

## In Ya'AhL KaGaM

## ביע"ל קג"ם –

### Overview

The גמרא mentions that the הלכה is like אביי (against רבא) in the six disputes of יע"ל. Our תוספות first cites different views as to what the 'למ"ד' in יע"ל stands for, and then discusses why other cases, where the הלכה is like אביי, are not mentioned.

למ"ד פירש הקונטרס<sup>1</sup> לחי העומד מאיליו -

לחי העומד מאיליו יע"ל of למ"ד the רש"י explained that

ור"ת מפרש דהלמ"ד היינו ימי לידה שאינה רואה בהן שאין עולים לספירת זיבתה<sup>3</sup> -

And the ר"ת explained that the יע"ל of למ"ד refers to the days of לידה in which she sees no blood, that they are not included for the counting of her זיבה.

ובני נרבונא מפרשים דהלמ"ד היינו פלוגתא דפרק כל שעה (פסחים דף כה, ב) -

And the בני נרבונא explain that the יע"ל of למ"ד refers to the dispute in פרק כל שעה, regarding a case where it is –

לא<sup>4</sup> אפשר ולא קמכוין<sup>5</sup> דהלכה כאביי -

(Not) possible but he has no intent to derive benefit, where the הלכה is like אביי.

We have here three views regarding the למ"ד; according to רש"י it is לחי העומד מאיליו, according to the ר"ת it is ימי לידה וכו', and according to the בני נרבונא it is קמכוין ולא אפשר.<sup>6</sup> Tosfos explains that there is no way to verify the correct interpretation from the גמרא.

ומכל מקום לא הוזכר יע"ל קג"ם אלא על יאוש שלא מדעת ועד זומם -

<sup>1</sup> בד"ה יע"ל.

<sup>2</sup> חכמים it is permitted to carry in a מבוי which is surrounded by walls (מחיצות) on three sides. However the חכמים required that (in order to carry in such a מבוי that) one should place either a beam across the opening of a מבוי or by placing a לחי (a slat of wood) by the side of the מבוי. The dispute is whether it is permitted to carry in this מבוי if the לחי was not placed there specifically for this purpose but it just happened to be there; according to אביי it is מותר to carry in that מבוי, and according to רבא it is אסור, and the הלכה is like אביי.

<sup>3</sup> A woman who gives birth is טמאה for either seven days (for a boy) or fourteen days (for a girl) whether she sees blood or not. A woman who is a זבה (גדולה) must count seven consecutive 'clean' days in order to become טהורה. The case here is a woman who gave birth while she was counting her seven clean days and she did not see any blood during or after the birth; the issue is, are these (seven or fourteen) days counted as 'clean' days and she becomes טהורה (from טומאת זב) even during her seven or fourteen days of טומאה (the view of רבא), or do we say that (even though) these (seven/fourteen) days do not disrupt her previous counting, but they cannot be part of her seven clean days, rather she must wait after the seven/fourteen days and resume her counting (assuming that no דם was seen in between) (the view of אביי). Tosfos maintains that the הלכה here is like אביי.

<sup>4</sup> The רש"י deletes this word 'לא', and the text should read קמכוין

<sup>5</sup> The issue there is regarding deriving benefit from a forbidden source where the person has no intent to derive the benefit but it is possible for him to remove himself from this place whereby he will not derive benefit. For instance he is passing a place where there is the smell of incense offered for ע"ז. He can go on a different path (אפשר), however he has no interest in smelling the incense (ולא קמכוין), but perforce if he goes this way he will smell it. רבא forbids it (he must take another way); אביי permits it.

<sup>6</sup> See 'Thinking it over'

And nevertheless the expression **והלכתא כוותיה דאביי ביע"ל קג"ם** was not mentioned elsewhere (besides here) except for **יאוש שלא מדעת** (the יו"ד of יע"ל), therefore we cannot be sure what the למ"ד of יע"ל קג"ם stands for.

Tosfos asks:

**ואם תאמר אמאי לא חשיב נמי פשע בה<sup>7</sup> ויצאת לאגם ומתה כדרכה -**

הלכה And if you will say; why do we not also count a seventh dispute where the הלכה is like אביי regarding the case where the watchman of a cow was negligent in his watching and the cow went out to pasture and died normally, where -

**אביי משמיה דרבה אמר חייב ורבה משמיה דרבה אמר פטור<sup>8</sup> (ב"מ דף לו,ב) והלכה כאביי -**  
in name of רבה ruled that the watchman is liable, and רבא in the name of רבה ruled that he is exempt from liability, and the הלכה is like אביי. We know that the הלכה is like אביי -

**דהא מסקינן (שם דף מב,א) והלכתא תחילתו בפשיעה וסופו באונס חייב כדפירש רבינו חננאל<sup>9</sup> -**  
For the גמרא concludes, 'and the הלכה is באונס וסופו בפשיעה', as the ר"ה explained it. This indicates that the הלכה is like אביי. However Tosfos cautions -

**ובספרים לא כתוב והלכתא בהך שמעתא -**

However in our texts in is not written in the aforementioned dispute, 'and the הלכה is תחבפוסב"א', which puts somewhat of a damper on the previous proof -

**אבל כתב בעל הלכות גדולות וגם כתוב בספרים גבי המפקיד מעות אצל חבירו -**

But nevertheless the ג"ה wrote that in the aforementioned case the הלכה is like אביי, and it (תחילתו בפשיעה וסופו באונס חייב) is also written in our text, regarding the case where one deposited money by his friend -

**בעובדא דצריפא דאורבני<sup>10</sup> -**

והלכתא תחילתו בפשיעה גמרא concludes **in the incident of a 'myrtle branch hut'**, where the גמרא concludes, which proves that the הלכה is like אביי. The question remains why is this not mentioned among the disputes where the הלכה is like אביי?<sup>11</sup>

<sup>7</sup> If a watchman is negligent and there was a loss due to his negligence he is obviously liable; however here, even though he was negligent, however the loss (seemingly) was not caused (at all) by his negligence. The animal (seemingly) would have died in any event. This may be referred to as באונס וסופו בפשיעה (it began with negligence, but it ended as an (unavoidable) accident. (See [however] 'Thinking it over' # 3.)

<sup>8</sup> See 'Thinking it over' # 2.

<sup>9</sup> See the ג"ה on ב,לו who writes regarding this dispute, חייב באונס וסופו בפשיעה תחילתו באונס חייב.

<sup>10</sup> The case there was where a watchman was given custody over money, and instead of burying it in the ground for safekeeping (as is required), he placed them in a hut of myrtle branches. Eventually the money was stolen from the hut. This is a case of תחילתו בפשיעה, for placing them in hut, is not a proper protection from fire; however it is סופו for thieves do not go searching in huts for money, nevertheless he is חייב.

<sup>11</sup> See 'Thinking it over' # 2

answers: תוספות

**ונראה לפרש דלכך לא נכתבה בכלל דיע"ל קג"ם -**

**And it seems that the explanation is that the reason the case of פשע בה וכו' was not written to be included in יע"ל קג"ם -**

**דלאחר כך נפסקה הך הילכתא כרבנן<sup>12</sup> סבוראי:**

**because the later (after the time of the אמוראים) gave this ruling like רבנן סבוראי, but in the times of the גמרא (the אמוראים) it was unresolved as to what the הלכה is.**

### **Summary**

The יע"ל of למ"ד may be referring either to (רש"י) or (ר"ת) ל"ח, or אפשר ולא ימי לידה (ר"ת), or אפשר ולא ימי לידה (ר"ת), or אפשר ולא ימי לידה (ר"ת). Certain פסקי הלכות may have been inserted into the גמרא by the רבנן סבוראי.

### **Thinking it over**

1. Do רש"י, the ר"ת, and the בני נרבונו respectively maintain that in the other two disputes (not in the one they maintain (respectively) is the יע"ל of למ"ד the הלכה is not like אביי (and therefore it cannot be the יע"ל in למ"ד), or perhaps they all agree that in all (three or two) cases the הלכה is like אביי, but nevertheless for some (unspecified) reason<sup>13</sup> they are not the יע"ל of למ"ד?

2. Can we answer תוספות question<sup>14</sup> that the rule of יע"ל קג"ם is only regarding disputes directly between אביי ורבא themselves; however in the case of פשע בה they are arguing what was the opinion of the master רבה?<sup>15</sup>

3. The fact of the matter is that רבא maintains פטור (in the case of פשע בה וכו'),<sup>16</sup> even if we agree that תחילתו בפשיעה וסופו באונס<sup>17</sup> what therefore is the proof that the הלכה is like אביי in the case of פשע בה וכו', when all the גמרא ruled was that פשע בה וכו'?!<sup>18</sup> but not regarding תחילתו בפשיעה וסופו באונס

<sup>12</sup> The רש"י amends this to read כרבנן סבוראי (instead of סבוראי). The רבנן סבוראי lived shortly after the time of the אמוראים and they included in the גמרא certain additions they deemed necessary.

<sup>13</sup> Like the reason תוספות offers regarding פשע בה וכו'.

<sup>14</sup> See footnote # 8.

<sup>15</sup> See מהרש"א.

<sup>16</sup> See footnote # 7.

<sup>17</sup> See the גמרא there in ב"מ לו,ב.

<sup>18</sup> See נחלת משה.