

**אם<sup>1</sup> עמד וגדר את הרביעית** – **If he arose and fenced in the fourth side**

### Overview

The **אם עמד וגדר וכו'** that ר' יוסי is vague concerning the statement of **משנה**. It does not state who was **גודר**; whether it was the **מקיף** or the **ניקף** that built the fourth wall<sup>2</sup>. In other **תוספות** the text read explicitly **אם עמד ניקף וכו'** גירסא rejects this.

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**ולא גרסינן אם עמד ניקף** – **The text do not read; 'if the encircled one arose'.**

The **משנה** was vague as to who actually fenced in the forth side.–

**דהא לכולהו לישני דגמרא** – **For in fact according to (almost) all the interpretations** of the **משנה** **that the גמרא** states, the word 'עמד' –

**קאי המקיף** – **refers to the encircling party**<sup>3</sup>; not (only) to the encircled party.

**לבר מלישנא בתרא** – **except for the last interpretation** in the **גמרא**<sup>4</sup>

**ת"ק** – **that states; the difference** between the **מקיף** and **ניקף** will be whether **המקיף** or **הניקף**, built the fourth wall. According to this last opinion, the word **עמד** refers to the **ניקף** only and not to the **מקיף**. ר' יוסי maintains that only if the **ניקף** made the fourth wall then **הכל** עליו את הכל. However the **חכמים** maintain that **הכל** עליו את הכל regardless of who made the fourth wall.

**תוספות** anticipates a question on this statement that the term 'עמד' refers to the **מקיף**.

**והא דדייק בפרק כיצד הרגל** (בבא קמא דף כב, ושם) **and concerning that which** the **גמרא** **infers in פרק כיצד הרגל**, in the discussion of whether **זה נהנה וזה לא חסר** is **חייב** or **פטור**. The **גמרא** infers from the statement of ר' יוסי that **זה נהנה וזה לא חסר** for the **פטור**. There the **גמרא** understands the word 'עמד' to refer to the **ניקף**, not the **מקיף**. As the **גמרא** there states that according to ר' יוסי –

**הניקף בנה את הכל** – **the reason** we are **בנה את הכל** is because **הניקף בנה את הכל** (he showed that he is willing to spend money); therefore he has to pay for the rest –

**המקיף בנה את הכל** – **however if the מקיף** built the fourth wall (also), the **ניקף** would be **פטור**, even though he is a **נהנה**. This proves that **זה נהנה וזה לא חסר**. This concludes the quote from that **גמרא**. Obviously that **גמרא** contradicts **תוספות** opinion that 'עמד' refers to the **מקיף**.

**תוספות** answers that there is no contradiction. The **סוגית הגמרא** that brought proof from our **משנה** –

<sup>1</sup> It would be beneficial to first learn the entire **גמרא** until the end of ב,ב,ד, before studying this **תוספות**.

<sup>2</sup> It should be obvious that if it refers to the **מקיף** (and the **ניקף** is **חייב**) then certainly if the **ניקף** made the fourth wall he is **חייב**. The question is whether it means only the **ניקף**, or perhaps the **מקיף** as well.

<sup>3</sup> Even if the **מקיף** made the fourth wall, the **ניקף** is responsible to contribute.

<sup>4</sup> **עמוד** is referring to the **לישנא אחרינא מקיף וניקף איכא בינייהו** at the end of this **תוספות**.

**לישון – it was according to that last** in our גמרא, that interprets 'עמד' to refer to the <sup>5</sup>ניקף. According to the other לשונות, however there would (seemingly) be no proof from our <sup>6</sup>גמרא.

### Summary

The גירסא in the משנה is 'ואם עמד וגדר וכו', not 'ואם ניקף וגדר כו'. In fact according to almost all the opinions in the גמרא the rule of the משנה applies even if the מקיף was גודר. The גמרא in ב"ק that attempts to derive from our משנה that זה נהנה וזה לא חסר is פטור, indeed maintains that ואם עמד refers to the ניקף, and is following the לישנא אחרינא in our גמרא.

### Thinking it over

Can there be a סברא that if the ניקף made the fourth wall there will be less reason to be מחייב him than if the מקיף made the fourth wall?

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<sup>5</sup> Perhaps the גמרא there assumed that the expression 'ואם עמד וגדר', indicates that this is being done by a new person; one who is first now 'עמד וגדר', i.e. the ניקף. See תוספות ד"ה ורבי יוסי on this עמוד.

<sup>6</sup> We cannot infer anything from the fact that if the מקיף made the fourth wall the ניקף is מחייב; because as the גמרא explains in ב"ק the מקיף is a חסר for he can claim יתירא. The proof can only be if the פטור is ניקף.