

## **A slave cannot become an agent, etc.      אין העבד נעשה שליח כולי -**

### **Overview**

The משנה<sup>1</sup> stated that a נכרי is פסול to bring a גט. The גמרא discussed what is the rule concerning an עבד כנעני; to which ר' יוחנן said in the name of ר' אסי that an עבד cannot be a שליח to receive a גט.

-----

תוספות asks:

**ואם תאמר ומתניתין ליתני עבד וכל שכן עובד כוכבים<sup>2</sup> -**

**And if you will say; why does not our משנה teach us that an עבד is פסול to be a שליח, and we would know that a נכרי is פסול certainly** –

תוספות offers a partial response:

**ולישנא דאמר רבי יוחנן לעיל<sup>3</sup> זו אין תורה ניהא -**

**And according to the version that ר"י said previously, 'this is not the law', it is understood -**

**דנקט עובד כוכבים למידק דלענין כתיבה אפילו עובד כוכבים כשר<sup>4</sup> -**

**That the reason our משנה mentions a נכרי (that he is פסול to be a שליח), is for the inference, that he is only פסול for a שליח, however regarding writing a גט, even a כשר is נכרי -**

**אבל להך לישנא<sup>5</sup> דמוקי רבי יוחנן כרבי אלעזר קשה מהך דרבי יוחנן דהכא<sup>6</sup> -**

**However according to the version that ר"י establishes the משניות like ר"א (that we require לשמה (כתיבה לשמה) there is a difficulty from this ruling of ר"י here –**

<sup>1</sup> כג, א.

<sup>2</sup> A נכרי is not fit for any שליחות, for we derive it from ב"ב שלוחכם (see the גמרא shortly), however an עבד can be a שליח for certain matters, since he is a ברית, for he is מחוייב במצות כאשה (he just cannot be a שליח for (בתורת גיטין וקידושין) since he is not וקידושין (who is not a ב"ב and not וקידושין) is certainly פסול.

<sup>3</sup> On the גמרא cited כג, א, ר' זריקא אמר ר"י אין זו תורה, this that you require לשמה כתיבה is incorrect, for we rule like ר"י that ר"מ (and ע"מ כרתי ר"מ) refers to the חתימה; not the כתיבה). According to this version of ר"י we can answer תוס' question.

<sup>4</sup> Regarding this inference that one is פסול only for שליחות, but is כשר for כתיבה, the greater חידוש is by a נכרי (more than an עבד) that even a נכרי who is not a ברית (like an עבד), nevertheless he too can write the גט, since we do not require לשמה כתיבה.

<sup>5</sup> The גמרא states כג, א, ואליבא דר"י; there are two views; whether ר"י follows ר"מ (and we do not require לשמה כתיבה), or ר"י follows ר"א (and we require לשמה כתיבה).

<sup>6</sup> If ר"י follows ר"א we cannot infer from our משנה that a נכרי may write a גט, for according to ר"א a נכרי cannot write a גט (even if געז"ג), the question then remains why did not the משנה rule that an עבד cannot be a שליח, and we would know that certainly not a נכרי?!

answers: תוספות

ואומר רבינו תם דנקט עובד כוכבים לאשמועין עובד כוכבים ונתגייר פסול<sup>7</sup> -

And the answers that the משנה mentions a נכרי to inform us the rule that if he was a נכרי when he received the גט and he was later מתגייר he is פסול to deliver the גט even after he was נתגייר -

אף על פי שבאותה שעה היתה דעתו להתגייר<sup>8</sup> -

Even though that at that time when he received the גט as a נכרי he intended to be מתגייר, nevertheless he is פסול; this חידוש -

דהוי בעובד כוכבים רבותא טפי מבעבד שאין בידו להשתחרר:

Is a greater novelty by a נכרי, who has the ability to be מתגייר than by an עבד who does not have the ability to be freed.

### Summary

The משנה mentions a נכרי (not עבד) either for the inference that he is כשר for כתיבה, or that even though he intended to be מתגייר he still cannot be a שליח.

### Thinking it over

Why should there be even a אמינא הוה that since he intends to be נתגייר, he should be כשר to be a שליח, since as of now he is still a נכרי and cannot be a שליח?!<sup>9</sup>

<sup>7</sup> The משנה mentions a נכרי for the case later in the משנה of נתגייר.

<sup>8</sup> We may have thought that since he intends to be מתגייר and there is nothing preventing him from doing so, he should be considered a 'בר היתרא', since when he delivers the גט and the גירושין are חל, he is a גר (so his שליחות should be valid retroactively [see 'Thinking it over']). However by an עבד there is no such חידוש, since an עבד does not have the capacity to free himself and become a full fledged ישראל; for he is totally dependent on his master.

<sup>9</sup> See # 59. אוצר מפרשי התלמוד.