He is taking the exchange of idols – חליפי עבודת כוכבים קא שקיל

Overview

The גמרא cites a משנה that if a גר and a גוי inherited their father, the גר can say to the גוי, 'you take the idols an I will take their equivalent in money'. The גמרא explains that if we would assume that a גר inherits his father מן התורה, how can he make this division, for he is taking חליפי עכו"ם (he is deriving benefit from ע"ז).[1] תוספות negates a possible refutation to this argument.

תוספות responds to an anticipated refutation:

ואין לומר טעמא משום ברירה[2] כלומר השתא הוברר הדבר דזה חלקו -

And one cannot say that the reason he is permitted to make this exchange (even if גר יורש את אביו מה"ת), is **because of ברירה; meaning that now** (after the exchange) **it was verified that this** (the money) **is** the s'גר **share** in the inheritance (but not the ע"ז) –

תוספות rejects this reasoning:

דאם כן אפילו באו לרשותו[3] נמי יהא מותר מהאי טעמא:

For if this is so (that ברירה is effective in this situation), then **even after** the ע"ז **came into** the s'גר **possession** (the ע"ז was in the property of the גר), **it should also be permitted** to make this exchange, **for this** very **same reason** of ברירה.

Summary

The rule of ברירה is not effective in this case, for if it were, the exchange would be permitted even משבאו ליד גר.

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[1] When the father dies, half of the estate (including half the idols) belongs to the גר (if we assume that גר יורש את אביו מה"ת). When the גר exchanges his share of the ע"ז for money it is the same as if he is selling the ע"ז to his 'brother' the גוי, and is deriving benefit from ע"ז, which is אסור.

[2] ברירה (choosing or clarifying) is a concept that is used when there is a situation where there is a mixture (as it is here where the estate is partly in the ownership of the גוי and partly in the ownership of the גר [if we assume גר יורש את אביו מה"ת]), however it is not clear which parts belong to whom. Later when each party chooses his share (whether by mutual agreement or casting lots) we can argue (on account of ברירה), that now (after the division) it is clarified that retroactively the גוי inherited his portion (and not the rest of the estate), and the same regarding the גר. If we assume that ברירה is effective here, there would seemingly be no difficulty even if we assume that גר יורש אביו מה"ת, for we have now (after the exchange) clarified that initially the גר inherited only the money, but not the ע"ז.

[3] It appears that according to תוספות the term משבאו לרשות גר (אסור) is referring to a situation where it so happened that the ע"ז was in the possession of the גר when the father died. However there was no (formal) division of the estate. (See פנ"י, מקנה, חת"ס, etc.) Therefore תוספות maintains that ברירה should allow the גר to make this exchange, because after the exchange it will turn out that the ע"ז, which was ברשותו, never belonged to the גר. So why would the משנה rule משבאו לרשות גר אסור. However if we maintain אין ברירה, and ירושת הגר is only מדרבנן, then it is understood that if רבנן permitted him to make the exchange, but once it was באו לרשות גר the רבנן prohibited such an exchange. See following תוס' ד"ה אלא.

Thinking it over

תוספות states and proves that ברירה is not effective here. However what is the reason the in other places we do say ברירה, and here we do not apply ברירה?[4]

[4] See בית לחם יהודה אות תיז (בשם הרשב"א).