

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 ma'asei amcha*)[4] is entitled to compensation from someone who injures him (and this is the position of the Ran as well[5]), 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.)

[1]Bava Metzia 73b.

[2]Shach to Shulchan Aruch cited below *s.k.* 28.

[3]Hilchos Avadim 1:8; Shulchan Aruch Y.D. 267:15.

[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 Rei'echa*": *Issur Haka'ah Bahalacha* at n. 1.

[8]Tosafos Sotah 3b *s.v.* *Ksiv*, 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. Kessef Mishneh, Lechem Mishneh, and Mirkeves Hamishneh *ibid.*, and cf. Tosafos *ibid.* *s.v.* *Mishtabdi behu tfei*.

[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.* *Shapir*.