

## סוכת גנב"ך ורקב"ש

### I. והוא שעשאה לשם צל סוכה - מח' רש"י ור"ת:

A. גמ' סוכה ה: a סוכת גנב"ך is כשר as long as it is מסוככת כהלכתה, which means that this סוכה has to be made לשם צל סוכה.

1. Q: What does this mean?

2. A: 2 Answers:

a) רש"י ד"ה אמר רב חסדא says that a סוכה has to be made for צל, there needs to be a lot of סכך put there. The סוכה may not have originally been made for צל, but for צניעות and that would not have been enough, b/c a סוכה needs to be made לשם צל. Therefore, there needs to be a lot of סכך put there in order to show that the סוכה was made לשם צל.

(1) Q: Why would it be a problem if the סכך was not put on for צל?

(2) A: רש"י says that even though the סוכה doesn't need to be built מצוה לשם, it needs to be built לשם צל. Therefore, if the סכך is put on the סוכה for a purpose other than צל, it is פסול מן התורה.

b) ר"ת (רא"ש סוכה א:יב) says that this means that the סכך can't be made in such a way that rain won't be able to get through.<sup>1</sup>

(1) The ט"ז או"ח תרלה:ב says that ר"ת didn't mean all that much in this statement - there is no problem מדאורייתא of having a סוכה that it can't rain into. הז"ל made a גזירה that you can't make סכך that's too thick, b/c then a person will end up sitting in his house instead of a סוכה and the תורה says that you need to sit in a סוכה, not a בית.

(2) So according to ר"ת, if you build a סוכה that has too much סכך, it's פסול מדרבנן b/c you will end up sitting in your house.

(a) Q: What forced the ט"ז to say this?

B. מתני' וגמ' סוכה טו-טז: תעשה ולא פסול b/c of פסול if a person makes his סוכה out of a haystack, it's פסול b/c of פסול. It could be כשר if there was טפה of empty space between the floor and the hay b/c that's an אהל. So you can then go and hollow out the rest of the haystack in order to make the סוכה a כשרה סוכה and there is no problem of פסול מן העשוי.

1. We see that the דין that a סוכה needs to be 10 טפחים tall is a דין in the דפנות and that there is no issue of פסול מן העשוי when it comes to the דפנות.

2. The ט"ז says that it doesn't rain into a haystack and the גמ' never raised that as being an issue and therefore, it must be that there was no פסול מדאורייתא of a סוכה that can't be rained in. The reason we aren't concerned with rain coming into a haystack is b/c it's only a דין דרבנן that you can't sit in a סוכה that it won't be able to rain into and the גזירה was only in cases where we are dealing with something that resembles a house, which a haystack does not.

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<sup>1</sup> ר"ת understood the גמ' סוכה ה: as saying that you should not do something, namely, don't make it so it won't be able to rain there, whereas רש"י understands it as saying that you should do something, namely, put a lot of סכך there.

- a) understood as saying that a סוכה that can't be penetrated by the rain is מדאורייתא. The מתני' תענית ב. פסול מדאורייתא. קללה. Why can't you just make your סוכה in such a way that it won't rain there, like by nailing the סכך down? You could say that it's אסור to do it מדרבנן b/c of גזירת תקרה and that just as you can't use boards, you can't nail the סכך down. But if that's the case and that it's only אסור מדרבנן to nail down the סכך, then גשמים on סוכות should not be considered to be a קללה. Therefore, if it doesn't rain into your סוכה, it's מדאורייתא.
- b) themselves seem to suggest that this is only a problem b/c of גזירת תקרה, but then they shut it down.<sup>2</sup>
- (1) So תוס' holds that if it can't rain into a סוכה, it's מדאורייתא.
- (2) However, the ט"ז says that according to ר"ת, if it can't rain into a סוכה, it's only מדרבנן.
- C. מתני' סוכה כב. if you make a סוכה with thick סכך, if it's מעובה כמין בית, it's כשר.
1. The טור או"ח סי' תרלא says that this סוכה is כשר provided that it can rain into it, but if it can't rain into it, it's פסול b/c ר"ת says that if it can't rain into the סוכה, it's פסול.<sup>3</sup>
2. But the טור says that the רא"ש didn't quote ר"ת, he didn't agree with him.
- a) Q: The רא"ש סוכה א:יב is the one who quotes ר"ת, so what does the טור mean?
- b) A: 2 Answers:
- (1) The ב"י או"ח תרלא:ג says that the טור just meant that in the סוגיא of מעובה כמין בית, the רא"ש doesn't mention ר"ת. This does not imply in any way that the רא"ש doesn't hold like ר"ת, b/c he quotes him in the סוגיא of גנב"ך and so, he holds like him in the case of מעובה כמין בית as well.
- (2) But the ב"ה או"ח תרלא:ד says that the טור is saying that the רא"ש only holds like ר"ת in the סוגיא of גנב"ך, but not in the סוגיא of מעובה כמין בית. If you are making a סוכה that was never really made as a סוכה in the first place and was built for some other purpose and it can't rain into it, then we must declare that it's not a סוכה b/c it's like בית. But in the case of מעובה כמין בית, that סוכה was made to be a סוכה and so, the fact that it doesn't rain into it doesn't make it פסול.
- (a) According to the ב"ה, there is a מח' between the טור and the רא"ש as to whether a סוכה that it can't rain into is פסול if it's מעובה כמין בית.
- i) According to the טור, such a סוכה is פסול.
- ii) But according to the רא"ש, such a סוכה is כשר.
- (b) So the מח' between the רא"ש and the טור according to the ב"ה is probably about what the פסול of a סוכה that it can't rain into is...
- i) תוס' סוכה ב. ד"ה כי - קבע - this is how כי understood.<sup>4</sup> If this is the problem, then it doesn't make sense to say

<sup>2</sup> תוס' would probably have to say that it does rain into a haystack.

<sup>3</sup> The טור או"ח סי' תרלה quotes ר"ת by מעובה כמין בית as well.

<sup>4</sup> תוס' says the סכך of a סוכה must be made עראי, but the דפנות can be קבע.

that a סוכה that it rains into is only going to be a problem sometimes. This is probably what the טור held.

- ii) But the ש"א held that a סוכה that it doesn't rain into is not a סוכה b/c it's too much like a בית. If this is the פסול then we can say that not every סוכה that it doesn't rain into is פסול. According to this understanding there is room to say that there are cases where it doesn't rain into the סוכה and it's still going to be כשר.

(1) We see that there are different understandings of ר"ת. But there are other ראשונים, such as רש"י who disagree with ר"ת altogether.

(2) The ריטב"א gives another answer...

## II. ביתו של כל השנה - שיטת הריטב"א

A. גמ' סוכה ת: a סוכה is כשר as long as it is מסוככת כהלכתה, which means that this סוכה has to be made צל סוכה.

1. Q: What does this mean?

2. A: The ריטב"א ד"ה ת"ר says that a סוכה must be made as a סוכה, it can't be made as a בית. If a person built a סוכה, but built it as a בית for the whole year, then it's פסול. A סוכה needs to be built as a סוכה and not a בית that's used the entire year. If a סוכה is built to be used the entire year, then it's קבע and there is a problem of תעשה ולא מן העשוי.

a) When the ריטב"א talks about קבע he seems to be driving at what רבא says in the גמ' סוכה ב, that a סוכה that's קבע is פסול.

b) When he talks about תעשה ולא מן העשוי he seems to be saying that the סוכה is פסול b/c it was made as קבע and so, it can't be fixed.

B. גמ' סוכה ת: if someone has 2 סוכות, one inside the other, the inner one is not a סוכה, but the outer one is.

1. The ריטב"א ד"ה א"ר לוי says that the inner סוכה is like a בית and so, it's פסול.

a) Here the ריטב"א doesn't mention the idea of קבע, but he says that there is a problem of תעשה ולא מן העשוי.

b) So when the ריטב"א is talking about דירה, he is probably talking about בית - the סוכה cannot be like your בית the entire year.

(1) Q: What does רש"י think about using a סוכה that is like השנה?

(2) A: רש"י seems to give us contradictory indications in different places...

2. רש"י ד"ה פנימית says that the inner סוכה is not a סוכה b/c it's not clear that the person is living there for סוכות b/c he lives there all year long. This is the place where this person hangs out all the time, so it doesn't like he's sitting there in order to be יוצא the סוכה of מצוה.

a) It would seem that there is a דין דרבנן that a person can't sit in this kind סוכה on סוכות b/c it doesn't look right, but מן התורה it would be good.

b) However, there is another רש"י that would lead us to believe otherwise...

C. מתני' וגמ' סוכה יד: discusses the potential problem of using planks of wood for סכך. It's true that מן התורה they are o.k. to use, but there was a גזירה made in certain cases that prevents you from using them.

1. Q: What was the גזירה?
2. A: רש"י ד"ה ר' מאיר says that if we would allow a person to use planks of wood for his סוכה then he will say that there's no difference between sitting in his סוכה which has planks and his house which also has planks. Sitting in your house would be a problem b/c the תורה says that you need to sit in a סוכה and not in the השנה ביתו כל השנה.
  - a) It seems from here that there's a פסול דאורייתא to sit in the השנה ביתו כל השנה.
  - b) Since there is such a problem, the חכמים were concerned that people would end up sitting in their houses if we allow them to be בנסרים בסוכה.
    - (1) Q: Does רש"י hold that there is a פסול דאורייתא to sit in the השנה ביתו כל השנה or not?
    - (2) A: It's a מה' אחרונים:
      - (a) The ב"ה או"ח תרלה:א suggests that רש"י doesn't accept a פסול of סוכה ולא בית. The fact that a person uses this structure the entire year is not a problem, however, רש"י does concede that you can't use a בית as a סוכה. A בית is not a סוכה, but you can sit in a סוכה even if it is used throughout the year, b/c it's still a סוכה. When you build something with planks of wood and you live there the entire year, that's called a בית and you would not be able to live there on סוכות - this is what ר' מאיר יד. ד"ה ר' מאיר is saying. But if a סוכה is built as a סוכה, but a person lives in it all year long, מן התורה, it's not a בית - this is why רש"י סוכה ה: ד"ה פנימית said that this סוכה is not פסול מן התורה.<sup>5</sup>
      - (b) But the מג"א או"ח תרלה:א says that there is a פסול דאורייתא of ביתו כל השנה. When it comes to סוכות יוצרים, רש"י סוכה ה: ד"ה פנימית tells us about a פסול פסול מדרבנן, b/c that סוכה is not really a בית since it was not made for a person to live there the entire year. Even though the person lives there the whole year, it wasn't made for that purpose and therefore, it's only פסול מדרבנן. But if you built this structure with the intention of living there the entire year, it would be פסול מדאורייתא.
        - i) Everyone agrees that there is a problem where you reach a בית and b/c of this concern הז"ל made a גזירת נסרים.<sup>6</sup>
        - ii) But there is a מה' regarding what it takes to make it a בית.

<sup>5</sup> This is the ב"ה לשיטתו, b/c he holds that in order to determine whether something is a בית and not a סוכה we need to look at a lot of different factors. This is what the ב"ה או"ח תרלה:ד says in regards to the טור או"ח ס' תרלא.

<sup>6</sup> There are ramifications of this למעשה. We פסקין that if the plank is less than 4 טפחים, then there's no problem. However, the ש"ע או"ח תרלא:ט quotes that even though that's the עיקר הדין, it's better not to use planks that are less than 3 טפחים, b/c then you will end up using ones that are bigger. But the מ"ב תרלא:כו quotes others who say that you can't use these planks b/c it used to be that people would only build houses using planks that are at least 4 טפחים planks, but nowadays people use planks that are even less than 4 טפחים and so, we have to be concerned that even smaller planks will be confused with bigger ones. If this is true then it calls into question the מנהג ירושלים that people had to use little slabs of wood for סוכה. Some of the אחרונים say that these slabs were problematic, but the other פוסקים say that using these slabs are not a problem b/c nobody builds a house with slabs this size and so there's no concern. There are different stories regarding what the הז"ל said about the slabs, but the מנהג in ירושלים was that they're o.k. and this seems to be the מנהג nowadays.

III. סוכת נשים - נשים בכתיבת ס"ת:

- A. סוכת גוים - גמ' סוכה ה: a סוכת גוים is a סוכת גוים, סוכת נשים, סוכת בהמה, סוכת כותים and סוכת כותים. These סוכות are כשר.
1. It seems that the סוכת נשים was a סוכה built by women.
  2. It's seems problematic that this סוכה was built by נשים...
- B. פסול קטנים and others are נשים, גוים, מזוזה and תפילין, ס"ת - גמ' גיטין מה: b/c anyone who is involved in the מצוה of קשירת תפילין can write these things and anyone who is not involved in the מצוה of קשירת תפילין cannot write these things.<sup>7</sup>
1. Even though a woman is חייבת in מזוזה, she can't write it b/c she can't write תפילין since she is a קשירה לא בר קשירה.
  - a) The ראשונים discuss whether women are פטורות from the מצוה of ס"ת כתיבת ס"ת.
  - b) The חינוך תריג says that women are פטורות b/c the מצוה of לימוד התורה is connected to the מצוה of ס"ת כתיבת ס"ת. Therefore, since a woman is not חייבת in the מצוה of ת"ת she is not obligated in ס"ת כתיבת ס"ת either.
- (1) But there are those who take issue with this...
- (a) The מנ"ח תריג:א says that there is a מצוה of ס"ת כתיבת ס"ת and it has nothing to do with the מצוה of ת"ת.
  - (b) The שאג"א ס' לה says that even if the חינוך is right, women are not פטורות from ת"ת. The רמ"א יו"ד רמ"ו: quotes that women have to learn about the מצוה that are relevant to them and so, even though they are not obligated to learn all of תורה, they do have a מצוה of ת"ת.
- (2) However, there are those who say that they are not obligated in this מצוה...
- (a) But the שו"ת בית הלוי א:ו says that women aren't obligated in the מצוה of ת"ת. Women have to learn the הלכות that are relevant to them, b/c they need to know what to do. If there wouldn't be a מצוה of ת"ת, we would still need to learn the הלכות in order to know how to do the מצוה. The חידוש of the מצוה of ת"ת is that there's a מצוה to learn the things that are not even למעשה and women are not obligated in that. However, women do need to learn the הלכות that are relevant to them in order so that they know what to

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<sup>7</sup> קושר clearly understood that in order to be a כותב for תפילין and מזוזה, you need to be someone who is קושר תפילין. They clearly understood that the word "וכתבתם" was going on מזוזה and תפילין. Where do we see anything about ס"ת here? The ראשונים try to figure out how we learn ס"ת from here.

do. But at the end of the day, women are פטורות from ס"ת b/c they are פטורות from ת"ת.<sup>8,9</sup>

(b) The מנ"ח תריג"א says that women are פטורות from ס"ת, b/c they can't do it. Since it would be impossible for a woman to fulfill this מצוה, she is not obligated in it. But he says that it could be that she would be obligated to do the מצוה שליח. But this can't be b/c the גמ' נזיר יב: says that it's impossible for there to be a מצוה that you yourself can't do, but you can have a שליח do on your behalf. Therefore, it can't be that women are obligated to write a ס"ת, b/c it would be impossible for them to do it.

i) This idea of the מנ"ח is against a 'תוס'...

(1) Q: The גמ' קידושין כט: says that we need a פסוק to teach us that a woman doesn't have to be מל her son. The גמ' ע"ז כז: says that according to some, a woman cannot be a מוהלת. So תוס' ד"ה אשה לאו asks, why do we need a פסוק to tell us that a woman is not obligated in מילה, she herself can't do it, so how could she be obligated?

(2) A: תוס' answers that if not for the גזירת הכתוב I would have thought that a woman has a חיוב to make sure that her son has a מילה, not that she was going to do it on her own. I would have thought

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<sup>8</sup> The בית הלוי שמות כד:ז writes that someone people think that ת"ת is just a מצוה to know how to act. The גמ' שבת פה: tells us that when בני" said "נעשה" before "נשמע", 60,000 מלאכים came down and gave 2 crowns to each person in ישראל, עם ישראל, one כנגד "נעשה" and one כנגד "נשמע". There are 2 parts to the מצוה ת"ת - there is learning in order to know what to do ("נעשה"), which both men and women are חייב in and there is learning for the sake of learning ("נשמע"), which only men are חייב in. If they would have said "נשמע" then it would have been 1 קבלה, to learn in order to know how to do the מצוה. In saying "נעשה" and "נשמע", they made 2 separate קבלות. They were מקבל upon themselves to learn in order to know what to do ("נעשה") and to learn for the sake of learning ("נשמע"). Since they said "נעשה" before "נשמע" and were מקבל the מצוה and עול התורה, they were זוכה to 2 crowns. It is only the 2<sup>nd</sup> aspect of ת"ת that requires a ברכות התורה. The גמ' נדרים פא: says that the בהמ"ק was destroyed, but nobody knew why and ה' said it was b/c "על" ת"ת. This means that people were not מברכין בתורה תחילה, they did not make a ברכות prior to learning. Why is this so bad that the בהמ"ק was destroyed b/c of it? The ר"ן ד"ה זכר זה quotes רבינו יונה who says that these people were learning תורה, but it was not important enough in their eyes that they felt they should make a ברכה on it. The בית הלוי explains that the people thought that ת"ת was only a מצוה הכשר and therefore, did not warrant a ברכה, b/c the גמ' מנחות מב: tells us that you only make a ברכה on the final stage of doing a מצוה. People thought that learning תורה was only necessary in order for people to know what to do. It's true that you need to learn in order to know what to do, but ת"ת is not a means to an end, it's an end in itself. There is a מצוה to learn תורה that has nothing to do with knowing how to act. When a person views ת"ת as being a means to an end, he won't make a ברכה, but if he views it as an end, then he will. When people view תורה as just being a מצוה הכשר and not being significant in its own right, that causes destruction. This is where the בית הלוי got his idea from.

<sup>9</sup> This plays out in terms of למעשה. The ש"ע או"ח מז:ד holds that women should recite the ברכות התורה. Some say that women make ברכות התורה b/c they are obligated in the מצוה ת"ת. This is like the שא"ג. But the ביאור הגר"א שם says that women don't make a ברכות התורה b/c they are not obligated in ת"ת. The ביאור הלכה שם quotes a נ"מ of whether a woman can be מוציא a man in ברכות התורה - if they are חייבות, then they can be מוציא men and if not, then they can't be.

גזירת מילה, but the גזירת מילה comes to tell us that she's not required to do that either.

- ii) ... We see that the מני"ה is against this תוס' b/c תוס' raises the possibility that a woman would only have to make sure that her son is not an ערל; she doesn't need to be involved in the מצוה מעשה מצוה, just in the end result. So it could be that even though a woman can't write a ס"ת on her own, she would have to appoint a שליח to have one written on her behalf.
2. ר"ת quotes תוס' ד"ה כל לולב or make ציצית either.
- a) According to ר"ת, in order to create a מצוה של מפצא, you need to be חייב in that מצוה.
- b) But תוס' says that this is not true b/c the גמ' סוכה ה: says that a כשר is סוכת גנב"ך. A woman can only not write ס"ת.
- (1) Q: How would ר"ת respond to this? What's the difference between סוכה and ציצית?<sup>10</sup>
- (2) A: לשמה need to be made לשמה and a סוכה does not need to be made לשמה. So maybe ר"ת holds that you only need to be involved in מצוה that require לשמה, like ס"ת, in order to be involved in creating the מצוה של מפצא. Therefore, a woman cannot make ציצית, since it requires לשמה, but she could make a סוכה b/c it does not require לשמה.
- (a) Q: Is the requirement of בר קשירה really connected to the דין of לשמה?  
What's the nature of the הלכה of בר קשירה?

#### IV. לשמה בכתיבת גט וציצית:

- A. חשו"ק anyone can write a גט, even a גט, they don't have דעת to write it לשמה? They can do it if there's a גדול עומד על גביו. If that works, then why don't we say that this works to allow a גוי write a גט? It doesn't work for a גוי, but it does work for a קטן.
1. רש"י ד"ה כג. ד"ה לדעתיה says that maybe the גוי won't write it a לשמה and he'll do what he wants. But we know that a קטן is going to write the גט properly if there's a גדול עומד על גביו.<sup>11</sup>
2. But the רמב"ם הל' גירושין ג:טו writes that a גוי is not capable of writing a לשמה and that's why he's not כשר to write a גט.
- a) Q: What does the רמב"ם say that makes us believe this?
- b) A: רמב"ם הל' גירושין ג:טו quotes a ראיה that the רמב"ם holds that a גוי just can't write לשמה from רב שמחה זליג, the דיין of Brisk. The רמב"ם הל' גירושין ג:טו says that a גוי has a דין like an עכו"ם and that's why he can't write a גט. The reason a גוי can't write a לשמה, is not b/c he won't have the proper כונה, but b/c he's not in the פרשה of לשמה. The גוי has דעת, it's just that he's not in the פרשה of לשמה,

<sup>10</sup> We are going to ignore ר"ת's comment about לולב for now.

<sup>11</sup> רע"א מסכת גיטין מה: ד"ה ס"ת וכו' asks, according to this, what would happen if this גוי would then go and convert and say that he wrote the גט properly? רע"א says that it could be that we believe the guy and the גט is כשר.

which is why he can't write the גט. A ישראל מומר is someone who is going to do things on his own so it could be that במציאות he would write a לשמה גט. But the ע"פ דין עכו"ם who פסול to write a גט b/c he has a דין of an עכו"ם says that he cannot create לשמה. Therefore, גר"ח says that the רמב"ם disagrees with רש"י.<sup>12</sup>

(1) Q: 2 Questions:

- (a) Why is it that a גוי can't write לשמה?
- (b) The תוס' גיטין מה: asks, why do we need a פסוק to tell us this, a גוי can't write a לשמה b/c he can't create לשמה!?!?

(2) A: גריד"ס says that according to גר"ח and זליג רב שמחה within the רמב"ם, there is a דין that a גוי is removed from the פרשה of לשמה. This is the מקור for that דין. The פסוק of "וקשרתם וכתבתם" is coming to tell us that when you want to make the לשמה aspect of סת"ם, the only person who can do that is someone who this פרשה speaks to. לשמה is a halachik entity and in order to endow something with לשמה, a person needs to be in the פרשה of "וקשרתם וכתבתם". A woman can't write the פרשיות of תפילין b/c they need to be written לשמה and a woman can't do that b/c she's not in the פרשה of "וקשרתם וכתבתם" and since a woman can't write תפילין, she can't write a ס"ת or מזוזה either.

- (a) This is not only a דין in הל' סת"ם, but a דין when it comes to לשמה in general. Any time there is a דין of לשמה, the פסוק of "וקשרתם וכתבתם" comes into play.
- (b) So ר"ת says that a woman can't tie ציצית b/c they require לשמה and therefore, a person needs to be in the פרשה of לשמה in order to make them. However, a woman would be able to make a סוכה b/c that doesn't require לשמה.
  - i) But תוס' גיטין מה: ד"ה כל felt that this has nothing to do with לשמה and that it's just that if you aren't חייב in a certain מצוה, then you cannot be involved in creating that מצוה של מצוה. This is תוס' b/c תוס' לשיטתם felt that there was no need for a פסוק to tell us that a גוי can't write a ס"ת and that we could have learned it from the fact a גוי is not a לשמה בר. We see that תוס' understood that the פסוק was not talking about לשמה, but about needing to be חייב in a מצוה in order to create that מצוה של מצוה in general. Therefore, the פסוק of "וקשרתם וכתבתם" is not talking about לשמה, but about being חייב in מצות in general.
  - ii) The problem with this is that ר"ת says that a woman can't tie a לולב together.

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<sup>12</sup> But the אבן האזל הל' גירושין ג:טו says that it could be that we don't trust a מומר the same way we don't trust a גוי. According to the רמב"ם, this is not necessarily a דין, it could be a problem in מציאות as well.