אע"ג דאמירה לעובד כוכבים שבות משום ישוב ארץ ישראל לא גזרו רבנן -
Even though that telling a gentile is violating the (rabbinic) ordinance to **rest,** nevertheless **because** of **inhabiting א"י, the רבנן did not decree** a prohibition in this instance.

Overview

Our גמרא teaches us that in order to fulfill the מצוה of ישוב א"י we are permitted to tell a גוי to do a מלאכה דאורייתא; in this case כתיבה. Our תוספות will be discussing under what circumstances is אמירה לעכו"ם permitted.
Another issue discussed in תוספות is the prohibition of מרבה בשיעורים. From the גמרא in [1]מנחות it is apparent that if two figs were needed for a חולה שיש בו סכנה and there were two options; either to cut one stem with two figs on it or to cut a stem with three figs on it, one would have to cut the stem with two figs on it, otherwise he would be considered מרבה בשיעורים, which is prohibited.

אבל משום מצוה אחרת לא היינו מתירין אמירה לעובד כוכבים במלאכה דאורייתא -
However, on account of another מצוה; not ישוב א"י, the חכמים **would not permit telling a gentile** to perform a **Torah** forbidden **task.** תוספות derives this from the fact that the חכמים permitted telling the עכו"ם to write the שטר which is a מלאכה דאורייתא only because it was for a special מצוה, but not for a 'regular' מצוה. If indeed אמירה לעכו"ם would be permitted for every מצוה even by a מלאכה דאורייתא, the גמרא should have said 'במקום מצוה לא גזרו' and not [2]משום ישוב א"י לא גזרו.

תוספות will now prove this point:

כדמוכח בפרק הדר (עירובין דף סח,א) **ההוא ינוקא דאשתפיך חמימיה אתו לקמיה דרבא -**
As is evident from the גמרא **in פרק הדר;** which states: **'There was this baby whose hot water spilled out, they came before רבא** to ask him if they are permitted to heat more water on שבת -

אמר להו לשיילו לאימיה אי צריכה ניחיימו ליה אגב אימיה -
רבא **answered them: 'ask** the baby's **mother, if she needs** any hot water for

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[1] דף סד,א.
[2] This however is not conclusive proof. One may say the opposite. The גמרא wanted to inform us that this case of ישוב א"י is also considered a sufficient מצוה for which אמירה לעכו"ם is מותר. It would certainly be מותר for other מצות. Therefore תוספות offers an additional proof.

herself, **we will warm up water** for the baby **on account of his mother''[3].** This concludes the quote from the גמרא.

תוספות will proceed now with his proof that אמירה לעכו"ם במקום מצוה is אסור.

ולכאורה משמע דביום המילה היה שהיו צריכין לחממו כדי למולו -

It is seemingly apparent that this story **happened on the day** when this baby was to receive his ברית **מילה[4]; they needed to heat** the water **in order[5] to circumcise him[6] -**

דאי לאחר המילה מסוכן הוא ובלא אימיה מחללין עליו שבת -

For if this happened **after** the baby was **נמול, he is considered in danger** of losing his life **and without his mother** needing hot water, **we desecrate the שבת for** the baby. We have established that this water was to be heated for a מצוה namely מצות מילה.

תוספות will now prove that the entire discussion there was concerning whether a גוי can heat the water.

ועל ידי עובד כוכבים אייר התם כדפירש שם בקונטרס וכן פירש רבינו חננאל -

The discussion there was concerning heating the water **through a גוי as רש"י explained there[7].** There was never any thought that a ישראל should be permitted to heat water on שבת for [the mother or for] a ברית, **and the ר"ח also explains it** in the same manner; that it was performed by a גוי -

כדאמרינן בפרק מפנין (שבת קכט,א) **דחיה משבעה עד שלשים[8] -**

As the גמרא **says in פרק מפנין that a birthing mother; after seven** days from giving birth **until thirty days** from after giving birth -

אפילו אמרה צריכה אני אין מחללין עליה את השבת -

Even if she says I need something which would require חילול שבת **we are not מחלל שבת for her** sake even though she asks for it[9]. At that time we consider her not to be in any danger. On the day of the מילה (the eighth day from birth), the mother is past the seven day limit; how can רבא say that we will heat the water for the child אגב אימיה? A ישראל may not heat the water even for the mother, since she is out of danger.

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[3] The various details of this story will become clearer (!) with the continuation of this תוספות.

[4] The גמרא does not state so explicitly; תוספות assumes that this is the case. See however later in תוספות that it is not necessarily so.

[5] It seems that in those days it was standard (medical) procedure to bathe the baby in hot water before the ברית

[6] This is to establish that we are discussing a מלאכה במקום מצוה.

[7] In the texts of our גמרות in עירובין it says explicitly 'נכרי'. See there the various commentaries and glosses.

[8] We are discussing a ברית, meaning that it was the eighth day after the birth; see later footnote # 14.

[9] We may however be מחלל שבת for this woman, who is considered a חולה שאין בה סכנה if it is done ע"י עכו"ם.

Therefore we must say that רבא meant to heat the water for the mother ע"י עכו"ם. The דין is that we may be מחלל שבת ע"י עכו"ם for a חולה שאין בה סכנה; which the mother is considered to be between שבעה ושלשים. We have now established that the water was to be heated ע"י עכו"ם for מצות מילה. Nevertheless the only way רבא permitted it was[10] אגב אימיה since she is considered a חולה שאין בה סכנה. He did not permit it for the baby directly even though it was לצורך מצות מילה. This concludes the proof that אמירה לעכו"ם is prohibited even לצורך מצוה. It is permitted only לצורך ישוב א"י.

תוספות anticipates a contradiction to the assumption that concerning a חיה from שבעה onwards, the דין is אין מחללין עליה את השבת

והא דאמר בסוף מפנין עד מתי פתיחת הקבר אביי (משמיה דרב יהודה) אמר שלשה -

And concerning **that which** the גמרא **says in the end of** פרק **מפנין: 'Until when is the womb** considered **open? אביי (in the name of רב יהודה[11]) says** up to **three** days -

ורבא משמיה דרב יהודה אמר ז' ואמרי לה ל' -

And רבא in the name of ר"י says up to **seven** days **and** others **say** up to **thirty** days. One may think that they are discussing the time we are still permitted to be מחלל שבת for the חיה; namely as long as the קבר is פתוח; she is still considered a מסוכנת. Therefore according to the "ואמרי לה ל', we are permitted to be מחלל שבת up to thirty days. If we were to assume that רבא agrees[12] with the אמרי לה, then perhaps he was permitting even a ישראל to be מחלל שבת אגב אימיה. There will be no proof then from that גמרא concerning אמירה לעכו"ם במקום מצוה, since it was ע"י ישראל and not ע"י עכו"ם.

תוספות rejects this argument:

לא לחלל עליה שבת קאמרי ופליגי אלא מר אמר חדא ומר אמר חדא ולא פליגי -

They were not discussing and therefore **arguing** concerning **חילול שבת for** this woman; **rather, each one is saying something unique, and there is no argument -**

וכולהו סבירא להו כנהרדעי דאמרי חיה ג' שבעה שלשים -

And the three of them **agree with the נהרדעי who maintain that a חיה** goes through three stages of recuperation at **three, seven, and thirty** days respectively[13]. The previous three אמוראים were each referring to a different stage of her

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[10] Even though extra water was added for the child, nevertheless (since [adding] is only אסור מדרבנן), it is permitted. This will be discussed later in this תוספות.

[11] The gloss omits this.

[12] Even though רבא said משמיה דר"י (only) until ז', nevertheless, we can say that he was merely quoting ר"י and not necessarily voicing his own opinion.

[13] The נהרדעי state that concerning a חיה the first three days we are מחלל שבת for her even if she claims she does not require it, up to seven days we are מחלל שבת if she claims she requires it, up to thirty days we are

recuperation, and the different level of חילול שבת permitted at that time.

תוספות anticipates another challenge to his proof.

ודוחק לומר דמעת לעת בעינן והא עובדא הוה תוך ז' של מעת לעת -

And we would be **hard pressed to say that we require** full **twenty four hour** periods in respect to the three, seven, and thirty day ruling **and this story took place within seven full days** from the time of birth. Were we to accept that this is indeed so, then we may argue that רבא permitted the heating of the water for the mother ע"י ישראל, for it is possible that a ברית מילה take place before seven full days pass from the time of birth.[14] Therefore it would be permitted to heat the water for the mother ע"י ישראל if she says צריכה אני. This would invalidate תוספות proof. תוספות rejects this argument by (previously) stating that it is a דוחק to say that we can be מחלל שבת up to seven complete days from the time of birth[15]. Rather we allow for only seven (regular) days, no matter when they start. If it is the eighth day for the baby it is the eighth day for the mother as well.

תוספות fends off another possible objection.

והא דאמר התם לעיל באידך ינוקא דאישתפך חמימיה -

And that which the גמרא **there** in פרק הדר **said previously concerning another child whose hot water spilled out -**

ואמר להו רבה נייתו ליה חמימי מגו ביתיה[16] ומוקי לה על ידי עובד כוכבים -

And רבה said to them: 'let them bring hot water for him from my house' and the גמרא **establishes** that רבא meant that **a גוי** should bring the hot water from his house. רבא and the child lived in the same חצר, however no עירובי חצרות were made, thereby carrying from רבא to the baby's house was prohibited. We see that we permit אמירה לעכו"ם במקום מצוה.

תוספות answers:

ודאי איסורא דרבנן שרי בחצר שלא עירבו לצורך מילה -

A Rabbinic prohibition is certainly permitted to be transgressed **for the purpose of מילה,** through אמירה לעכו"ם **in a courtyard where an עירוב was not made**. Carrying in such a חצר is only an איסור דרבנן, and that is permitted through אמירה לעכו"ם, since it is being done לצורך מצות (מילה).

מחלל שבת only through a גוי.

[14] If the baby was born Sunday late afternoon and the ברית is performed Sunday morning, seven full days have not passed yet. See footnote # 8.

[15] Or perhaps it is a דוחק to say that (in addition [to this novel ruling]) this particular story took place before seven full days passed. The גמרא should have made some mention of it; so as not to mislead us.

[16] The ב"ח amends the text to read ביתאי as it is written in עירובין סז,ב.

אבל איסור דאורייתא כגון לחמם לו חמים אסור -

However, to transgress a **תורה prohibition, for instance to heat hot water for** the child; **that is prohibited** even when asking a גוי to do the מלאכה.

From תוספות previous answer it may seem that we may transgress an איסור דרבנן through אמירה לעכו"ם if it is לצורך מצוה. However, תוספות will qualify that היתר:

ואין ללמוד מכאן היתר לומר לעובד כוכבים להביא ספר בשבת דרך כרמלית -

One should not derive from the previous גמרא, **permission to tell a גוי to bring a** תורה **scroll on שבת**, whereby the גוי will be required to pass **through a כרמלית.** Carrying in a כרמלית is only an איסור דרבנן. The תורה is being carried לצורך מצוה, so the people could hear the reading of the תורה. Following the previous discussion one may surmise that we are permitted to tell the גוי to bring the תורה even though he is carrying in a כרמלית. We have just concluded that אמירה לעכו"ם by a איסור דרבנן is permitted במקום מצוה. However, תוספות says that it is not so.

דלא דמי משום דמילה דהיא גופה דחיא שבת התירו -

For they are not alike; we cannot compare the case of מילה to the case of ספר תורה, **for** only **by מילה, which it (מילה) itself pushes away שבת[17], did they permit** אמירה לעכו"ם במקום מצוה. However, other מצות such as קריאת התורה, where we do not find that it is דוחה שבת, therefore אמירה לעכו"ם is אסור אפילו במקום these types of מצות.

In conclusion: תוספות is of the opinion that אמירה לעכו"ם באיסורי דאורייתא is אסור even לצורך a מצוה, except for מצות ישוב א"י. However, אמירה לעכו"ם by איסורי דרבנן is מותר if it is לצורך מצוה that it itself is דוחה שבת for instance מצות מילה. However, לצורך other מצות, even באיסורי דרבנן, the דין is that אמירה לעכו"ם is אסור.

תוספות will now bring a dissenting opinion

ומיהו בהלכות גדולות משמע דאפילו איסורא דאורייתא שרי -

However it seems from the הלכות גדולות[18] that it is permitted to transgress **even an איסור תורה -**

על ידי עובד כוכבים לצורך מילה -

through a גוי, for the purpose of מילה[19].

שפירש דליתו מתוך ביתא דרך רשות הרבים -

For he interprets what רבה said '**that they should bring it from the house'** that means that the גוי should bring the hot water by **way of the רה"ר.**

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[17] One is allowed to be מל on שבת even though he is being עובר איסורי דאורייתא.

[18] The בעל הלכות גדולות is usually identified with either ר' יהודאי גאון or (מתקופת הגאונים) רבי שמעון קיירא.

[19] See footnote # 2.

Carrying in a ר"ה is an איסור תורה and nevertheless the בה"ג permits it ע"י עכו"ם since it is לצורך מצות מילה.

לפי זה הא דקאמר נחים ליה אגב אימיה נוקמה תוך ז' ואמרה צריכה אני -

According to this view that even מותר באיסור אמירה לעכו"ם במקום מצוה דאורייתא, then **that which** רבא **said** in the case of the other ינוקא, **'heat** the water **for him on account of his mother', we will** need to **establish** that it took place **within seven days** from the birth (it has nothing to do with מילה[20]), **and she said: 'I need** the hot water' -

שמחללין עליה שבת -

For we desecrate the שבת on her behalf, even through a Jew, since it is within the seven days and she says צריכה אני. If the child would have needed the water for the מילה, then according to the בה"ג we would be permitted to heat the water for the child directly ע"י עכו"ם, and רבא would not have said to warm it אגב אימיה. The בה"ג maintains that even by an איסור דאורייתא is מותר לצורך מצוה אמירה לעכו"ם. The reason רבא said to warm it through his mother, is because there was no מצות מילה involved. This episode took place during the seven days (after the three days) after birth, wherein if the woman says צריכה אני we are מחלל שבת (even[21]) through a ישראל[22].

It seems that according to the בה"ג, in the story of ניחום ליה אגב אמיה, the water may have been heated either through a ישראל or (להבדיל) a גוי. תוספות takes issue with the option (according to the בה"ג) that the water was warmed by a ישראל for the mother who needed it, and incidentally given to the child as well.

ונראה דלא יתכן לומר דנחים ליה על ידי ישראל -

However[23] it seems that it is not correct to say that it was warmed for the child **through a Jew -**

דעל ידי ישראל היה אסור להרבות בשביל קטן כדאמר בפרק קמא דחולין (דף טו,ב) -

For it would be prohibited for a Jew to add water **for the child**, in addition to the water he is heating for the mother **as** the גמרא **says in the first** פרק **of** חולין **-**

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[20] This (following) interpretation follows the פירוש of the תוספות הרא"ש who states explicitly that (according to the בה"ג) it was not ביום המילה. See also תוספות ב"ק דף פ,ב ד"ה אומר. *[Many commentaries (see מהר"ם שי"ק), however, interpret the* בה"ג *to mean that it was* לצורך מילה *and it was* ע"י ישראל. *The* ברית מילה *took place* תוך *ז' of the* לידה. *The* בה"ג *accepts the* תוספות *refuted earlier (see footnote # 14), to be the* פשט. *Their view will be presented in the italicized footnotes.]*

[21] It is possible however that the water was actually heated by a גוי.

[22] If we assume that it was heated by a ישראל, then the בה"ג will not be 'נכרי': גורס in עירובין מ'. See footnote # 7.

[23] *[According to the 'commentaries' mentioned in footnote # 20, this* ונראה וכו' *is coming to refute the* בה"ג *entirely, since according to these 'commentaries' the* בה"ג *is discussing heating only by a* ישראל.*]*

המבשל לחולה בשבת אסור לבריא גזירה שמא ירבה בשבילו -

If one cooks for a sick person[24] on שבת, a healthy person is prohibited from eating any of the leftover food that was cooked on שבת; **it is a decree that** if he is allowed to eat the leftovers, **perhaps he will add** extra food **for him[25].** We see from that גמרא that even though we are permitted to cook for the חולה nevertheless it is אסור to add more food to the pot than the חולה needs. It is also אסור for the בריא to eat any of the leftovers. Here also, even though a ישראל may heat water for the mother because she says צריכה אני; however he may only heat sufficient water for her needs but not for the needs of the baby who is in no סכנה.

אבל על ידי עובד כוכבים ניחא דשרי להרבות -

However, if it was heated **by a גוי** (as תוספות interprets it in his explanation) **it is acceptable, for he is permitted to add more** for the child[26]. The גוי may cook as much as he wishes regardless whether the woman requires the total amount being heated or not. Therefore it is preferable to interpret the בה"ג that it was heated ע"י גוי.

In summation: even according to the בה"ג we need to say that when רבא permitted to warm the water אגב אמו, it was only ע"י נכרי and that is why it was מותר להרבות for the child. תוספות also agrees according to his own שיטה that it is מותר להרבות ע"י גוי for the child אגב אימיה. Otherwise, how did רבא say ניחום ליה אגב אימיה?

תוספות will now make a possible distinction between the היתר of תוספות to be מרבה אגב אימיה to the היתר of the בה"ג to be מרבה אגב אימיה.[27]

ושמא דוקא לצורך המילה הוא דשרי -

And perhaps the גוי[28] is permitted to add water for the child **only** when it is **necessary for the מילה ברית,** as the episode is according to תוספות that the water was needed to perform the מילה.

אבל לצורך דבר אחר אפילו על ידי עובד כוכבים אסור להרבות -

However, for other needs; not for מילה as the בה"ג defines the episode, **even**

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[24] We are discussing a חולה שיש בו סכנה for whom it is permitted to be מחלל שבת.

[25] There is a מחלוקת הראשונים concerning 'מרבה בשיעורים'. According to the רשב"א (and תוספות in מנחות סד,א) it is אסור מדרבנן. According to the ר"ן it is אסור מה"ת (ד"ה שתיים).See the following footnote # 26.

[26] See the previous footnote # 25. According to the רשב"א we can say that in this case (לצורך מילה) they were not גוזר. The ר"ן explains that במקום חולי it is היתר גמור if it is done ע"י נכרי. Therefore he may be מרבה. *[The בה"ג may follow either explanation according to the 'commentaries'.]* According to the interpretation presented herein, however, the בה"ג would seemingly need to follow the explanation of the ר"ן, since the בה"ג is not discussing a case of במקום מצוה.

[27] *[According to the 'commentaries', תוספות is either qualifying the previous היתר of מותר להרבות ע"י עכו"ם; or you may be מרבה even ע"י ישראל. The גמרא in חולין which states אסור להרבות is discussing a case of במקום מצוה שלא.]*

[28] *[According to the 'commentaries', it may even be ע"י ישראל. See previous footnote #27.]*

if it is performed **by a גוי it is forbidden to add** additional work to what was initially permitted for a sick person[29]. The difficulty remains according to the בה"ג as follows: If it was לצורך המילה why was it necessary to heat it אגב אמיה. If it was not לצורך המילה then how do we know that (even) a גוי is permitted to מרבה במלאכה in a case where it is שלא לצורך מצוה?[30]

תוספות quotes some גמרות which seem to contradict the previous conclusion that a ישראל certainly may not add more (work) than is initially required.

והא דתנן בפרק ב' דביצה (דף כא,ב) לא יחם אדם חמין לרגליו אלא אם כן ראויין לשתיה-

And concerning **that which we learnt in a משנה in the second פרק of** מסכת **ביצה, 'a person should not heat water** to wash **his feet unless the** water **is fit for drinking[31].'** One may heat water on יום טוב for the purpose of eating (לצורך אוכל נפש). One may not heat water just for washing one's feet. If however the water is fit for drinking we consider it as if he is heating (some of) it for drinking and the remainder will be for washing. This seems to contradict our previous conclusion that one is permitted to do מלאכה only to the degree that it is necessary.

An additional seeming contradiction:

ואמרינן נמי בגמרא דביצה (דף יז,א) ממלאה אשה קדירה בשר -

And the ברייתא also says in ביצה מסכת**, 'a woman may fill a kettle** with **meat -**

אף על פי שאינה צריכה אלא לחתיכה אחת -

even though she only needs one piece.' Again we see that one may do more מלאכה than is needed.

A similar contradictory statement in the same ברייתא:

וכן ממלא נחתום חבית של מים אף על פי שאינו צריך אלא לקיתון אחד -

And similarly the גמרא says, **a baker may fill a barrel** with hot **water even though he only needs one jug** for baking**.** We see that one may add to a permitted מלאכה. In all theses cases it is a ישראל who is being מרבה בשיעורים and (seemingly) it is not לצורך מצוה.

תוספות offers one answer for these seemingly contradictory statements.

משום שמחת יום טוב התירו חכמים להרבות:

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[29] Perhaps תוספות does not accept the explanations of the רשב"א and ר"ן and maintains that since it is אסור to be מרבה בשיעורים (even מדרבנן), then this איסור extends to אמירה לעכו"ם as well, if it is שלא לצורך מצוה.

[30] This cannot be construed as a refutation of the בה"ג. We do not know specifically that מרבה בשיעורים ע"י עכו"ם is אסור שלא לצורך מצוה.

[31] This is שיטת ב"ש. However ב"ה permit it.

on account of the joy[32] of [33]יו"ט the חכמים permitted[34] to add more than is required for one's needs[35].

Summary

There is a מחלוקת between תוספות and the בה"ג if we may be מחלל שבת through אמירה לעכו"ם for the purpose of fulfilling a מצוה. תוספות maintains that only for the מצוה of ישוב א"י may we transgress an איסור דאורייתא through אמירה לעכו"ם; not by any other מצוה. The בה"ג is of the opinion that אמירה לעכו"ם is (מילה) מותר לצורך מצות even if we transgress an איסור דאורייתא.
Concerning מרבה בשיעורים according to תוספות it is not permitted ע"י ישראל (even במקום מצוה), however it is permitted ע"י עכו"ם (if it is במקום מצוה).

Thinking it over

Where would there be more reason to be מתיר מרבה בשיעורים: a) a ישראל במקום מצוה or b) a גוי שלא במקום מצוה?

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[32] Washing the feet may be considered שמחת יו"ט. The רש"ש explains that the case of אשה ונחתום are also considered שמחת יו"ט, for they do not have to be concerned on יו"ט what will be tomorrow.

[33] This may be considered לצורך מצוה. *[According to the 'commentaries, this may justify what תוספות previously said that according to the בה"ג one may be מרבה בשיעורים even ע"י ישראל if it is לצורך מצוה.]*

[34] From these words one may infer that תוספות maintains that מרבה בשיעורים is only an איסור דרבנן.

[35] According to the ר"ן the fact that אוכל נפש on יו"ט is a היתר גמור, it is permissible to be מרבה בשיעורים.