

דכולא¹ עלמא ישנה לשכירות מתחלה ועד סוף –

For everyone agrees wages are due from the beginning to the end

Overview

The גמרא cited a ברייתא regarding a case where a woman said to a man, 'I will consent to be מקודשת to you if you make some jewelry for me from the material I am giving you', where ר"מ rules she is מקודשת and the חכמים maintain that she is not מקודשת. The גמרא explained (initially) that their dispute depends on whether we maintain בסוף (the view of ר"מ) and she is מקודשת, or we maintain ישנה (the חכמים) and she is not מקודשת, for it is a מלוה.² The גמרא then continues and says, we can even assume that they all agree that ישנה or אומן קונה בשבחה כלי [and nevertheless they argue whether לשכירות מתחלה ועד סוף or not]. תוספות explains that we cannot infer anything from the fact that the גמרא says (however we can infer it from other places).

אין לדקדק מכאן דהלכה דישנה לשכירות מתחלה ועד סוף³ -

We cannot infer from here that the הלכה is that ישנה לשכירות מתחלה ועד סוף -

דהא לא הוה מצי למימר דכולא עלמא אינה לשכירות -

For it is not possible to say that all agree that אינה לשכירות אלא לבסוף -

דאם כן מאי טעמא דמאן דאמר אינה מקודשת⁴ -

¹ This עמוד ב' references the גמרא on the תוספות.

² When a worker is hired to do a job, do we say that as soon as he does a פרוטה worth of work, his employer owes him a פרוטה, so when he subsequently pays him at the end of the day, he is really paying him back a loan which he owed him for all the פרוטה work that he did that day (this is called ישנה לשכירות מתחלה ועד סוף) and it would not be effective for קידושין (for it is considered במקדש במלוה), or do we say that the employer does not owe the worker anything until the worker returns the finished product to his employer (this is called אין לשכירות אלא לבסוף). In this case he is paying him his current due, but not repaying a loan. This would be an effective קידושין. [When he gives her the finished product (as קידושין) and does not charge her for it, this cannot be considered a מחילה of a loan, but rather a bona fide payment.]

³ Seemingly since the גמרא says that we can say that everyone agrees that ישנה לשכירות מתחלה ועד סוף (and their argument is regarding אומן קונה בשבחה כלי), but the גמרא did not say that everyone agrees that אין לשכירות אלא לבסוף (and their argument is dependent on something else), this would seemingly prove that the גמרא maintains ישנה and therefore is comfortable saying ישנה לשכירות מתחלה ועד סוף (since that is not the הלכה). See תוספות מז,ב ד"ה דכ"ע (and on תוספות מז,ב ד"ה דכ"ע), where תוספות makes a similar inference. However here תוספות goes on and rejects this inference,

⁴ If אין לשכירות אלא לבסוף it is not a מלוה and there is no reason why she should not be מקודשת. Therefore the גמרא could not possibly have said אין לשכירות אלא לבסוף. דכ"ע. An inference can be made only when the גמרא has two options (to say that כ"ע maintain either view), and chooses only one (as in תוס' מז,ב ד"ה דכ"ע), then we can make an inference that the הלכה is like the one the גמרא chose, but if only one option is available, we cannot derive anything from what the גמרא chose, since there is no other option.

For if indeed it is so (that אין לשכירות אלא לבסוף) so what is the reason of the one (the חכמים) who maintains that she is not מקודשת.

גמרא continues that even though there is no proof from our גמרא, nevertheless there is proof from a different גמרא:

אך יש להביא ראיה דהלכה דישנה לשכירות מתחלה ועד סוף -

However, we can bring proof that the הלכה is סוף ועד סוף

מההיא דפרק קמא דמסכת עבודה זרה (דף יט, ב) תנן -

From that גמרא in the first פרק of ע"ז, based on the משנה⁵, which states –

הגיע לכיפה שמעמידים בה עבודת כוכבים אסור לבנותה -

‘when he reaches the dome where they place the ע"ז, the Jewish workman is not permitted to build the dome’ -

וקאמר רבי אלעזר בגמרא דאם בנה⁶ שכרו מותר -

And regarding this משנה, ר"א rules in the גמרא that if he built it, he is permitted to accept his wages

ומפרש התם טעמא משום דישנה לשכירות מתחילה ועד סוף -

And the גמרא there explains the reason why his wages are מותר, because ישנה

לשכירות מתחלה ועד סוף -

ואימת קמיתסור במכוש אחרון⁷ ובמכוש אחרון לית בה שוה פרוטה⁸ -

And when does this ע"ז become (בהנאה) אסור, with the last bang of the hammer, but by the last bang of the hammer, there is no שו"פ of work -

שמע מינה דהכי הילכתא דליכא מאן דפליג⁹ -

We can derive from this גמרא that this is the הלכה (that ישנה לשכירות מתחילה ועד סוף), since no one argues and maintains that the wages are forbidden.

הלכה discusses the ramifications of this תוספות:

ואין נפקותא לענין חזרה¹⁰ -

⁵ The משנה is on טז, א.

⁶ The גמרא there concludes that this means even if he built the ע"ז (not only the dome where they place the ע"ז).

⁷ The ע"ז is אסור בהנאה once it is an ע"ז that is fit to be worshipped, As long as the final hammer blow (the finishing touch) is not given, the ע"ז is not finished, and is not considered an ע"ז to be בהנאה.

⁸ We are now assuming that ישנה לשכירות מתחלה ועד סוף, therefore for every פרוטה that he works, his employer owes him a פרוטה. When he did the first פרוטה worth of work, it certainly was not an ע"ז, and this פרוטה wage he may certainly accept (for he did not make an ע"ז yet). The final blow with the hammer, which makes it into an ע"ז, is not worth even a פרוטה (it is so miniscule a task), therefore he may take all his payment that is due to him before this last hammer blow (which means [virtually] all his wages).

⁹ If we would assume that אין שכירות אלא לבסוף that would mean that he is owed his wages only after the entire ע"ז is totally completed (and is בהנאה); he would not be permitted to have הנאה from making the ע"ז and collect his wages.

¹⁰ חזרה means the ability of the hired worker to quit in the middle of the day and receive payment for the time he

And there is no difference regarding retracting; whether we maintain ישנה לשכירות or not - מתחלה ועד סוף

דהא דאמר רב (בבא מציעא דף עז, א) פועל יכול לחזור בו אפילו בחצי היום¹¹ -

For this which רב ruled that a worker can retract even in the middle of the day - היינו אפילו למאן דאמר אינה לשכירות אלא לבסוף¹² -

That ruling is true even according to the one who maintains אינה לשכירות אלא לבסוף, so regarding חזרה, the rule is the same that פועל יכול לחזור בו אפילו בחצי היום or אינה לשכירות אלא לבסוף, whether we maintain or ישנה לשכירות מתחילה ועד סוף -

אבל איכא נפקותא לענין קידושין¹³ דאי ישנה לשכירות מתחילה ועד סוף -

However there is a difference regarding קידושין in the case mentioned in the בריתא where she hired him to make something, **for if סוף ועד סוף** - ישנה לשכירות מתחילה ועד סוף, then -

חשיב האי שכירות מלוה ואינה מקודשת -

This שכירות is considered a loan and she is not מקודשת, however if אינה לשכירות אלא מקודשת, it is not a loan and she is מקודשת (as the גמרא states here regarding the מחלוקת between ר"מ and the חכמים) -

ישנה לשכירות מתחילה ועד סוף mentions another case where it matters whether we maintain תוספות

ולענין עבודת כוכבים אם בנה שכרו מותר¹⁴ -

And also regarding an ע"ז, if he built it, his wages are permitted, (only) if we maintain ישנה לשכירות מתחילה ועד סוף.

clarifies a possible misconception: תוספות

ואף על גב דישנה לשכירות מתחילה ועד סוף -

And even though the הלכה is סוף ועד סוף - ישנה לשכירות מתחילה ועד סוף

מכל מקום אינה משתלמת אלא לבסוף¹⁵ כדאמרינן בפרק איזהו נשך (בבא מציעא דף סה, א) -

Nevertheless the payment is not due until the end of the שכירות period, as the פסוק of - פרק איזהו נשך derives in גמרא

worked. It would seem that if the rule is סוף ועד סוף, so the worker is owed money for any work he did, and therefore even if he quits in the middle he should be paid for the work he did. However if we assume אין (and the worker was hired or a full day's work), since that as of now it is not the סוף, so if he quits he should not be paid for his work. תוספות, however rejects this notion.

¹¹ The reason for this is that a Jewish worker is not a slave and can quit at any time. The owner must pay him - pro rata – for whatever wages they agreed to.

¹² The reason is that since he may quit at any time (see footnote # 11), whenever he quits that is the סוף שכירות, and his payment is due.

¹³ See 'Thinking it over'.

¹⁴ See footnote # 8. See 'Thinking it over'.

¹⁵ The employee (if he continues to work) cannot demand partial payment for the time he worked; he must wait till the end of the שכירות. It is similar to a loan where the לווה owes the מלוה the money from the very beginning, however the מלוה cannot demand payment until the agreed upon time was reached.

כשכיר שנה בשנה¹⁶ שכירות של שנה זו אינה משתלמת אלא בשנה אחרת:
כשכיר שנה בשנה (like a yearly hired man for a year) that it teaches us the wages of this year (כשכיר שנה) is not paid until the next year (בשנה).

Summary

We derive the הלכה that ישנה לשכירות מתחלה ועד סוף from the גמרא in ע"ז regarding the workman's wages. The הלכה is relevant for קידושין and for ע"ז, but not for חזרה. In any event the wages are paid only by the end of the שכירות period.

Thinking it over

תוספות states that the הלכה of סוף ועד סוף of ישנה לשכירות מתחילה ועד סוף is relevant by קידושין and קידושין. ¹⁷ Seemingly this is obvious; regarding גמרא our קידושין mentions this in regards to the מחלוקת between ר"מ וחכמים, and regarding ע"ז, it was just mentioned in תוספות based on the גמרא in ע"ז. Why does תוספות repeat them?!

¹⁶ ויקרא (בהר) כה,נג

¹⁷ See footnotes # 13 & 14.