

לא יעמוד אדם ברשות הרבים וישתה ברשות היחיד –

A person should not stand in a רה"י and drink in a רה"ר

OVERVIEW

The גמרא cites a משנה that one may not stand in a רה"ר and drink water in a רה"י, out of concern that he may carry the water out from the רה"י into the רה"ר. However one is permitted to do so if he placed his head and most of his body into the רה"י; then there is no concern that he will carry out the water. Our תוספות clarifies this משנה.

introduces us to the משנה and its explanation:

בהמוצא תפילין¹ (עירובין דף צט,א) מוקי לה בחפצים הצריכים לו² ודברי הכל –

In the case of תפילין, the גמרא establishes this משנה of 'לא יעמוד וכו' that we are discussing articles which he needs, so this משנה is according to everyone -

פירוש³ אפילו רבנן דאמרי עומד אדם ברשות הרבים ומטלטל ברשות היחיד –

The explanation is that the משנה can be according to everyone even according to the רבנן, who rule that one may stand in the רה"י and move objects in the רה"י and we are not concerned that he may bring them into the רה"ר from the רה"י, nevertheless -

הכא מודו דכיון דצריך לשתות איכא למיחש שמא יביאם אצלו –

Here in the case of 'לא יעמוד', the רבנן admit that it is prohibited, for since he needs to drink, there is the concern that he will bring the vessel with the water to him into the רה"ר. However the משנה of 'ומטלטל ברה"ר' is regarding חפצים that are not צריכים לו.

תוספות asks:

ואם תאמר⁴ השתא נמי כי יכניס ראשו ורובו אמאי שרי –

And if you will say; so now also, even if he brings in his head and most

¹ The גמרא in עירובין צט,א asks that this משנה of 'לא יעמוד אדם ברה"י וכו' is in contradiction to a previous משנה on צה,ב which states that 'ומטלטל ברה"ר וכו' (a person may stand in a רה"ר and move objects in a רה"ר, and we are not concerned that he will carry them into the רה"י from the רה"ר).

² חפצים הצריכים לו (and its utensil) will shortly explain that the need to drink makes the water (and its utensil).

³ There is a משנה in עירובין קא,א regarding a key, in which ר"מ prohibits using a key out of concern that he may carry the key from a רה"ר to a רה"י, however the חכמים disagree and are not concerned that he may carry the key. Initially the גמרא assumed that the משנה of 'לא יעמוד וכו' which is concerned about carrying follows the view of ר"מ (see previous footnote # 1). However the גמרא reconciles it with the view of the רבנן by distinguishing between the two cases 'ומטלטל ברה"ר' and 'עומד ברה"י וישתה ברה"ר'.

⁴ See 'Thinking it over' # 1.

of his body into the רה"י, **why is he permitted** to drink -

הא מפיק מרשות היחיד לרשות הרבים –

For he is taking out the water from a רה"י into a רה"ר explains - תוספות

שלוקח ברשות היחיד ונחית בבטנו ברשות הרבים⁵ –

for he is taking the water (making the עקירה) in the רה"י, and it rests in his stomach (the הנחה) in the רה"ר.

תוספות supports his contention that there is a הנחה in the stomach:

דהכי אמר התם⁶ השתין מים ורק חייב חטאת –

For so says רב יוסף there, if he urinated or spit (from one רשות to another)

he is חייב a חטאת. It is evident that the liquid which is in his body is considered at rest. Therefore here too we should consider that there is a הנחה in his stomach (which is [still] in the רה"ר).

תוספות answers:

ויש לומר דבליעתו היינו הנחתו⁷ ואין לחוש במה ששוב נכנסים לתוך מעיו⁸ –

And one can say; that his swallowing of the water, that is considered its הנחה, and it is of no concern that they continue to enter his intestines (that only resting in the intestines is the proper הנחה, this is not so) -

כדאמר (לקמן דף פ,א) הוציא דיו לכתוב ב' אותיות⁹ וכתבן כשהוא מהלך חייב –

As רבא rules; one who took out (from a רה"י to a רה"ר) sufficient ink to write two letters, and he wrote the two letters with this ink while he was walking, he is חייב a חטאת - קרבן חטאת

דכתיבתן זו היא הנחתן¹⁰ –

Because writing them on parchment is their הנחה, similarly here too swallowing is the הנחה. However, by השתין ורק it went from his body (which is in a רה"י) to another רשות (a רה"ר; or the opposite).

תוספות mentions an additional benefit from this explanation:

⁵ תוספות maintains that ראשו ורובו means most of his body excluding the legs (see שפ"א), therefore even if most of the body is in the רה"י, his stomach will still be in the רה"ר. See ק"א ס"ק א.

⁶ רב יוסף in the name of עירובין צט"א.

⁷ The swallowing is in the throat which is part of the רובו which is in the רה"י.

⁸ See שפ"א. מכוחו that when the water travels to his intestines it is not מכוון. (בשם הריטב"א)

⁹ The חיוב for הוצאה by ink is only if he took out sufficient ink to write at least two letters.

¹⁰ רבא rules that he is חייב even though he continued to walk, nevertheless the ink is considered at rest as soon as it is written, and we ignore the subsequent walking. Similarly here too, we consider the water at rest as soon as he swallows it and we ignore its subsequent descent into his intestines. See 'Thinking it over' # 2.

ואתני שפיר הא דפרק אמרו לו (כריתות דף יג, ב) יש אוכל אכילה אחת –

And according to this it will be properly understood that which we learnt in פרק אמרו לו, where the משנה states; ‘there is one who eats one eating -

וחייב עליה ד' חטאות ואשם אחד –

And is liable for this eating to bring four קרבנות חטאת and one ¹¹אשם – קרבן אשם ¹²רבי מאיר אומר אף אם היתה שבת והוציאו בפיו חייב –

ר"מ says that if it was also שבת and he carried out this food with his mouth he is חייב an additional חטאת for קרבן חטאת.

והשתא היכי תני רבי מאיר הוצאה דלא מחייב עלה עד שתנוח במעיו –

But now how can ר"מ include הוצאה for which he is not חייב until it rests in his intestines -

בהדי הנהו דמחייב בשעת בליעה –

together with the others for which he is חייב from the moment of swallowing, הוצאה is different from the rest; its חיוב begins later -

אלא אהוצאה מחייב נמי בשעת בליעה כדפרישית –

But rather we must say that for הוצאה is also חייב from the moment of swallowing, as I have explained.

ורש"י תירץ בענין אחר בהמוצא תפילין (עירובין דף צט, ב¹³) –

And רש"י explained it in a different manner in פרק המוצא תפילין

ובפרק ב' דעירובין (דף כ, א ושם¹⁴) פירשתי –

And I have explained (רש"י) in the second פרק of עירובין.

תוספות concludes with a halachic ruling:

ונראה דאף על גב דהלכה כרבי מאיר בגזירותיו –

And it is the view of תוספות that even though we rule like the decrees of ר"מ, nevertheless -

בהא דאמר לא יעמוד ברשות הרבים ומטלטל ברשות היחיד או איפכא –

Regarding this decree of ר"מ in which he ruled that one may not stand in a ר"מ and move objects in a ר"מ or the opposite, in this decree -

לית הלכתא כוותיה אלא כרבנן דשרו כדמוכח בהמוצא תפילין (שם דף צח, ב) –

¹¹ The case is where a person who was טמא ate חלב from קדשים which were נותר on יוהכ"פ. There is a חיוב מעילה בהקדש אשם for eating: 1. קדשים בטומאה, 2. חלב, 3. נותר, 4. יו"כ, and an אשם for eating.

¹² תוספות קב, ד"ה רבי מאיר. See however יו"כ on הוצאה (חיוב חטאת) or כרת. ר"מ is of the opinion that there is no כרת.

¹³ Seemingly this should read צט, א. See ד"ה רישא there רש"י, where he poses the same contradiction (between the משנה of 'וכו' וישתה' with the דין of 'אל יעמוד אדם ברה"ר וישתה' as תוספות does. [However] רש"י there gives the same answer as תוספות offers here that the הנהגה is in the mouth! See מהר"ם.

¹⁴ See there לא תוד"ה where he cites a different answer in the name of רש"י, that the mouth is considered a מקום פטור, עיי"ש.

The ruling is not like ר"מ but rather according to the רבנן who permit it, as is evident in פרק המוצא תפילין -

דאמר מתני ליה רבי חנינא בר שלמיא לחייא בר רב קמיה דרב לא יעמוד כולי –

Where the גמרא states that ר"ה ב"ש taught to רב in the presence of רב; one should not stand, etc. (in a רה"י and be מטלטל in a רה"ר) -

אמר ליה שבקת רבנן ועבדת כרבי מאיר:

רב said to רבנן (who permit it) and are ruling like ר"מ (who forbids it). It is evident that רב rules like the רבנן and not like ר"מ and so is the הלכה.

SUMMARY

We do not permit handling objects in another רשות if the object is needed by the handler. Otherwise it is permitted (we do not follow the גזירה of ר"מ). Swallowing an object is considered a הנחה just as writing is a הנחה for ink.

THINKING IT OVER

1. Why was it necessary for תוספות to preface his question (that there is a הנחה in his stomach),¹⁵ by stating that it is הצריכים לו?¹⁶

2. תוספות compares swallowing the water to writing on the parchment;¹⁷ in both cases, the swallowing and writing is considered the הנחה. Seemingly however by writing, the ink remains permanently on the parchment, by the swallowing however it continues from his throat to his intestines. How can we compare the two?!¹⁸

¹⁵ See footnote # 4.

¹⁶ See לשון הזהב.

¹⁷ See footnote # 10.

¹⁸ See אור החמה (see also עה"ד טוב רש"ש).