

Do we trust people to do the right thing? The Case of מעשה שבת (ב"ק עא)

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Halakhah is a system designed for people to follow. And people are flawed!! We can be dishonest, self-serving, exploitative, etc. (How) should halakhic rulings try to correct for how people might exploit legal leniencies in dishonest ways? The case of ruling on whether an item changed/made by Shabbat violation may be used by Jews is one site where this question is addressed. We examine it in this brief shiur.

1. בבא קמא עא.

דַּתְנִן: הַמְבִּשֵׁל בַּשַּׁבָּת – בְּשׁוּגָג יֹאכֵל, בְּמִזִּיד לֹא יֹאכֵל; דְּבַר רַבִּי מֵאִיר.

As we learned in a mishnah* (*Terumot* 2:3): In the case of one who cooks food on Shabbat, if one acted unwittingly (i.e., did not know it was Shabbat or did not know cooking on Shabbat was prohibited), one may eat the food (Rashi: that day; as may others) but if one acted intentionally one may not eat it (Rashi: that day**); nor may others)- per Rabbi Meir.

*In some manuscripts of the Gemara, the term דַּתְנִיָּא, “as we learn in a baraita,” rather than דַּתְנִן, “as we learn in a mishnah” is used. דַּתְנִיָּא is probably more accurate because what is cited does not show up in the *Mishnah*, but only in the *Tosefta*, a text also from the early 3rd century.

**In a case of intentional cooking, the cook and others may eat the item after Shabbat acc. to R. Meir

רַבִּי יְהוּדָה אוֹמֵר: בְּשׁוּגָג – יֹאכֵל בְּמוֹצָאֵי שַׁבָּת, בְּמִזִּיד – לֹא יֹאכֵל עוֹלָמִית.

Rabbi Yehuda says: If one acted unwittingly one may eat the food after Shabbat (Rashi: as may others), and if one acted intentionally one may not eat it ever (Rashi: although others may partake of it).

רַבִּי יוֹחָנָן הַסַּנְדֵּלָר אוֹמֵר: בְּשׁוּגָג – יֹאכֵל לְמוֹצָאֵי שַׁבָּת לְאַחֵרִים, וְלֹא לוֹ; בְּמִזִּיד – לֹא יֹאכֵל עוֹלָמִית, לֹא לוֹ וְלֹא לְאַחֵרִים.

Rabbi Yoḥanan HaSandlar says: If one cooked the food unwittingly it may be eaten after Shabbat by others only, but not by the person who cooked it; and if one acted intentionally it may not be eaten ever, neither by the cook nor by others.

2. משנה תרומות ב:ג – נשמע כר' מאיר

...הַמַּעֲשֵׂר וְהַמְבִּשֵׁל בַּשַּׁבָּת, שׁוּגָג, יֹאכֵל, מִזִּיד, לֹא יֹאכֵל...

One who separates tithes*, or cooks on Shabbat: If unwittingly, may eat it. But if intentionally, may not eat it.

*separating tithes or terumah on Shabbat is forbidden because it appears as a type of repair, as it renders the food it is separated from halakhically edible.

3. משנה חולין א:א – נשמע כר' מאיר

השוחרט בשבת וביוה"כ אע"פ שמתחייב בנפשו שחיתתו כשרה

One who slaughters an animal on Shabbat or on Yom Kippur, though that person is now obligated in capital punishment, the slaughter is considered valid.

4. תוספתא שבת ב:ז - נשמע כר' יהודה

השוחרט בשבת בשוגג, יאכל למוצאי שבת. במזיד, לא יאכל.

One who slaughters an animal on Shabbat - if unwittingly, may eat it after Shabbat; if purposely, may not eat it.

5. ירושלמי תרומות ב:א דף יב.

רב כד הו' מורי בחבורתיה מורי קרבי מאיר. בציורי קרבי יוחנן הסנדלר...

When Rav taught his group of students, he ruled like R. Meir (i.e., more leniently). But when he taught in public, he ruled like R. Yohanan the Sandalmaker (i.e., the most strictly)...

בעין קומי רבי יוחנן את מה את אמר? אמר לון אני אין לי אלא משנה המעשר והמבשל בשבת בשוגג יאכל במזיד לא יאכל.

They asked R. Yohanan: What do you say? He said, I only have what is written in the mishnah (Terumot 2:3): One who separates tithes, or cooks on Shabbat: If unwittingly, may eat it; if intentionally, may not eat it.

שמע רב חסדא ומר הותרו שבתות! לא כן אמר רב הונא בשם רב ונתני רבי חייה כן בראשונה היו אומרים השוכח תבשיל על גבי כירתו בשבת בשוגג יאכל במזיד לא יאכל. נחשדו שהיו מניחין מזידין ואומרים שכיחין היינו ואסרו להן את השוכח. ואת אמר הקא הכין?!

Rav Hisda heard and said: Will the Sabbaths be rendered permissive?! Did not Rav Huna say in the name of Rav, and R. Hiyya likewise taught: in the beginning, they used to say that one who forgot a dish on the stove with the onset of Shabbat,* unwittingly may eat it, but intentionally

may not. But they were suspected of intentionally leaving the dish and just claiming, “We forgot it there,” so they forbade the food of one who forgets the item there as well. And yet, you say this (permissive thing) in this instance (of cooking on Shabbat)?!

*The issue raised here is called *שהייה*, the rabbinic prohibition of leaving food on a flame even before shabbat to cook *unless* a) the food is already cooked to an edible degree, b) the food is completely raw; or c) the flame/mechanism for raising the flame is covered.

אמר רבי הילא נחשדו להיות מניחין ולא נחשדו להיות מבשלין. קנסו במניח ולא קנסו במבשל...

R. Hila said: they were suspected of leaving something cooking, but not of directly cooking on Shabbat. They placed a penalty on someone who leaves a pot (even out of forgetfulness) but not someone who unwittingly cooks on Shabbat...

6. בבלי חולין טו.

והאמר רב חנן בר אמי כי מורי להו רב לתלמידיה מורי להו כר' מאיר וכי דריש בפירקא דריש כרבי יהודה משום עמי הארץ

Did not R. Hanan bar Ami say: when Rav ruled for his students, he ruled for them like R. Meir, but when he expounded at the public learning session (Rashi: on Shabbat), he expounded like R. Yehuda because of the hoi polloi (See Bavli Berakhot 47b for definitions of *עם הארץ*.)