

אין גותנין עורות לעבדן ובית הלל מתירין -

We do not give hide to a tanner, and *Bais Hilel* permit it

Overview

הלל maintains that it is permitted to give a tanner hide to cure on ע"ש, even if the tanner may cure it on שבת, which is a מלאכה דאורייתא for a ישראל. Our תוספות discusses whether we can derive certain leniencies from this משנה.

מכאן היה נראה לרבינו תם להתיר על ידי קבלנות¹ נכרי לבנות בשבת -

From this משנה it appeared to the ר"ת to permit a contracting נכרי to build on שבת, if the נכרי so desires and we are not required to stop him –

The ר"ת offers an additional proof:

ועוד מביא ראיה מריחים דשרי בית הלל אליבא דרב יוסף בגמרא² (לקמן יח,א) -

And the ר"ת also brings proof from the case of a water mill which ב"ה permits according to רב יוסף later in the גמרא; meaning -

דמתירין להניח שם חיטין מבעוד יום ויניחנו כל השבת -

That ב"ה permits putting wheat in there, in the mill, before שבת and he can leave it there for the entire שבת where it will be ground into flour, therefore -

כל שכך³ קבלנות על ידי נכרים דשרי -

Contracting through a נכרי is certainly permitted.

ריחיים from ר"ת rejects the proof of the תוספות:

ואינו ראיה דידעי כולי עלמא שהריחים טוחנות מעצמם⁴ -

And it is not a proof, for everyone knows that the water mill grinds on its own, no one needs to do any work, the flow of the water turns the millstones -

¹ קבלנות or contracting is where a person is paid for the job, but not by the hour/day. In this case the ישראל contracts the נכרי to build a house for him at a agreed upon price. The נכרי (according to the ר"ת) may then work even on שבת. Just as it is permitted to give the hides to the tanner and he works on שבת, since the tanner is not a שכיר (a hired person by the hour), but rather a קבלן (he is paid by the job), the same היתר should apply to building on שבת. The difference between a שכיר and a קבלן is that by a שכיר the נכרי is working directly for you, he is working now because you hired him and are paying him for his work at this moment; however by קבלנות the נכרי works whenever he wants, he is not working directly for you, he is working for himself. He will be paid the same whether he works on שבת or not.

² רב יוסף taught that the prohibition for placing wheat in a mill is because of שביתת כלים. However שביתת כלים is only according to ב"ש, but not according to ב"ה. Therefore since the ריחיים of איסור according to רב יוסף is because of שביתת כלים, it turns out that it is permitted according to ב"ה. See מהר"ם on ולימא that it is permitted according to ב"ה. יח,א בתוד"ה ולימא on מהר"ם.

³ The "כ"ש" would be that if by ריחיים, which belong to a ישראל, and it makes a loud noise, nevertheless it is permitted to grind on שבת, so certainly when the נכרי is working and the ישראל has nothing to do with it, that it is certainly permitted.

⁴ We cannot suspect that he is telling a נכרי to operate the mill, for it works on its own.

וידעי נמי שהחטין הושמו שם מערב שבת⁵ -

And they also know that the wheat was placed there in the mill on ש"ש, therefore it is permitted -

אבל קבלנות יאמרו שצוה להם בשבת לעשות⁶ -

However by the building contractor, people will say that the ישראל told them to work on שבת, which is prohibited.

The ר"ת offers a different proof:

ועוד מביא ראיה מסוף פרק קמא דעבודה זרה (דף כא, ב ושם) דאמר רבן שמעון בן גמליאל -

And the ר"ת brings another proof from the end of the first פרק of ע"ז, מסכת ע"ז, where רשב"ג states -

משכיר אדם שדהו לנכרי מאי טעמא אריס אריסותיה קעביד⁷ -

'A person may rent out his field to a נכרי; what is the reason, we assume the sharecropper is working for his share' -

והכא נמי קבלנותיה קעביד -

So here too by the building he is working for his contract (not for the ישראל) -

ואף על גב דרבי שמעון בן אלעזר פליג עליה -

And even though רשב"ג argues on רשב"ג, nevertheless -

קיימא לן כרבן שמעון בן גמליאל דסתם מתניתין כוותיה⁸ -

We follow רשב"ג for our משנה ruled like רשב"ג -

תוספות anticipates a difficulty:

והא דאמרינן במועד קטן (דף יב, א ושם) מקבלי קבולת בתוך התחום אסור חוץ לתחום מותר -

And this which שמואל states in מ"ק; 'those (נכרים) that accept contracts; if it is within the תחום of the city it is forbidden for them to work; however if it is outside the תחום it is permitted for them to work'. Presumably this is discussing whether the נכרי is permitted to work on שבת if he is a contractor; שמואל rules that if it is בתוך התחום it is אסור, this is in contradiction to ר"ת -

תוספות responds:

⁵ No one will suspect that the miller put the wheat into the mill on שבת. He will not blatantly disregard an מה"ת. איסור מה"ת.

⁶ People are suspect of not adhering to the prohibition of לעכו"ם; אמירה לעכו"ם; it does not seem to them to be such a serious offense. They onlookers will not necessarily assume that this is קבלנות, they will think he hired them.

⁷ Even if the נכרי works on שבת, we will not assume that he is an agent of the ישראל and working on his behalf, but rather we will assume that he is an אריס, and he is working to receive his percentage of the produce. A שכיר rents the field, meaning he pays the owner a certain fee (for a certain amount of time) and all the produce is his. An אריס works the field for a percentage of the yield. Many fields are let out באריסות, therefore we do not suspect that this שוכר is a יום שכיר, but rather we assume he is an אריס [however in fact he is a שוכר (which is also permitted)].

⁸ See Tosfos who says that לשון הזהב means that our משנה that ruled לעבדן agrees with עורות עורות לעבדן. See footnote # 13.

מוקי רבינו תם התם כולה שמעתיה באבל⁹ ולכך החמיר¹⁰ -

The ר"ת establishes that whole סוגיא there regarding a mourner, so therefore was stricter, however regarding שבת we are more lenient and he is permitted even בתוך התחום.

Tosfos rejects this answer:

ולא נהירא דהתם איכא דמחמרי בחול המועד¹¹ טפי מבאבל -

And it does not seem so (that אבל is more stringent than שבת), **for there** in מו"ק **there are those who are more strict by חוה"מ than by אבל** (so they will certainly be more strict by שבת [which is more חמור than חוה"מ] than by אבל) -

ואפילו למאן דמחמרי טפי באבל מבחול המועד מודה בשבת דחמיר טפי¹² -

And even those who are stricter by אבל than by חוה"מ, will agree that שבת is more strict than אבל -

In summation the ר"ת has a ראייה that מותר is קבלנות בבנין, from our משנה regarding עורות לעבדן. His proof from ריהיים was rejected. Another proof is from רשב"ג. However there is a difficulty from מו"ק where it is prohibited for קבלנים to work התחום.

Tosfos presents an opposing view:

ונראה לרבינו יצחק דהא דשרי בשמעתין עורות לעבדן היינו בתלוש -

And it is the view of the ר"י, this which our סוגיא permits giving עורות לעבדן is only because the leather is not attached to the ground; so in that case -

דלא מפרסמא מילתא שהנכרי עושה מלאכה בביתו ולא ידעי שהוא של ישראל¹³ -

There is no publicity. For the נכרי (the tanner) does the work in his house, so no one knows that it is the work for the ישראל -

וכן נמי אמר במועד קטן (דף יא,ב ושם) גבי אבל -

And similarly רשב"ג also rules in מו"ק regarding an אבל -

מלאכתו ביד אחרים בביתו לא יעשו בבית אחרים יעשו -

If his work is in the hands of others (meaning it is contracted out); in the s'בל house they should not do it (even if they are contractors), in the house of others

⁹ A mourner is not permitted to do work. שמואל ruled that even contracted jobs are forbidden התחום, because בתוך התחום people will suspect that the אבל hired them as day laborers to do his work.

¹⁰ The גמרא in יא,ב states מו"ק בימי אבלו אסורים במועד המותרין אסורים בימי אבלו. The reason may be that sometimes the חכמים were stricter on their איסורים in order to bolster them, than they were on תורה, איסורי תורה, which need no bolstering. עשו חכמים חיוזק לדבריהם יותר משל תורה.

¹¹ There is an אהל similar to the מלאכה חוה"מ on איסור מלאכה. See רב אשי there who is more במועד.

¹² See 'Thinking it over'.

¹³ The ר"י rejects the proof from our משנה since it is בתלוש where there is no פרסום, as opposed to מחובר where there is פרסום. The ראייה from רשב"ג also falls off since we can no longer say כוותיה כוותיה, for our משנה is בתלוש and in רשב"ג is במחובר; we would rather say the הלכה is like רשב"ג as cited later from the ירושלמי. See footnote # 8.

they may do it¹⁴ -

אבל קבלנות דמחובר דהוי ברשות ישראל דמפרסמא מלתא אסור בתוך התחום -
However when contracting a job, which is in the property of the ישראל, so there is publicity, it is forbidden בתוך התחום -

דהרואה יאמר שכירי יום נינהו -

For whoever sees the נכרים working on the ישראל's property will assume that are day laborers, which is forbidden.

ר"י offers support for the תוספות:

והכי משמע בירושלמי דפירקין דקאמר התם אומני נכרים שהן עושים עם ישראל -
And so it seems in the תלמוד ירושלמי of our פרק, where he states there, נכרי, craftsmen who are working for a ישראל -

בתוך ביתו אסור בתוך ביתם מותר -

In the ישראל's house it is forbidden, in their house it is permitted -

אמר רבי שמעון בן אלעזר במה דברים אמורים בקבולת אבל בשכר אסור פירוש שכיר יום -
אמר רבי שמעון בן אלעזר במה דברים אמורים (בתוך ביתם מותר) if they are contractors, however for wages it is forbidden; the meaning of בשכר is day laborers -

במה דברים אמורים בתלוש אבל במחובר¹⁵ אסור ובעיר אחרת בין בתלוש בין במחובר מותר -
When is this said (that it is בקבולת) only however בתלוש if it is for the purpose of מחובר it is אסור, and if the נכרים work in another city it is permitted, whether בתלוש or whether במחובר -

אמר רבי שמעון בר כהנא בשם רבי אחא בשבת ובאבל ובע"ז¹⁶ הלכה כרבי שמעון בן אלעזר -
הלכה ע"ז and אבל and רב אחא regarding רב אחא said in the name of ר"ש בר כהנא is like רשב"א -

ורבינו תם נמי כשבנה את ביתו לא סמך על תשובתו ולא רצה להתיר:

And even the ר"ת when he built his house did not rely on his responsa and did not want to permit the נכרים to work on שבת.

The following is an addendum from תוספות ישנים:

ומיהו בשדה¹⁷ מותר כרבן שמעון בן גמליאל דבשדה רגילות לעשות באריסות ולא בשכירות יום -

¹⁴ In the s'בל house we may mistakenly assume that he hired them (as laborers), however when it is not in his house, no one knows for whom the contractor is working for, therefore it is permitted.

¹⁵ This means if the נכרי is cutting stones in his house for a building, that too is אסור; only work for תלוש is permitted.

¹⁶ See אומנין ישראלים (ירושלמי ע"ז פ"א סוף ה"א) that this is referring to a case (in ה"א) where אומנין ישראלים are working for an אומן on his 'holiday'; there the law is the exact opposite, they cannot work in his house but they can work in their houses. Regarding this, רשב"א qualifies and says אסור לקרקע אסור.

¹⁷ The תו"י qualifies the אסור במחובר of the ר"י that it does not apply to renting out a field.

However by a field it is permitted to rent it out to a נכרי as רשב"ג ruled, for regarding a field it is customary to give it out to sharecroppers, but not to day laborers –

Another ruling:

וכשישראל אומר לנכרי לתקן מנעלים או לקנות אל יאמר תעשה למחר דאם כן הוי כשכיר יום -
So when a ישראל says to a נכרי, 'fix my shoes', or 'buy me something' he should not say on ע"ש, 'do it tomorrow' on שבת, for then the נכרי is like a שכיר יום -
אלא תעשה לכשתרצה –

But rather he should say, 'do it whenever you want' –

A final ruling:

ואם הביא לו נכרי כליו ויודע שכבסן בשבת אסור ללבושן בשבת -
And if the נכרי brought him his clothes (on שבת) and the ישראל knows that he washed them this שבת, he is forbidden to wear them this שבת -
דאמר לקמן (קכב,א) נכרי שהדליק נר בשביל ישראל אסור להשתמש לאורה (תוספות ישנים):
As the משנה states later, 'a נכרי lit a lamp for the sake of a ישראל, he is forbidden to use its light'. (The above is from תוספות ישנים).

Summary

The ר"ת wanted to permit a נכרי contractor to work on שבת (based on our משנה), but he did not follow his own ruling. The ר"י differentiated between תלוש, where there is no publicity and it is מותר, and מחובר, where there is publicity so it is אסור. The ר"י qualified that by a שדה it is מותר, since it is common to let it out to sharecroppers.

Thinking it over

Tosfos writes that even those who are more מחמיר by אבל than by חוה"מ will agree that שבת is stricter than אבל.¹⁸ Why is Tosfos so sure of this; perhaps just as he is more מחמיר בשבת than מועד, he is also more מחמיר באבל?!

¹⁸ See footnote # 12.