

**A gloss<sup>2</sup> – הגה"ה כתב בספרים אבל מקיף לא יהיב ליה אלא דמי רביעית<sup>1</sup>. It is written in certain text, ‘however if the מקיף made the fourth wall, the ניקף pays him only the value of the fourth wall’.**

### Overview

The תוספות interprets s' יוסי' ר' position, that only when the ניקף made the fourth wall is he liable to assist in payments for all four walls, but not if the מקיף made the fourth wall. In our texts, the conclusion is that if the מקיף made all four walls the ניקף pays nothing at all. תוספות cites other texts where it states that if the מקיף made the fourth wall then (according to ר"י) the ניקף must assist in paying for the fourth wall. תוספות will explain the rationale for this ruling, as well as why it does not contradict a גמרא in ב"ק.

תוספות asks:

**And this is difficult; for how do we know that the ניקף is required to pay even for the fourth wall?!** Perhaps the ניקף need not pay anything if the מקיף made the fourth wall. We are now assuming that the term 'ואם עמד' refers to the ניקף; that only then is he חייב since דניחא ליה implying that if the מקיף made the fourth wall and there is no גילוי דעת, the ניקף is not responsible for anything.

תוספות cites a גמרא which supports his contention:

**And this is also seemingly indicated in פרק כיצד הרגל** (בבא קמרא דף כב, ושם דיבור המתחיל טעמא) פטור, that if the מקיף made the fourth wall the ניקף is completely פטור.

**for the גמרא says there, ‘the reason ר"י maintains that מגלגלין עליו את הכל is because the ניקף fenced in the fourth wall<sup>4</sup> –**

**however had the מקיף fenced in the fourth wall the ניקף would have been פטור**

**– we can derive from this ruling of ר"י that in the case where one derives a benefit and the other (the benefactor) is not lacking on account of this derived benefit, the beneficiary is exempt<sup>5</sup> from paying to the benefactor; since he is not causing the benefactor any monetary loss<sup>5</sup>. The מקיף made the fourth wall for his own benefit, that his fields should be protected. The**

<sup>1</sup> This תוספות is discussing the גמרא at the very end of דף ד,ב.

<sup>2</sup> Seemingly this תוספות was not part of the original תוספות but was included as an addendum from (presumably) other תוספות. See ד"ה הג"ה. בעלי תוספות.

<sup>3</sup> The הגהות הב"ה adds this emendation.

<sup>4</sup> See תוספות on ד"ה אם.

<sup>5</sup> The גמרא there was discussing a case of זנוול"ה, wherein a tenant lived in a vacant property of a neighbor. The tenant was נהנה; however the owner of the property was לא חסר, for he had no intention of renting out this property.

מקיף field is then automatically protected. The מקיף is deriving a benefit from the מקיף. However the benefit that he is deriving is not causing any loss to the מקיף. The מקיף is making the walls for himself. This is a case of חסר לא חסר and he is פטור<sup>6</sup>. The גמרא there continues –

**ודחי – and rejects** this proof. It is possible to assume that זה נהנה וזה לא חסר is indeed פטור, because – פטור is זנוול"ח, the fact that the מקיף is פטור is not conclusive proof that זנוול"ח is פטור, because –

**זנוול"ח – it is different there** in the case of מקיף וניקף than a regular זנוול"ח

**זו ז' a' מקיף says to the ניקף – דאמר ליה לדידי סגי לי בנטירא בר זוזא** **worth of watching is sufficient for me**'. My derived pleasure from your wall is worth only a זוז to pay for a watchman. A wall is not necessary; it is extravagant. Therefore the נהנה is only a זוז (which he will be obligated to pay him), but not for the wall(s). However by a regular נהנה, perhaps he would be required to pay for the entire הנאה. This concludes the גמרא that תוספות is citing from ב"ק. It seems from that גמרא that the ניקף is obligated to pay a זוז (at most), but not for the fourth wall, as indicated by the גירסא that תוספות quoted. How can we reconcile this גירסא (which requires the ניקף to pay for the fourth wall), with the גמרא in ב"ק (which seems to be saying that the ניקף is liable only for a זוזא בר זוזא)?!

The original question of תוספות is based on logic. What reason is there to say that according to ר"י the ניקף must pay for the fourth wall? The second question was that this גמרא seemingly contradicts a גמרא.

replies: תוספות

**however perhaps this proof can be rejected.** There is no proof from ב"ק that the ניקף pays only for a זוזא בר זוזא.

**for this is what the גמרא in ב"ק is saying.** The ניקף is arguing that – **דהכי קאמר – For me a ז' worth of security is sufficient.** I do not require a more expensive protection<sup>7</sup>

**therefore the ניקף is exempt from any requirement to assist in the building of the four walls;** since he has no הנאה which is worth that much money –

**however for the fourth wall, he is obligated to assist in paying for its cost – אבל רביעית יסייע**

**for there is no person who would not be willing to assist in the fourth wall if he knows – דאין לך אדם שלא יסייע לרביעית**

**that he will be fenced in from all four sides**<sup>8</sup>. No one will turn down such a bargain. It is worth for him to lay out a minor expense to

<sup>6</sup> See 'Thinking it over # 2.

<sup>7</sup> See דף ד,ב on ד"ה שניה and תוספות ד"ה דמי קנים.

<sup>8</sup> Tos not only resolves the contradiction from ב"ק, but in addition, maintains that logic dictates that the ניקף be responsible for the fourth wall.

derive a significant improvement in his property. It is considered that his הנאה is worth the contribution for the fourth wall<sup>9</sup>.

### Summary

In the גמרא there are two different גירסאות that dispute what position does ר' יוסי maintain, in the case where the מקיף made the fourth wall.

Some texts maintain that ר"י is of the opinion that the ניקף owes nothing if the מקיף built all four walls. This position is seemingly supported by the גמרא in נטירא בר' which articulates the argument of the ניקף; 'I only require a בר' זוזא'. This seemingly exempts him from any (additional) payments.

The texts that maintain the even according to ר"י the ניקף must pay for the fourth wall, will argue that even though a בר' זוזא is sufficient, nevertheless the ניקף must pay for the fourth wall. This is based on the assumption that any person is willing to assist in the building of one wall when in return, he is fenced in on all sides.

### Thinking it over

1. Why did not תוספות ask this same question on the previous לשונוות who interpreted the position of the ת"ק that the ניקף must pay only for the fourth wall, if the מקיף built all four walls?

2. תוספות cites the גמרא in ב"ק as proof that ר"י maintains that the ניקף owes nothing if the מקיף made all four walls. To prove his point תוספות quotes the 'ודחי' of the גמרא as well. Seemingly תוספות could have proven his point from the original ראיה. It states there 'הא מקיף פטור'. That would seemingly prove that he is פטור completely. Why was it necessary for תוספות to cite the concluding 'דיחוי' of וכו', as well?<sup>10</sup>

3. תוספות first question is why we should assume that he is required to pay for the fourth wall. Seemingly תוספות has already answered this question in דף דב, on תוספות ד"ה שניה in the same manner as he explains it here. Why does he repeat the same answer twice?

<sup>9</sup> It would seem that the value of the הנאה is commensurate with the amount of money one would be willing to spend in order to receive this הנאה. The ניקף is willing to spend money, assisting for the fourth wall, in order to be fenced in completely. Therefore he is נהנה the cost of a wall, not merely a בר' זוזא.

<sup>10</sup> See footnote # 6.