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ב"ר משה גרוסמן זצ"ל

Dedicated in loving memory of
HaRav Yosef Grossman zt"l

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LABOR FORCE: MAY A PERSON BE COMPELLED TO WORK? PART II

Adapted from the writings of Dayan Yitzhak Grossman

Our previous article discussed Rabeinu Tam's rule that outside the narrow confines of the laws of *eved Ivri* (the Jewish bondsman), which are not in effect today, a Jew cannot be compelled by a court to work for someone else, even if he is unable to pay a debt. In this article, we discuss some scenarios where a Jew may be compelled to work. The Talmud relates:

Rav Se'oram, brother of Rava, would forcibly seize people who were not acting properly and have them carry Rava's sedan chair. Rava said to him: You acted correctly, as we learn: If you see a Jew who does not behave properly, from where is it derived that you are permitted to have him work as a slave? The *pasuk* says: "Of them you may take your slaves forever, and over your brothers" (Vayikra 25:46). (It is derived from the conjunctive "and" linking the two clauses of the *pasuk* that there are circumstances in which it is permitted to treat a fellow Jew as if he were a slave.) One might have thought that this is the halacha even if a

Jew acts properly. To counter this, the *pasuk* continues: "And over your brothers the Bnei Yisrael you shall not rule, one over another, with rigor."¹

The Rambam and Shulchan Aruch codify this as halacha:

When [Jewish]² people do not conduct themselves in an appropriate manner, it is permissible to impose one's authority over them by force and subjugate them.³

It is unclear, however, what the justification for this is. After all, do people who do not conduct themselves appropriately not retain their legal rights? Is it permitted to steal or damage their property, or injure them? If such actions are prohibited, why is this permitted?

The Chasam Sofer indeed deduces from a different Gemara that even someone who does not act as a member of your people (*eino oseh*

(continued on page 2)

¹ Bava Metzia 73b.

² Shach to Shulchan Aruch cited below s.k. 28.

³ Hilchos Avadim 18; Shulchan Aruch Y.D. 267:15.



PARSHAS VAYEIRA

GUEST RELATIONS

Excerpted and adapted from a shiur by
Rabbi Baruch Benfil

And he said, "Hashem, if it please you that I find favor in Your eyes, please pass not from before Your servant."

Bereishis 18:3

According to Rashi, Avraham asked Hashem to wait while he fulfilled the mitzvah of *hachnasas orchim*. The Gemara (Shabbos 127a) derives from here that *hachnasas orchim* is greater than *kabbalas pnei haShechinah* (greeting the Divine presence).

R' Shlomo Heiman (Chidushei R' Shlomo 37) was asked that the principle of *osek bemitzvah patur min hamitzvah* (one who is engaged in one mitzvah is exempt from other mitzvos) would dictate that Avraham need not interrupt the mitzvah of *kabbalas pnei haShechinah* to perform *hachnasas orchim*, even if it is the greater mitzvah. Rav Heiman cites some *Rishonim*, including the Rashba, that even forbid a person to interrupt a mitzvah to perform another. According to that view, why did Avraham leave to greet the guests?

Rav Heiman answers that the principle of *osek bemitzvah patur min hamitzvah* only applies where performing the second mitzvah would mean failing to fulfill the current one. Since stopping to greet the Shechinah does not negate the mitzvah entirely (as one is

(continued on page 2)

Q&A from the
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Domain Names

Q Last Shabbos, my toddler walked out of the house with my silver *becher* and dropped it in the street. Given that there is no *eiruv* in our area, is there a way I could have moved it to the curb so it wouldn't be run over?

A One of the 39 *melachos* is *hotza'ah*, carrying an item between *reshus hayachid* and *reshus harabim*, a *toldah* (derivative) of which is *ma'avir arba amos*, moving an item four *amos* in *reshus harabim* (Shabbos 96b). The Ba'al Hamaor (35b in Rif) explains the comparison to *hotza'ah*: A person is considered to occupy his surrounding four *amos*, so when he moves something from that place, it is like removing it from his domain.

(continued on page 2)

(continued from page 1)

ma'asei amcha⁴ is entitled to compensation from someone who injures him (and this is the position of the Ran as well⁵), and he accordingly raises the above question.⁶

R' Eliezer of Metz (the Yerei'im), however, rules that it actually is permitted to hit "a sinner, even with respect to a single mitzvah," and one of his proofs of this is indeed from the Gemara's dispensation to compel (which he understands to involve hitting) those who do not conduct themselves appropriately to work.⁷

Elsewhere, the Chasam Sofer notes that Tosafos explains that the right to compel such people to work is only a Rabbinic penalty, and the Gemara's derivation thereof from a *pasuk* is a mere allusion (*asmachta be'alma*).⁸ This would seem to align with the position of the Chasam Sofer (and the Ran) that even a sinner generally retains his legal rights and one may not steal from or injure him, so the dispensation here is a special penalty.

The Gemara's statement that one might have thought that this is the halacha even if a Jew acts properly is puzzling as well: How is it at all conceivable that one could impose his authority by force and subjugate a Jew who acts properly?

The Chasam Sofer addresses this problem, too, explaining that the Gemara is referring to cases like a teacher with regard to his student, where the student has a mitzvah to serve his teacher, even to the degree of a full-blown slave (*eved Cna'ani*), and yet the Torah is admonishing us not to rule over him with rigor (*lirdoso beferech*).⁹ He notes that Chazal teach that Avraham Avinu was indeed punished for just such an abuse of his students:

For what reason was Abraham our Forefather punished and his children enslaved in Egypt for 210 years? Because he made a draft (*angarya*) of *talmidei* chachamim, as it says, "He urged his trainees, born in his house" (Bereishis 14:14). These trained men that he took to war were actually his students, who were *talmidei* chachamim.¹⁰

Immediately prior to the story about Rav Se'oram, the Gemara relates the following:

Rav Papa said to Rava: Let the Master see these chachamim who pay money for the tax (*akarga*) on behalf of other people and afterward make them work more than is reasonable for the amount they paid. Rava said to him...this is what Rav Sheishes said: The

certificate (*moharkeihu*) of servitude of these people lies in the treasury of the king (i.e., all of his subjects are considered his servants), and the king said: The one who does not pay the head tax shall serve the one who does pay the head tax, and consequently, by dint of the law of the kingdom, they can have them work as much as they want.

While the Ra'avad understands that the Gemara here is just teaching us that this arrangement does not violate the prohibition of *ribbis*,¹¹ the Rambam apparently understands it to also be articulating a right to compel others to work against their will without violating the prohibition of theft—in this case, even those who *do* conduct themselves appropriately, albeit not to the same extent that one may compel those who do not:

When a king decrees that anyone who does not pay the fixed head tax should be enslaved to the person who pays the head tax for him, a person who pays the head tax for someone may use that person for labor beyond the ordinary measure. He may not, however, use him like an *eved Cna'ani*. If, however, that person does not conduct himself properly, he may use him as a slave.¹²

In light of this Gemara, R' Avraham Chaim Shor (the Toras Chaim) arrives at a radically different understanding of the aforementioned dispensation to compel those who do not conduct themselves appropriately to work, motivated in part by concerns similar to ones we have raised with the generally accepted understanding of that dispensation. He explains that the Gemara's entire discussion of compelling such people to work is limited to a scenario where there is a legal right of compulsion: Rav Se'oram had paid the taxes of the people he was compelling to work, and so had the right to compel them to work, and the only issue was whether the particular *type* of work in question was permitted, or forbidden by the prohibition against ruling over one another with rigor. This is permitted *vis-à-vis* those who do not conduct themselves appropriately, but not *vis-à-vis* those who do, even where there does exist a legal right to compel them to work.¹³

According to this approach, there is no dispensation whatsoever to compel anyone, even those who act inappropriately, to work, in the absence of a legal right to do so. (This position, however, is apparently against the halachic consensus, including the aforementioned rulings of the Rambam and Shulchan Aruch.)

⁴ See Bava Basra 4a, Sanhedrin 85a, and elsewhere.

⁵ Chidushei HaRan Sanhedrin ibid.

⁶ Chasam Sofer to Shulchan Aruch O.C. siman 169 Magein Avraham s.k. 1.

⁷ Sefer Yerei'im siman 217 (247). Cf. R. Yehoshua Pfeffer, "Lamah Sakeh Re'echa": Issur Haka'ah Bahalacha at n. 1.

⁸ Tosafos Sotah 3b s.v. Kshiv, Chidushei Chasam Sofer to Bava Metzia ibid. s.v. Le'olam.

⁹ Chasam Sofer Bava Metzia ibid. s.v. Yachol.

¹⁰ Nedarim 32a.

¹¹ Hasagos ibid.

¹² Ibid.; and cf. Kesef Mishneh, Lechem Mishneh, and Mirkeves Hamishneh ibid., and cf. Tosafos ibid. s.v. Mishatvei behu l'fei.

¹³ Toras Chaim Bava Metzia ibid. s.v. Desanya. See the Chasam Sofer's discussion of, and objections to, this approach in Chasam Sofer Bava Metzia ibid. s.v. Shafir.

(continued from page 1)

Chazal extended the *melacha*, applying it to a *karmelis* as well. Almost any area (except a surface smaller than $4x4$ *tfachim*) that doesn't qualify as a *reshus hayachid* or *reshus harabim* is classified as a *karmelis*. Therefore, even on a quiet side street, one may not move an object four *amos*.



RAV ARVEH
FINKEL

The *issur* of *ma'avir* is only violated when the full distance is covered in a single movement. If one moves an item three *amos*, stops, and then moves it another three *amos*, he hasn't transgressed *mide'Oreisa*.

But Chazal forbade moving an item any distance in *reshus harabim*. This precludes the option of moving the *becher* to the curb in several small movements.

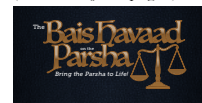
Still, the *poskim* debate whether this decree applies in a *karmelis* or only in *reshus harabim*. The Shulchan Aruch (O.C. 349:5) states clearly that it includes a *karmelis*, but the Biur Halacha discusses this at length and concludes that one may possibly be lenient for mitzvah purposes. But protecting a *becher* is not a *tzorech* mitzvah.

There is a simple solution described in the Mishnah (Eiruvim 95b): R' Yehudah says a person may give a barrel to his friend, and his friend to his friend, etc. Since each person is moving the barrel less than four *amos*, it is permitted. Where multiple people are involved, Chazal didn't forbid transporting the item under four *amos*, because it is not likely that one of them will mistakenly carry it too far.

Although some *poskim* rule in accordance with the Chachamim, who forbid this (Shulchan Aruch ibid. 3 cites two opinions), the Mishnah Brurah (ibid. 13) rules leniently, but he says it is commendable to be stringent in this.

Some *poskim* (Pri Megadim) permit two people to continuously pass the object to one another, comparing it to a chain of multiple people. But the Biur Halacha disagrees.

(continued from page 1)



not obligated to greet the Shechinah continuously), Avraham performed *hachnasas orchim* instead, which is the greater

mitzvah. The Brisker Rav, R' Yitzchak Zev Soloveitchik, answers that although *kabbalas pnei haShechinah* is certainly a lofty activity, it does

not actually constitute a mitzvah, so the rule of *osek bemitzvah* does not apply.

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