

## מטבילין אותו על דעת בית דין משום דזכות הוא –

**We are him with the consent of בי"ד, because it is beneficial**

### OVERVIEW

ruled that a בי"ד of three can be מטביל and מגייר a minor, because it is beneficial for the prospective גר to become a Jew. תוספות discusses how this גירות can be effective.

asks:

**ותימה דהא זכייה<sup>1</sup> הוי מטעם שליחות דכיון דזכות הוא לו אנן סהדי דעביד ליה שליח -**  
**And it is astounding! For זכייה is effective because of the rules of שליחות,**  
**meaning that since it is beneficial for him, we can testify that the זוכה (would**  
**have) appointed the מזכה to be a שליח for this זכות. תוספות proves that זכייה is שליחות מטעם שליחות זכייה -**  
**כדמוכח בפרק קמא דבבא מציעא<sup>2</sup> (דף יב,א) גבי חצר משום יד איתרבאי ולא גרע משליחות<sup>3</sup> -**  
**As is evident<sup>4</sup> in the first פרק of ב"מ regarding the statement, the 'yard'**  
**was included on account of the 'hand', but the yard is no less than שליחות -**

<sup>1</sup> זכייה (or acquiring) refers to the act where one (the 'שליח') can acquire something on behalf of a recipient (זוכה) if it is beneficial for the זוכה to acquire it. For instance if ראוּבֵן wants to grant שמעון property, but שמעון is not present; ראוּבֵן can write a מתנה שטר שמעון, and give it to לוי that he should acquire this property on behalf of שמעון. The rule is that שמעון acquires the property (as soon as לוי receives the שטר), even though שמעון has no knowledge of this gift and certainly did not appoint לוי to act on his behalf. Nevertheless since it is beneficial (זכות) for שמעון to acquire this property, it is assumed (אנן סהדי) that שמעון agrees that לוי should be his agent (שליח) to acquire the property for him. Similarly here since it is a זכות for this קטן to become a Jew, even though he is not aware of it and has no mind of his own to consent to this גירות (since he is a קטן), nevertheless we acquire this גירות for him (by being מטביל and him) on his behalf since it is a זכות for him.

<sup>2</sup> The גמרא there (on יב,א) derives (from the word יד [either from (דברים [תצא] כד,א) or from תמצא בידו] by גט or by נתן בידה) that the חצר (property) of a person can acquire objects for him; if a gift or a גט is placed in the חצר (of the recipient), the recipient and the woman acquire the gift and the גט respectively. There is a difference however between a גט and a מתנה; regarding a גט the woman must be staying beside the חצר to acquire the גט (unless she specifies that her חצר should acquire the גט for her), however by a gift the recipient need not be near the חצר (if it is a guarded חצר). See the following footnote (# 3) for the reason of this distinction.

<sup>3</sup> We derive that a חצר can be קונה, from the word יד (see previous footnote # 2), therefore just as the יד is next to the person, similarly the חצר can be קונה (as a יד) only if one is beside the חצר. This explains why by גט she needs to be near the חצר to acquire the גט. However the חצר besides having the power of יד is not worse than a שליח; it can be considered as a (self-appointed) שליח of the owner. The שליח does not need to be near the משלה. Therefore by מתנה where it is a זכות for the recipient (the owner of the חצר) and the rule is לאדם שלא בפניו, therefore the חצר can be considered as the שליח of the owner, since it is for his benefit. However by a גט, where it is detrimental to her (she loses her מזונות, etc.), and the rule is that חבין לאדם אלא בפניו, therefore if she is near the חצר she is divorced (מטעם) because the husband may place the גט in her hand against her will; however the חצר cannot function as her שליח (without her specific consent) since it is a חוב for her.

<sup>4</sup> If זכייה is not שליחות מטעם, the גמרא should have merely said that the חצר is במתנה (even if he is not nearby) because לא גרע משליחות, indicates that the גמרא says that the חצר is קונה since it is שליחות מטעם.

ואם כן היאך זכין לקטן<sup>5</sup> והלא אין שליחות לקטן כדאמרין באיזהו נשך<sup>6</sup> (שם עא,א) -  
And since it is so that זכיה is מטעם שליחות, how can we be זוכה on behalf of the  
פרק קטן, since there is no concept of שליחות regarding a קטן as the גמרא states in  
- איזהו נשך

continues to ask:

ועוד דאכתי עובד כוכבים הוא ואמרין התם דקטן דאתי לכלל שליחות אית ליה זכייה מדרבנן -  
And furthermore,<sup>7</sup> this קטן is still a gentile, and רבינא there states that a קטן  
who will eventually come into the category of שליחות (when he becomes an adult)  
can have זכיה מדרבנן (even when he is a קטן), however -  
עובד כוכבים דלא אתי לכלל שליחות<sup>8</sup> אפילו זכייה מדרבנן לית ליה<sup>9</sup> -  
A gentile who will not come into the category of שליחות, does not have זכיה  
even מדרבנן, so how can we be זוכה for this קטן גר who is an עכו"ם now?!

answers:

ונראה לרבינו יצחק דהכא נמי דזכין לו מדרבנן כדאמרין התם דקטן אית ליה זכייה מדרבנן -  
And it is the view of the ר"י that here too we are זוכה for the קטן מדרבנן as  
stated there that a קטן has זכייה מדרבנן -  
ואף על גב דאכתי עובד כוכבים הוא הא אתי לכלל שליחות<sup>10</sup> -  
And even though that the קטן is still an עכו"ם (at this point), nevertheless he will  
come לכלל שליחות, for he is becoming a גר.

offers a different version of this answer:

אי נמי כיון דבהך זכייה נעשה ישראל הוה ליה כישראל גמור<sup>11</sup> לעניין זכייה -

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מטעם שליחות is חצר of זכיה.

<sup>5</sup> We are doing this beneficial act for the קטן (the גירות) without his consent (since he is not a דעת). However the only reason why we are זוכה שלא בפניו is because we assume that it is as if the זוכה made the זוכה his שליח for this beneficial act. However the קטן cannot make a שליח, so how can we be זוכה for him.

<sup>6</sup> קטן לאו אף על גב דלית ליה שליחות [אית ליה זכיה מדרבנן] there states; רבינא. However 'תוס' does not initially want to entertain the thought that here it is a גירות מדרבנן, because of the difficulties involved as Tosfos mentions later.

<sup>7</sup> Tosfos is asking that even if we will say that a קטן has זכיה מדרבנן (see footnote # 6), there is still a difficulty.

<sup>8</sup> We derive the concept of שליחות from the [קרה] [יה,כה] (the word 'also') which states גם אתם כן תרימו גם אתם (also) (also) includes that your שליח may also separate תרומה for you. However since the פסוק writes גם אתם, we interpret this to mean that the גם (the שליח) must be similar to אתם (the משלח, the Jew) ברית אף שלוחכם בני ברית, excluding מה אתם בני ברית אף שלוחכם בני ברית, excluding בן ברית who is not a עכו"ם.

<sup>9</sup> A קטן will come into שליחות כלל automatically with the passage of time; however this קטן הבא להתגייר will not automatically come into שליחות כלל unless there is a גירות.

<sup>10</sup> Tosfos rejects the reasoning in footnote # 9, for since we are capable of being מגייר him, it is considered אתי לכלל שליחות.

<sup>11</sup> The ריטב"א (and others) explain this to mean that it is as if גירותו וזכייתו באין כאחת, as we say also כאחת באים וידו וידו (see גיטין עז,ב).

**Or you may also say that since through this זכייה (of being מגייר him), he becomes a ישראל, therefore regarding this particular זכייה of being מגייר him; he is considered a ישראל גמור.<sup>12</sup>**

תוספות asks:

וְאִם תֹּאמַר הִכִּי הוּא גֵר מִדְּרַבָּנָן וְשִׁרְיָנָא לִיה בְּבֵת יִשְׂרָאֵל<sup>13</sup> וְקִדּוּשֵׁי קִדּוּשִׁין<sup>14</sup> -

**And if you will say;** (since the קטן has זכייה only (מדרבנן) **how can he be a גר** **מדרבנן**, **and we permit him to marry a Jewish daughter and his קידושין** are valid **קידושין** (when he becomes an adult) -

**הא מן התורה עובד כוכבים הוא<sup>15</sup> -**

Since עכו"ם he is an מן התורה

תוספות answers:

**ויש לומר דקסבר כמאן דאמר בהאשה רבה (יבמות דף פט, ב) -**

**- פרק האשה רבה** agrees to the one who maintains in **רב הוּנא** And one can say; that  
**דִּישׁ כַּח בֵּיד חֲכָמִים לַעֲקוּר דָּבָר מִן הַתּוֹרָה בְּקוֹם וְעִשָּׂה** <sup>16</sup> -

**That there is power in the hands of the חכמים to uproot a תורה ruling even by a קום ועשה (doing something improper)<sup>17</sup> –**

תוספות resolves a possible difficulty:

**וכי פריך מאי קא משמע לן הוה מצי לשנויי קא משמע לן -**

**And when the גמרא asked, ‘what is רב הונא teaching us’ with this דין of מטבילין of דין of**

**דיש כח ביד חכמים לעקור דבר מן התורה בקום ועשה וחד מתרי טעמי נקט -**

<sup>12</sup> The "א" is limiting the power of זכיה for this potential ישראל. It gives him the right of זכיה regarding גרות only, but not for anything else; as opposed to the first answer of תוספות, that since he is שליחות אתי לכלל שלוחות, therefore he has זכיה (גירות) regarding other issues as well (not only the גירות).

<sup>13</sup> A אִשְׂרָאֵל is not permitted to marry an עכו"ם.

<sup>14</sup> If this גר will be מקדש an אשה, she will be considered married to this גר (when in reality she is not married to him (מדאורייתא). If another Jew will be מקדש her (after the קדושין of the גר) she should be מקודשת לשני; however since we formally accept this גר as a גיורת מדרבנן she will be living with her husband the גר as an אשת איש (to the second מקדש).

<sup>15</sup> He never consented to be a גר; and the concept of זכייה applies only מדרבנן, meaning that מדאורייתא there is no גירות.

<sup>16</sup> The חכמים have the power to be עוקר by דבר מן התורה a עוקר preventing us from doing something the תורה commands us to do. For instance, we are not to blow שופר on בשבת. We are passive - ר"ה שחל להיות בשבת. However there is a מחלוקת whether the חכמים can be עוקר דבר מן התורה בקום ועשה. In this case we are allowing a גוי to marry a Jew (or allowing him to live with an איש אשת [see footnote # 14]), nevertheless (according to one מ"ד) the חכמים have the power to do so.

<sup>17</sup> This is in a case (for instance) where one was מפריש תרומה מן הטמא על הטהור, where מדרורייתא it is valid תרומה, however the חכמים ruled that it is an invalid תרומה (since they did not want that the כהן should lose out by receiving תרומה which he cannot eat) and it reverts to טבל חולין and he must be תורם again מן הטהור. Here the חכמים were דאורייתא עוקר.

**That the חכמים have the power to be עוקר a ועשה**; however the **mentioned one<sup>18</sup> of the two explanations** what ר"ה teaches us.

anticipates a difficulty:

**והא דאמרין בריש בן סורר (סנהדרין דף סח, ב ושם) גבי גזל הגר<sup>19</sup> -**

**And that which רבה states in the beginning of סורר בן סורר regarding what was stolen from a גר, where the תורה writes -**

**אם אין לאיש<sup>20</sup> גואל איש אתה צריך לחזר אחריו אם יש לו גואל -**

**If the person (גר) has no relative; meaning if the גר is an איש (an adult, who can have children) you have to investigate regarding him, whether he has a relative (if he bore children), before you give his returned גזל to a כהן -**

**אבל קטן אי אתה צריך לחזר אחריו כולי -**

**However if the גר is a minor you do not have to investigate him, etc., and you may give his גזל to a כהן immediately (רבה proves from this that a minor cannot bear children). The question is since the תורה writes the word 'איש' to exclude a minor (גר קטן); this means that there is a גר קטן מן התורה. However תוספות just explained that the גר קטן is only מדרבנן (since there is no זכייה ושליחות for a קטן (עכו"ם קטן).**

responds:

**משכחת לה גר קטן מן התורה במעוברת שנתגיירה כדאמרין בפרק הערל (יבמות דף עח, א ושם) -**

**We can find a גר קטן מן התורה by a pregnant woman who was נתגייר, as רבא states in פרק הערל, that -**

**עובדת כוכבים מעוברת שנתגיירה בנה אין צריך טבילה<sup>21</sup> -**

**'A gentile pregnant woman who was נתגייר her son (with whom she was pregnant during the גירות) does not require immersion in a מקוה', this concludes the statement of רבא; תוספות continues -**

**והוי גר מן התורה דישראל גמור הוא<sup>22</sup> ואית ליה ממון מן התורה<sup>23</sup> כגון שירש את אמו<sup>24</sup> -**

<sup>18</sup> ר"ה teaches us that it is definitely a זכות for a קטן to become a Jew.

<sup>19</sup> The rule is if one falsely denies owing money and he swears that he does not owe it; when he repents and decides to pay what he owes, he must return the principal plus a חומש (which is actually a fourth of the principal) to the person he owes (and in addition he is required to bring a גזילת (קרובן אשם גזילות). The תורה writes (תה, ח) that אם (במדבר [נשא] ח, ח) רבה expounds this פסוק, how is it possible that he has no relatives; there is always some relative (albeit distant). We must conclude that we are discussing a case where he owed a גר money, and the גר died. רבה continues as mentioned now in תוספות.

<sup>20</sup> The word 'איש' is seemingly superfluous; the תורה could have written גואל אין לו גואל. The word איש teaches us something.

<sup>21</sup> If we maintain הוא אמו ירך (that he is an integral part of his mother) then the טבילה of the mother applies to the עובר as well since he is אמו ירך. Even if we maintain הוא אמו ירך (the fetus is considered as a separate entity), nevertheless the טבילה is effective even for the עובר and the mother's body is not considered a חציצה, since (as the רש"י states there on the ע"ב) that היינו רבייתיה, this is the manner in which he grows (see [also] רש"י).

**And this child is a Jew for he is a complete Jew, and he can have money** מן התורה, **for instance that he inherited his mother** (while he was still a קטן), the word איש in the פסוק teaches us -

ואי אתה צריך לחזר עליו שאין לו יורשין שאינו מוליד ואחיו מן האם אין יורשין אותו<sup>25</sup> -  
**that it is not necessary [for you] to investigate this, for he certainly has no heirs, since he cannot bear children (as a minor) and his brothers from his mother do not inherit him.** Therefore this money owed is given to a כהן.

offers an alternate response to the initial question(s):

ולפי ספרים דגרסינן בבבא מציעא (דף עא,ב) זכייה מיהא אית ליה ולא גרס מדרבנן<sup>26</sup> ניחא -  
**And according to those text in ב"מ that read, 'but he (the קטן) has זכייה', and their texts do not read that he has זכייה מדרבנן, it is understood<sup>27</sup> -**  
**דמצי למימר דאית ליה זכייה מן התורה -**

**For we can say that a קטן has זכייה מן התורה** -  
**ועובד כוכבים קטן כיון דבא להתגייר חשבינן ליה כישראל קטן<sup>28</sup> -**  
**And regarding this minor עכו"ם, since he is coming להתגייר we consider him to be a קטן, who has זכייה מן התורה -**

anticipates a difficulty:

ואף על גב דזכייה הוי מטעם שליחות ואין לו שליחות מן התורה -  
**And even though that זכייה is שליחות מטעם, and a קטן has no שליחות מן התורה, so how can he have זכייה מן התורה?!**

responds:

**הני מילי בדבר שיש בו קצת חובה כגון להפריש תרומתו -**  
**When does this apply that he has no שליחות מה"ת, only by something which may by somewhat detrimental to the קטן, for instance to separate his תרומה on his behalf (which a גדול cannot do because אין שליחות לקטן), it is a קצת חובה -**

<sup>22</sup> See 'Thinking it over' # 1.

<sup>23</sup> Tosfos is responding to an anticipated difficulty; this קטן, must have money that someone stole from him; seemingly as a קטן he cannot have any money מן התורה, for he has no זכייה מה"ת. See 'Thinking it over' # 2.

<sup>24</sup> A minor (even a day old infant) inherits. Therefore the קטן had assets, (from his deceased mother) which were stolen from him, and are being returned after his death.

<sup>25</sup> This includes any brothers his mother may have born after the deceased קטן was born (for inheritance is established through the father's side [and his natural father who fathered him as a גוי is not considered his legal Jewish father]) and certainly not the brothers his mother born before the גירות who are totally unrelated to him.

<sup>26</sup> See footnote # 6

<sup>27</sup> All the questions mentioned previously are resolved; we can be מגייר him on account of זכייה and he is a גר (מעוברת שנתגיירה by לאיש פסוק so there is no need to establish the מדאורייתא).

<sup>28</sup> See footnote # 10, 11.

**דשמא היה רוצה לפוטרה בחטה אחת או שמא היה רוצה להעדיף –**

**For perhaps** the קטן **wanted to exempt** the crop from תרומה by separating only **one kernel of wheat** (which is sufficient מה"ת) **or perhaps** (the other extreme) the קטן **wanted to give more** than the גדול is being מפריש on his behalf, therefore in these cases there is no שליחות לקטן -

**אבל הכא שזכות גמור הוא<sup>29</sup> לו יש לו שליחות:**

**However here** by גירות **where it is a complete זכות for the** קטן, **there is שליחות** even for a קטן (and therefore there is מה"ת).

### **SUMMARY**

There is (either) זכייה לקטן מדרבנן and this applies even to an להתגייר, and it is effective even to be עוקר a ועשה, or there is שליחות וזכייה for a גירות as זכות גמור by something which is a קטן מדאורייתא.

### **THINKING IT OVER**

1. מעוברת שנתגיירה בנה אין צריך טבילה statement רבא's proves תוספות. 1. <sup>30</sup> Seemingly all that רבא is saying is that he needs no additional גר גמור. <sup>31</sup>!נתגייר but he does not say that the child is טבילה,

2. <sup>32</sup> Seemingly this is irrelevant to our discussion, this has to be explained in the גמרא in סנהדרין, which discusses גזל גר גזל גר; why is תוספות involved in this?!<sup>33</sup>

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<sup>29</sup> It may be necessary to say that when רבינא stated (see footnote # 6) **לית ליה זכייה** he means that there is a difference whether it is merely שליחות where it is not זכות גמור (where there is no שליחות or זכייה) to a שליחות where it is a זכות גמור – זכייה (where שליחות וזכייה).

<sup>30</sup> See footnote # 22.

<sup>31</sup> See **ח"י רע"א** and **סוכ"ד אות נד**.

<sup>32</sup> See footnote # 23.

<sup>33</sup> See **מהרש"א**.