon agree that the widow forgave her marriage document, and, since Reb Shimon endorses the Maharit, that the lender who forgave in silence has nothing. They disagree about the mechanism: the Ketzos holds that an inference from the circumstances takes the thought out of the category altogether, while Reb Shimon holds that an inference can only tell us what a person thought, and that forgiving never required speech to begin with. The material does not decide between them, and it does not come back to the Ketzos's objection from renouncing ownership, dedication to the Temple, and vows.

V. Is a Silent Condition on a Gift the Same Question?

Background:

Normally, thoughts that stay inside a person's heart — that he never says out loud — don't count and have no legal power. This rule is called "*devarim shebalev einam devarim*" (matters in the heart are not [binding] matters). The question here is whether there's an exception when it comes to a *matanah* (a gift).

The same shape, in a different place, pointing the other way.

משנת רבי אהרן (נדרים, סי' ה') | Mishnas Rav Aharon, Nedarim 5

Rabbi Aharon Kotler (1891 to 1962), Lithuania and the United States. He led the yeshiva in Kletzk, escaped Europe during the war by way of Japan, and rebuilt in Lakewood, New Jersey, beginning with a handful of students in a rented house.

With this we can explain the opinion of the halachic authorities that the Rema brings in *Choshen Mishpat*, chapter 207, paragraph 4. There is an opinion that "matters in the heart are not [binding] matters" — meaning, in general, private thoughts don't count. *But* when it comes to a gift, those thoughts *do* count.

Now look at the *Biur HaGra* (the Vilna Gaon's commentary), note 14, who shows where this idea comes from. We find in the Gemara in several places that an *asmachta* (a commitment a person didn't fully mean) and an obvious assumption can cancel a gift. In other words, even though the giver never said out loud that he didn't really want to give the gift, we can still cancel it based on what we assume he was thinking.

The Tosafos in the sugya in *Kiddushin* (on daf 49b, and on daf 6b) explain

ובזה יש לבאר שיטת הפוסקים שהביא הרמ"א בחו"מ סי' ר"ז סעי' ד', די"א דדברים שבלב אינם דברים, אבל במתנה הוי דברים, ויע"ש בביאור הגר"א אות י"ד דמקורו הוא מהא דמצינו בגמ' בכמה מקומות דאסמכתא ואומדנא מבטל מתנה, והתוס' בסוג' (קידושין) דף

why this works: because all these *umdenos* (obvious assumptions) are considered *stronger* than regular "matters in the heart." So according to Tosafos, an obvious assumption isn't really a plain "matter in the heart" at all — it's something more powerful.

But there's other opinion's that the Rema quotes and understands it differently. According to them, an obvious assumption really *is* still just a "matter in the heart." The reason it works to cancel a gift is not because it's stronger — it's because with a gift specifically, even plain "matters in the heart" *do* count and have legal power.

מ"ט: ד"ה דברים, ובדף ו: ד"ה לא החזירו כתבו, דהיינו משום דכל האומדנות הוו יותר מדברים שבלב עי"ש, אבל דעת הי"א דבאמת עדיין חשיב דברים שבלב, אלא דבמתנה אף דברים שבלב הוו דברים.

Sugya Note

Rav Aharon Kotler investigated the nature of the rule that in a gift we say that matters of the heart are matters: is it because in such a case it is no longer included in matters of the heart at all, since where there is a clear inference from the circumstances it is as though the words had been made explicit with his mouth, or is it that it truly remains a matter of the heart in the fullest sense, except that in the case of a gift a special rule was established, that even matters of the heart are effective?

On this basis he explained the position of the authorities cited by the Rema (Choshen Mishpat 207:4), that there are those who say that in a gift matters of the heart are matters. The Biur HaGra explained that the source of this position is those passages in the Talmud in which we find that an inference from the circumstances, or an asmachta, voids a gift. And Tosafos in Kiddushin wrote likewise, that all these inferences are not included in matters of the heart but are stronger than they are: since the matter is evident from the circumstances and the inference is clear, it is treated as though he had specified his condition explicitly.

But according to the view of those who say [that in a gift matters of the heart are matters], one is not compelled to explain it that way. It remains possible to say that even where the inference is clear, this thought is still within the category of matters of the heart; a gift is different, however, for since the entire giving of a gift rests on nothing but the will and the mind of the giver, wherever there is a revealing of his mind, even though it is only a matter of the heart, it has the power to hold back the gift from taking effect. It

דחקר מרן הגר"א קוטלר זצ"ל, דבגדר הדין דבמתנה אמרינן דדברים שבלב הוו דברים, אם היינו משום דבכהאי גוונא שוב אין זה בכלל דברים שבלב, דכיון דאיכא אומדנא ברורה הוי כאילו נתפרשו הדברים בפיו, או דלעולם חשיבי דברים שבלב ממש, אלא דבמתנה נתחדש דין מיוחד דגם דברים שבלב מהני.

ועל פי זה ביאר את שיטת הפוסקים שהביא הרמ"א (חו"מ סי' ר"ז סעי' ד'), דיש אומרים דבמתנה דברים שבלב הוו דברים. דהנה בביאור הגר"א ביאר דמקור שיטה זו הוא מסוגיות הש"ס שמצינו בהן דאומדנא ואסמכתא מבטלות מתנה. וכן כתבו התוספות בקידושין, דכל הני אומדנות אינן בכלל דברים שבלב, אלא עדיפי מינייהו, דכיון שהדבר ניכר מתוך הענין והאומדנא ברורה, חשיב כאילו פירש את תנאו להדיא.

אולם לדעת היש אומרים אין הכרח לפרש כן. דלעולם אפשר לומר דאף באומדנא ברורה עדיין חשיבא מחשבה זו בגדר דברים שבלב, אלא דבמתנה שאני, דכיון שכל נתינת המתנה אינה אלא מחמת רצונו ודעתו של הנותן, ממילא כל היכא דאיכא גילוי דעת, אף שאינו אלא

emerges that it is effective not because these are not matters of the heart, but because in a gift a special rule was established, that even matters of the heart are matters.

דברים שבלב, יש בכוחו לעכב את חלות המתנה. ונמצא דלא מפני שאין אלו דברים שבלב מהני, אלא מפני שבמתנה נתחדש דין מיוחד דאף דברים שבלב הוו דברים.

Two ways to explain one rule. Do the earlier authorities actually divide on it?

Sugya Note

It seems that they disagree in the very definition of obvious assumption: Is it that even where there is a clear obvious assumption, his thought is still classified as matters of the heart, except that in such a case a novel ruling was introduced that it is nonetheless effective? Or perhaps, since there is a clear obvious assumption, it is no longer in the category of matters of the heart at all, but rather it is "more than matters of the heart," and it is as though the matter had been spoken out.

מבואר דנחלקו בגדר אומדנא, האם כל היכא דאיכא אומדנא ברורה עדיין חשיבא מחשבתו בגדר דברים שבלב, אלא דבכהאי גוונא נתחדש דמהני, או דילמא כיון דאיכא אומדנא ברורה שוב אין זה בכלל דברים שבלב כלל, אלא הוי "יותר מדברים שבלב", וכאילו הוו דברים.

Explanation — how the Ketzos and Rav Shimon Shkop each hold one side:

These are the two sides of the very same investigation we saw earlier, and each of the two authorities takes one side.

The Ketzos holds like the second side — that once there is a clear obvious assumption, the matter is no longer considered matters of the heart at all. That is exactly why he pushes away the proofs of the Mahari"t: he maintains that matters of the heart on their own are *never* effective, and the only reason they seemed to work in those cases is that the obvious assumption lifted them out of the category of "in the heart" entirely and made them "as though spoken out." For the Ketzos, thoughts in the heart have no power by themselves — an obvious assumption works precisely because it is "more than matters of the heart."

Rav Shimon Shkop holds like the first side — that even with a clear obvious assumption, the thought genuinely remains matters of the heart, and the novelty is that in such a case it is nonetheless effective. That is why he defends the Mahari"t and says he was "right on target": the Mahari"t's whole point is that you do *not* need actual speech — the will alone can finish the job, as long as it becomes revealed. For Rav Shimon, an obvious assumption cannot act like real spoken words; all it does is *let us know* what the person was thinking in his heart. So the fact that it works proves that a revealed thought — still a "matter in the heart" — is itself effective.

The two sides line up cleanly: the Ketzos holds "it is no longer matters of the heart" — like Tosafos, that an obvious assumption is stronger than, and outside, the category of matters in the heart. Rav Shimon Shkop holds "it remains matters of the heart, but it works" — like the *yesh omrim* in the Rema, that with a gift even matters in the heart are binding.

Takeaway

Part 1 closes with the question sharpened rather than settled. Everyone agrees the widow forgave her kesubah and that the lender who forgave in silence has nothing. What is still open is why: the Ketzos holds that a clear assumption takes the thought out of the category of matters in the heart altogether, while Rav Shimon Shkop holds that it stays a matter in the heart and works anyway. The gift case pulls the same question the other way, because there the silent thought holds a transfer back rather than making one happen. Part 2 goes looking for the rule underneath both.

Part 2

VI. Where Did This Rule Come From?

קידושין (האיש מקדש, מ"ט:) | Kiddushin 49b

Masechta Kiddushin treats betrothal, and this chapter works through what happens when a transaction was made on an assumption that turned out to be false – a man who betroths a woman believing her to be something she is not, a man who sells on an expectation that does not come about. It is in the middle of that run of cases that Rava states the rule this entire sheet is built on.

There was a certain man who sold his property with the intention of going up to Eretz Yisrael, **and at the time that he sold he said nothing** at all [of that intention]. Rava said: this is a matter of the heart, and matters of the heart are not matters.

ההוא גברא דזבנן לנכסיה אדעתא למיסק לארץ ישראל, **ובעידנא דזבין לא אמר** ולא מידי, אמר רבא הוי דברים שבלב ודברים שבלב אינם דברים.

He sold everything for one reason, and it was the only reason. Does that change anything?

פרש"י | Rashi, ad loc.

Rabbi Shlomo Yitzchaki (1040 to 1105), Troyes, in northern France. He made his living from a vineyard and wrote the commentary that has accompanied nearly every printed page of the Talmud since. His grandsons and their students became the Baalei HaTosafos, who argue with him on the same page.

[He did not say:] "I am selling with the intention of going up." For had he specified at the time of the sale, "I am selling with the intention of going up," the sale would not have stood, since he did not sell on the understanding that he would go on living here without land.

דאדעתא למיסק מזבנינא, דאילו פריש בשעת מכירה דאדעתא למיסק מזבנינא, לא הוה זבינא דאדעתא דהכי לא זבין שיהא דר כאן בלא קרקע.

Sugya Note

It appears in Kiddushin, in the case of the man who sold his property intending to go up to Eretz Yisrael and in the end did not go up. Since at the time of the sale he revealed nothing at all of this being the reason for the sale, Rava ruled that the sale stands, because it is a matter of the heart, and matters of the heart are not matters. And Rashi explained that had he stated explicitly at the time of the sale that his entire sale was only because he intended to go up to Eretz Yisrael, there would have been room to void the transaction when he did not go up, since it would then be evident that he resolved to sell only on that understanding. But since he did not utter this condition, we judge only according to what was actually done, and his inner thought carries no weight in the law.

It emerges from Rashi's words that his very desire to go up to Eretz Yisrael creates no condition in the sale so long as he did not reveal his mind at the time of the act. And even though this was the sole reason for which he sold all his property, still, since the matter remained in his heart alone, it falls within matters of the heart, and matters of the heart are not matters.

From here comes a great and fundamental source for this rule: that a hidden thought has no power to change what an act brought about, so long as it was not revealed in a binding manner.

דאיתא בקידושין בההוא גברא דזבין נכסיה על דעת לעלות לארץ ישראל, ולבסוף לא עלה. כיון שבשעת המכירה לא גילה כלל שזו סיבת המכירה, פסק רבא דהמכירה קיימת, משום דהוי דברים שבלב, ודברים שבלב אינם דברים. ופירש רש"י, דאילו היה אומר בשעת המכירה בפירוש דכל מכירתו אינה אלא משום שדעתו לעלות לארץ ישראל, היה מקום לבטל את המקח כשלא עלה, דמוכח שלא גמר בדעתו למכור אלא על דעת כן. אולם מאחר שלא הוציא תנאי זה בפיו, אין אנו דנים אלא כפי מה שנעשה בפועל, ואין למחשבתו הפנימית כל משמעות בדין.

ומבואר מדברי רש"י, דעצם רצונו לעלות לארץ ישראל אינו יוצר שום תנאי במכירה, כל זמן שלא גילה דעתו בשעת המעשה. ואף שהיתה זו הסיבה היחידה שמחמתה מכר את כל נכסיו, מ"מ כיון שנשאר הדבר בלבו בלבד, הוי בכלל דברים שבלב, ודברים שבלב אינם דברים. ומכאן הוי מקור גדול ויסודי לכלל זה, שאין מחשבה נסתרת בכוחה לשנות את חלות המעשה, כל זמן שלא נתגלתה באופן המחייב.

The rule is clear. What exactly does it cover?

Rashba, Kiddushin 50a הרשב"א (שם, נ. ד"ה ואסיקנא)

Rabbi Shlomo ben Aderes (1235 to 1310), Barcelona. He served as rav of the city for some fifty years, and questions were sent to him from Spain, France, Germany, North Africa, and the Land of Israel in such numbers that his responsa became one of the main channels through which Jewish law travelled between distant communities.

[The Rashba raises a difficulty:] In the first chapter of *Nazir*, we learned that if a person says "I shall be," he becomes a *nazir* (someone who takes a special vow to abstain from wine, haircuts, etc.). The Gemara explains this is talking about a case where a *nazir* was walking past him at that moment. So even though the man

והא דתנן בפ"ק דנזיר האומר אהא הרי זה נזיר ואוקימנא בפ"ק דנזיר בשהיה נזיר עובר לפניו ואע"ג דלא פירש, דאלמא

never spelled out what he meant, he still becomes a *nazir*. This seems to prove that thoughts in the heart *do* count!

. [The answer given is that] there, since he said "I shall be" right as a *nazir* was passing by, it's as if he clearly said "I shall be like *him*." The Torah accepts these kinds of partial, shorthand expressions as valid *nazir* vows.

[The Rashba is not satisfied with that answer:] But this answer is not clear to me, for they are matters of the heart nonetheless, since it is possible that he meant "I shall be in a fast," as the Gemara itself objects there. And even according to the Amora Shmuel, who establishes the case as one in which he was holding on to his hair, they are still not explicit words but words entrusted to the heart, and so on.

[The Rashba gives his own explanation:] Really, none of these cases have anything to do with "matters in the heart" at all. When we say "matters in the heart are not matters," we only mean this: a thought cannot *cancel out* or *contradict* what a person actually said with his mouth. For example: a man who sells something but secretly thinks "I'm only selling because I plan to move to Yerushalayim" — his secret thought can't undo the plain sale.

But the rule is completely different when the thought does *not* cancel a person's actions — instead it *supports* and completes them. For instance, the *nazir* who says "in my heart I meant to be like the one passing by," or a person who mentally sets aside *terumah* (the priestly portion of his crops), which the law allows to be designated by thought alone. In these cases, the thought isn't fighting against anything he did — it's filling in and strengthening it. There, thoughts absolutely *do* count, and Rava's rule ("matters in the heart are not matters") simply doesn't apply. This is how it appears to me.

דברים שבלב הוי דברים, התם כיון דאמר אהא ונזיר עובר לפניו כאילו פירש אהא כמוהו, שאלו הו ידות נזירות שרבתה אותן התורה, והא תירוצא לא מחוור לי, דמ"מ דברים שבלב הן, דהא אפשר דאהא בתענית קאמר, וכדאקשי' עלה התם, אפי' לשמואל דמוקי לה בשהי' תופס בשערו, מ"מ לאו דברים מפורשין אלא דברים המסוריים ללב הן וכו', אלא דכל כי האי לא דייקי כלל לדברים שבלב, דכי אמרי' דברים שבלב אינן דברים הייגו שאינן דברים לבטל מה שאמר בפיו, כההוא דזבין והיה בלבו תנאי שיעלה לירושלים, ובאומר סבור הייתי שהיא כהנת, וכן כולם, אבל כל שהדברים שבלבו אינו מבטלין מעשיו אלא מקיימין כנזיר שאמר בלבי היה להיות כזה שהיה עובר, או מחשב בתרומה שאין דברי לבו מבטלין שום דבר, הוו דברים ואין זה בכלל דברי רבא כלל, כך נראה לי.

Term Note

נזיר | *Nazir* | **One Who Takes the Nazirite Vow**

A person who accepts upon himself abstention from wine, from cutting his hair, and from contact with the dead, for a set period.

Term Note

יד | *Yad* | **A Partial Expression That Still Binds**

An incomplete phrase that counts as a full declaration because the setting makes its meaning clear.

Sugya Note

The Rashba advanced a great foundation in the nature of the rule that matters of the heart are not matters: the rule is not stated wherever a person's thought is unexpressed, but specifically where he seeks, by force of his thought, to void or to alter the meaning of words or of an act that were in fact carried out.

The Rashba explains that with regard to what we find concerning the nazir, that one who says "I shall be" while a nazir was passing before him is a nazir, no difficulty should be raised from the fact that this appears to be a matter of the heart. And even though there is room to say that his intention was toward something else, such as accepting a fast upon himself, this nevertheless does not fall within the rule that matters of the heart are not matters.

The basis of the distinction is that wherever his thought does not come to contradict his words but, on the contrary, to explain and to sustain what he said, it is not included in matters of the heart. Since he is not seeking to uproot the act that was done, but only to clarify its meaning, his thought is properly effective.

This is not so in all those passages in Kiddushin, for example one who sells his property intending to go up to Eretz Yisrael, or one who betroths a woman thinking that she was the daughter of a priestly family, where he seeks to void retroactively what the act brought about, on the strength of a thought he did not reveal at the time of the act. It is of this that Rava said that matters of the heart are not matters, and his thought has no power to uproot what was in fact done.

It emerges, according to the Rashba, that not every hidden thought is included in matters of the heart, but specifically a thought that comes to void or to alter what the act brought about. But a thought whose whole purpose is to explain, to complete, or to sustain the act is not included in this rule, and it is properly effective even though it was not expressed with his mouth.

חידש הרשב"א יסוד בגדר הדין ד"דברים שבלב אינם דברים", דאין כלל זה אמור בכל מקום שמחשבתו של אדם אינה מפורשת, אלא דוקא היכא שמבקש בכח מחשבתו לבטל או לשנות את משמעות הדברים או המעשה שנעשו בפועל.

ומבאר הרשב"א, דמה שמצינו בנזיר שהאומר "אהא" והיה נזיר עובר לפניו הרי זה נזיר, אין להקשות דהא לכאורה הוי דברים שבלב. ואף דיש מקום לומר שכוונתו היתה לדבר אחר, כגון לקבל עליו תענית, מכל מקום אין זה בכלל הדין דדברים שבלב אינם דברים.

ויסוד החילוק הוא, דכל היכא שמחשבתו אינה באה לסתור את דבריו, אלא אדרבה לפרש ולקיים את מה שאמר, אין זה בכלל דברים שבלב. כיון שאין הוא מבקש לעקור את המעשה שנעשה, אלא רק לבאר את משמעותו, שפיר מהני מחשבתו.

משא"כ בכל הני סוגיות דקידושין, כגון המוכר נכסיו על דעת לעלות לארץ ישראל, או המקדש אשה וסבור היתה כהנת, הרי מבקש הוא לבטל למפרע את חלות המעשה על סמך מחשבה שלא גילה בשעת המעשה. בזה הוא שאמר רבא דדברים שבלב אינם דברים, ואין בכח מחשבתו לעקור את מה שנעשה בפועל.

ונמצא לדברי הרשב"א, דלא כל מחשבה נסתרת בכלל "דברים שבלב", אלא דוקא מחשבה הבאה לבטל או לשנות את חלות המעשה. אבל מחשבה שכל עניינה לפרש, להשלים או לקיים את המעשה, אינה בכלל דין זה, ושפיר מהני אף שלא נתפרשה בפיו.

VII. If It Undoes Nothing, Why Does It Still Fail?

Renouncing ownership cancels no earlier word and no earlier deed, and it still does not work in the heart.

חלות and מעשה קנין — A Legal State, and the Act That Produces It

Some legal facts are simply true. A debt exists because money was lent. A person is obligated because he took an obligation upon himself. Nothing further needs to happen in order for these to be so.

Other legal results do not simply hold. They come into being at a moment, and before that moment they were not. Ownership passes from one person to another; a woman becomes betrothed; property leaves its owner's hands and belongs to no one. A result of that second kind is a chalos, a legal state brought into being.

The ordinary way such a state is produced is a maaseh kinyan, a formal act: money changes hands, a document is delivered, the buyer draws the animal toward himself. The sale of a field is completed by an act of that sort and not by the agreement alone.

ברכת שמואל (קידושין, סי' א' אות ג') | Birkas Shmuel, Kiddushin 1:3

Rabbi Boruch Ber Leibowitz (1862 to 1939), Lithuania. He was among the closest students of Rav Chaim Soloveitchik of Brisk and headed the yeshiva of Kaminetz. His attachment to his teacher was such that he understood his own task as transmitting Rav Chaim's Torah, and the Birkas Shmuel preserves a great deal of it. Where this passage says "our teacher," it means Rav Chaim Soloveitchik (1853 to 1918), rav of Brisk. The answer below is Rav Chaim's; his talmid Rav Boruch Ber is the one recording it and working it out.

והנה שאל אותי ת"ח גדול מדברי הר"ן בריש פסחים (דף א. מדפי הרי"ף) דהפקר שבלב אינו הפקר משום דהוי דברים שבלב, ואע"ג שאינו מבטל למה שבפיו. ותי' רבינו זצ"ל דבמקום כדי לעשות חלות וקנינים ע"ז לא מהני מחשבה גרידא, וצריכין אומדנא גמורה, לפיכך נמצא דיש ב' מיני דברים שבלב, א) כמו במעשה דאיתא בסוג' דקידושין, דבלי שום חלות כההוא זבן ארעא אדעתא למיסק לארץ ישראל, דהתם הדברים שבלב הם באין ואדרבא שלא לעשות חלות, התם אינם דברים משום דהם סותרין להמעשה, ב) דברים שבלב לעשות קנין וחלות, דהתם לא הוי דברים אפי' היכא שאין סותר להמעשה, כיון שצריכין

A great Torah scholar asked me from the words of the Ran at the beginning of Pesachim , that renouncing ownership in the heart is not a renunciation, because it is a matter of the heart, and this despite the fact that it voids nothing that he said with his mouth.

And our teacher [Rav Chaim Soloveitchik] answered that where the purpose is to bring about a legal state and acts of acquisition, mere thought is not effective for that, and a complete inference from the circumstances is required. It therefore emerges that there are two kinds of matters of the heart:

(a) As in the case that appears in the passage in Kiddushin, where [the thought] is not the thing bringing about a legal state: the one who sold land intending to go up to Eretz Yisrael. There the matters of the heart come, on the contrary, so that a legal state should not take effect; there they are not matters, because they contradict the act.

(b) Matters of the heart that come in order to bring about an acquisition and a legal state. There they are not matters even where they do not contradict the act, since an act of acquisition

must be performed, and through a thought one sees no act of acquisition and no legal state at all.

לעשות מעשה הקנין, וע"י מחשבה אין רואין שום מעשה הקנין וחלות.

Sugya Note

Rav Baruch Ber Leibowitz is explaining the rule "matters of the heart are not binding" — "matters in the heart are not [binding] matters." He points out that this phrase actually covers two *different* problems, not just one.

The first situation: Sometimes a person's private thought is trying to *cancel* something that already legally took effect. For example, in the sugya in betrothal — a man wants to undo a deal he already made, based on a thought he never said out loud. In *this* case we say "matters in the heart are not matters," because his thought simply doesn't have the power to rip up an action that already happened.

The second situation: But there's another kind of case — where a person is trying to *create* a legal effect (a *kinyan* or a *chalos*, meaning making something take legal effect) using his thought *alone*. For example, *hefker* (declaring something ownerless) done only in the heart. Here the problem is *not* that his thought is fighting against some action he did. The problem is different: a bare thought, by itself, doesn't count as a real "act" that is powerful enough to create a legal effect or an acquisition.

The bottom line: So there are actually *two separate* weaknesses. One: "matters in the heart are not matters" when the thought comes to *cancel* something that already took effect. And two: a thought by itself cannot *create* a legal effect in a place where the Torah requires an actual act of acquisition.

דביאור דכתב מרן הגאון הרב ברוך בער זצוקללה"ה, דיש לחלק בין שני אופנים בדין דברים שבלב. דיש דברים שבלב הבאים לעקור את החלות שנעשתה בפועל, וכגון בסוג' דקידושין, דרוצה לבטל את המעשה מכח מחשבה שלא נתפרשה, ובכהאי גוונא אמרינן דדברים שבלב אינם דברים, לפי שאין בכח מחשבתו לעקור את המעשה שנעשה. אולם יש אופן נוסף, והוא היכא שרוצה להחיל קנין או חלות על ידי מחשבתו בלבד, כגון בהפקר שבלב. ובזה אין החסרון משום שמחשבתו עומדת כנגד המעשה, אלא משום שמחשבה גרידא אינה חשובה מעשה הראוי לפעול חלות וקנין. ונמצא, דמלבד הדין דדברים שבלב אינם דברים כשהם באים לעקור את החלות, ישנו חסרון נוסף, דמחשבה לבדה אינה יכולה ליצור חלות במקום שהתורה הצריכה מעשה קנין.

If a complete inference can reach into a legal state that has to be brought into being, how far does it reach?

Sugya note

We just saw that Rav Baruch Ber split the rule of "matters in the heart" into two problems: (1) a thought can't *cancel* something already done, and (2) a thought by itself can't *create* a legal effect (an acquisition) where an action is needed. With this concept, we explain the Ketzos's view — that when there's a clear obvious assumption, the thought stops being a weak "matter in the heart" and counts as if it were spoken. The Ketzos already wrote (in chapter 66, note 26) that when a borrower

ולפי"ז אפשר לומר דזהו האי טעמא כוונת הקצות דס"ל דע"י האומדנא אינו נחשב דברים שבלב אלא הוו דברים, דכבר כתב הקצות (סי' ס"ו,

pays back on his own, *or* when the lender forgives the loan, it is like a payment. In other words, the lender's *mechilah* (forgiving) counts as an actual "payment" — which means it is an act that creates a legal effect.

Now here's the important point: since *forgiving a loan* is an *action* that creates an effect, it *must* be that a plain "matter in the heart" is not enough for it — *even* in a case where the thought isn't contradicting anything the person said out loud. A thought alone still can't do the job. It only works through the power of the obvious assumption — because when a thing is known to everybody, it counts as real, binding words.

There are two levels where a "matter in the heart" can work:

A "matter in the heart" in a case where it is *not* creating a legal effect or an acquisition, and it is not contradicting anything he said out loud. (Here even a plain thought can count.)

A "matter in the heart" backed by an obvious assumption — which works *even* for an act that creates a legal effect or an acquisition. Because when there's an obvious assumption, the "matter in the heart" is treated as real, binding words.

ס"ק כ"ו) וז"ל, דכשהלוה פורע בעצמו או שמחל לו המלוה דהוי כפרעון ע"ש, דהיינו מחילת המלוה נחשבת פרעון וממילא הוי מעשה חלות, על כרחך דברים שבלב לא סגי אפי' במקום דלא סותרין את פיו, ואינו מועיל אלא ע"י כח האומדנא דידוע לכל אדם דהוו דברים. נמצא דיש כאן ב' דרגות דמועיל דברים שבלב, א) דברים שבלב במקום דאינו עושה חלות או קנין ואינו סותרין דיבורו, וב) דברים שבלב במקום אומדנא, דאפי' במעשה חלות וקנין מועיל, שבמקום אומדנא הדברים שבלב הוו דברים.

Takeaway

The Birkas Shmuel, setting out Rav Chaim's answer, distinguishes two independent reasons a silent thought fails: it cannot contradict an act already performed, and it cannot itself serve as the act that brings a legal state into being. A further suggestion, offered as a possibility, is that a complete inference from the circumstances reaches even into the second of these.

VIII. Why Does Betrothal Still Need the Words?

An inference was enough one section ago. Is it enough here?

Background:

In Jewish law, an incomplete or "shorthand" expression can sometimes still be legally binding. This is called a yad (literally "a handle"). For example, if a person starts a statement and doesn't finish it, but everyone understands what he meant, that "handle" can count. The Gemara in Nedarim (6b) asks whether the concept of shorthand expression works for betrothal too. The author now brings a sharp question and answer from his teacher (referred to as "my teacher and master") about this.

Birkas Shmuel, Kiddushin 1, opening of the siman | ברכת שמואל (שם, בריש הסימן)

ונקדים דברי מו"ר הגאון אמיתי החסיד רשכבה"ג זיע"א אהא דבעי בנדרים (דף ו:) אם יד לקידושין או לא, ומוקי כגון דאמר לה לאשה הרי את מקודשת לי, ואמרה לה לחברתה ואת, מי אמרי' ואת נמי א"ל לחברתה ותפסי בה קידושין לחברתה, או דלמא ואת חזאי א"ל לחברתא ולא תפסי בה קידושין בחברתה, והק' מו"ר זיע"א מה צריכין אני לדין לשון גבי קידושין, הא אפי' אומדנא ע"י שדיבר עמה על עצמה קידושין, אע"פ שאין בו דין לשון ג"כ מהני גבי קידושין, דהא לא בעינן דין לבטא בשפתים גבי קידושין, והרי הר"ן כ' דודאי יד מוכח הוי דאת נמי קאמר, א"כ אפי' אם נאמר דאין יד לקידושין נמי מהני לקידושין דלכל הפחות הוי כמו דיבר עמה על עצמה קידושין (דהיינו הוו נחשב דברים מכח האומדנא), ותי' מו"ר זיע"א דמזה מוכח דמן לשון של קידושין לא עבדינן אנן אומדנא, וביאור דבריו הק' הם, דבקידושין בעינן אמירה מגזה"כ דכי יקח, דבעינן נתן הוא ואמר הוא, וביאור הך גזה"כ הוא דגבי קידושין מה דבעינן דעת הבעל אין זה רק משום דין קנין כמו דבעינן גבי מקח וממכר דעת משום חלות הקנין, אלא מלבד דין דעת לעשות קנין כמו בשארי קנינים דבעינן דעת וכוונת קונה, בעינן בזה דעתו דבעל בכדי שיהי' מעשה קיחה, וכל זמן דליכא דעתו אין כאן מעשה קידושין.

Let us first bring the words of my teacher and master [Rav Chaim Soloveitchik] on the Gemara's question in *Nedarim* (6b): does the concept of shorthand expression work for betrothal or not?

The Gemara sets up the case like this: a man says to a woman, "You are betrothed to me," and then says to her friend, "and you too." The question is: do we say that "and you too" means he was also betrothing the friend — so the betrothal takes hold on the friend as well? Or do we say that "and you too" only meant "and you should watch this betrothal happen" — so no betrothal takes hold on the friend?

[Rav Chaim Soloveitchik] questions, why do we even need the whole concept of shorthand expression here for betrothal? After all, even a plain obvious assumption should work! Since he was clearly in the middle of talking to her about betrothal, that context alone should be enough — even without the special rule of shorthand expression — because for betrothal we do *not* need the law of "expressing it with the lips" (speaking the words out fully). And in fact the Ran writes that this is a clear, obvious shorthand expression, since it's plain he also meant "you too." So even if we were to say that shorthand expression does *not* work for betrothal, it should *still* work — because at the very least it's like he was speaking to her about betrothal (meaning: the thought should count as binding through the power of the obvious assumption)!

My teacher's [Rav Chaim Soloveitchik] answers from this we see a proof — that for the *wording* of betrothal, we do *not* make an obvious assumption. In other words, an obvious assumption is not enough to fill in the words of betrothal.

The reason being that by betrothal the Torah requires an actual *saying* (a spoken statement), which we learn from the verse "*ki yikach*" ("when a man takes [a wife]"). From here we learn that *he* must give and *he* must say. And here is the deeper meaning of this verse: by betrothal, the reason we need the husband's *da'as* (his intent — the awareness and will behind the act) is *not* only because of the rules of an acquisition — the way we need intent by regular buying and selling in order for the acquisition to take effect. Rather, on top of the normal need for intent to make an acquisition, by betrothal we *also* need the husband's intent specifically in order for there to be a valid "*act* of taking" (*ma'aseh kichah*). And as long as his intent is missing, there is simply no *act* of betrothal here at all.

Term Note

קידושין | *Kiddushin* | **Betrothal**

The act by which a man makes a woman his wife, effected by his giving her an object of value and stating that he does so.

Term Note

גזירת הכתוב | *Gezeiras HaKasuv* | **A Rule Set by the Verse**

A law that stands on the wording of the Torah rather than on the reasoning that governs comparable cases.

Sugya Note

We just learned Rav Chaim Soloveitchik answer that for betrothal, the Torah requires the man to actually *say* the words — a mere obvious assumption is not enough. Now the Rov Boruch Ber explains *why* that is. The key idea: in betrothal the "saying" isn't just a way to show intent — the *saying itself* is part of the *action* of getting married. This is different from a regular acquisition, where an obvious assumption can be enough.

This means that in betrothal there are two parts: (1) giving the money (the ring or coin), and (2) the *saying* (speaking the words of betrothal). And the *saying* is itself a *part* of the act of betrothal — the saying, together with the giving of the money, is what *makes* the act of betrothal happen.

Because of this, an obvious assumption is not enough for the act of betrothal. You need a *real, actual saying* — it is not enough merely to reach the level of "this is no longer just a matter in the heart." Here's why: all an obvious assumption can do is take a thought *out* of the category of "matters in the heart." So for a plain acquisition or legal effect, a "matter in the heart" *plus* an obvious assumption is enough — because the obvious assumption makes it count as real, binding words instead of a mere thought.

But even so, that still is *not* the same as a real "*saying*." An obvious assumption can turn a thought into "binding words," but it cannot turn it into an actual act of *speaking*. And in betrothal, the Torah specifically requires a real *saying*, because the saying is a *part* of the very act of betrothal. Therefore, in the act of betrothal, even an obvious assumption does not help — because the verse demands actual speech, and that speech is a built-in piece of the *ma'aseh kiddushin* (the act of betrothal) itself.

דהיינו בקידושין הוו שני דברים, א) נתינת הכסף וב) האמירה, דגם האמירה היא חלק ממעשה קידושין, והאמירה עושה מעשה הקידושין עם נתינת הכסף, ממילא אומדנא במעשה קידושין לא סגי, וצריכה אמירה ממש ולא רק שלא הוו דברים שבלב, דאומדנא רק מועיל כדי שלא הוו דברים שבלב וממילא בקנין וחלות גרידא סגי דברים שבלב עם האומדנא, דלא נחשב דברים שבלב אלא דברים הוו, מ"מ עדיין אינו דין אמירה, ע"כ במעשה קידושיו אפי' ע"י אומדנא לא מועיל דגזה"כ דצריכה אמירה ממש, דהאמירה חלק במעשה הקידושין.

IX. סיכום הדברים — The Four Rules

Sugya Note

Summary of the matter: Throughout our discussion we've been sorting out the rule of "matters of the heart" — matters in the heart. It turned out the rule isn't just one simple thing; there are actually four different levels, depending on the situation. The following is list all four in order, from the weakest (thoughts that never help) to the strongest requirement (where even a strong thought isn't enough and you need real speech).

1) A "matter in the heart" that does NOT help. This is in a case where the thought *contradicts* what he said out loud, OR where he is trying to make an acquisition or legal effect *without* an obvious assumption. In these cases a private thought has no power. *(In simple terms: a hidden thought can't cancel your spoken words, and a bare thought can't create a legal effect on its own.)*

2) A "matter in the heart" that DOES help. This is where he is *not* trying to create a legal effect or acquisition, and his heart and mouth match (his thought doesn't fight his words — it just adds to them). *(In simple terms: when the thought quietly supports what he did rather than contradicting it, and nothing new needs to be "created," the thought counts.)*

3) A "matter in the heart" that helps because of an umdena. This works *even* for an act that creates a legal effect or acquisition. Because when there is an obvious assumption, the "matter in the heart" is upgraded and counts as real, binding words. *(In simple terms: a clear, obvious assumption is strong enough to turn a thought into "spoken-level" words, so it can even build a legal effect.)*

4) An actual saying is required in the act of kiddushin. Here, *even* a "matter in the heart" backed by an obvious assumption does *not* help. Betrothal needs real, spoken words — because in betrothal the saying is a *part* of the very act itself, and no obvious assumption can replace it. *(In simple terms: marriage is special — the speaking is built into the act, so even the strongest assumption can't substitute for actually saying the words.)*

סיכום הדברים מצינו דיש ד' דינים בסוג' דברים שבלב, א) דברים שבלב דלא מועיל כגון דסותרין דיבורו או במקום קנין וחלות בלא אומדנא, ב) דברים שבלב דמועיל היינו במקום דאינו עושה חלות וקנין ולבו ופיו שוין, וג) דברים שבלב דמועיל במקום אומדנא, דאפי' במעשה חלות וקנין מועיל, שבמקום אומדנא הדברים שבלב הוו דברים, ד) אמירה ממש במעשה קידושין, דאפי' דברים שבלב מכח האומדנא לא מועיל ודו"ק.

Conclusion

The whole discussion is really building one big idea: “matters in the heart” (matters of the heart) isn’t a single rule — it’s a spectrum with four levels, and where you land depends on what job you’re asking the thought to do.

The deepest point underneath all four levels is this: the more “work” you need the thought to accomplish, the more it takes to make it count.

If you just need a thought to sit quietly alongside your actions (not cancel anything, not create anything) then a plain thought is enough.

If you need a thought to cancel your spoken words, or to create a legal effect on its own then a plain thought is not enough; you need an obvious assumption to lift it up to the level of “spoken words.”

And if you need it for betrothal then even that upgrade isn’t enough, because betrothal requires real speech as an actual part of the act, and nothing can substitute for it.

In one line: An obvious assumption can turn a thought into “words,” but it can never turn a thought into “speech” . That single distinction is what separates ordinary acquisitions (where an obvious assumption suffices) from betrothal.