By a tree that is standing in a רה"י and its branch extends into the רה"ר. – באילן העומד ברשות היחיד ונופו נוטה לרשות הרבים

Overview

רב יוסף answered הא מני רבי היא, who maintains that a מקום ד' is not required, as we see from the ברייתא of זרק ונח ע"ג זיז כל שהוא רבי מחייב. The גמרא refutes this answer because רבי may agree that a מקום ד' is always required, and the reason רבי maintains that he is חייב, is because this is a special situation where the אילן is ברה"י ונופו נוטה לרה"ר, and רבי maintains the concept of שדי נופו בתר עיקרו, while the חכמים do not. תוספות offers different explanations as to what שדי נופו וכו' accomplishes and why it was necessary to establish the מחלוקת in a case where the אילן was ברה"י and נופו נוטה לרה"ר.

תוספות anticipates a difficulty:

הכא בשמעתין הוה מצי לאוקמי –

In our discussion here (regarding עקירה והנחה on a מקום ד')**, we would have been able to say** that the ברייתא of זרק ונח ע"ג זיז כל שהוא is discussing the case of -

באילן שעיקרו ונופו כולו קאי ברשות היחיד ויש בעיקרו ד' –

A tree that both **the trunk and the branches were entirely in the רה"י and the trunk is** טפחים על ד' טפחים **ד'** -

דרבי סבר שדי נופו בתר עיקרו וחשיבא מקום ד' –

Where רבי maintains that we cast the branch after its trunk and the branch **is considered** as if it were a **מקום ד',** just as the trunk is a מקום ד', and therefore he is חייב, because (he was זורק מרה"ר לרה"י and) there was a הנחה ע"ג מקום ד' -

ורבנן סברי לא אמרינן שדי נופו בתר עיקרו ולא הוי מקום ד' -

And the רבנן maintain that we do not say שדי נופו בתר עיקרו, so the branch **is not** considered as **a מקום ד',** and therefore he is פטור. This would be a valid refutation to the answer of רב יוסף that הא מני רבי היא.

תוספות responds to an anticipated question; we find later[1] that רב חסדא maintains that in a רה"י we do not require a הנחה ע"ג מקום ד', why is שדי נופו necessary to for a מקום ד' -

דברשות היחיד נמי סברא שמעתין דבעינן מקום ד' על ד' –

For our גמרא maintains that a place of ד' על ד' is required even in a רה"י for עקירה והנחה; we can prove this -

[1] ב,ז.

מדאמר[2] בסמוך[3] תני טרסקל שבידו הא תינח ברשות היחיד –

since later the גמרא **will say that** our משנה **should be read** as if it said that it was placed or taken from **the basket** (which was ד' על ד') which **was in his hand,** thereby explaining how there was עקירה והנחה מעל גבי מקום ד', to which the גמרא there responds, **this** explanation of the basket **is valid** only **when** the basket **is in the רה"י,** so we have a מקום ד', however when it is in the רה"ר there will be difficulties (see the גמרא there). -

משמע דברשות היחיד נמי מהדרינן לאשכוחי מקום ארבע –

It can be inferred from the גמרא of טרסקל **that concerning a רה"י we are also requiring that there be a מקום ד'.** Therefore regarding our discussion of הנחה ע"ג מקום ד' it is not necessary to say that the branch extended from the רה"י to the רה"ר, which is a more complicated situation (and it also requires that שדי וכו' confers upon the branch a change of רשות), when the גמרא could have said that the entire tree was in the רה"י, which also requires a מקום ד'. Therefore according to רבי the branch has the status of a מקום ד' because of the principle שדי נופו בתר עיקרו, and according to the רבנן he is פטור, because the branch is not a מקום ד' since they do not agree to שדי וכו'. Why then did not the גמרא refute רב יוסף in this simpler fashion?

תוספות explains:

אלא נקט בכהאי גוונא משום דמילתא דאביי איתמר בפרקין[4] אמילתא דרב חסדא –

However the reason why אביי **said it in such a manner,** namely עיקרו ברה"י ונופו ברה"ר is **because this statement of אביי was** originally **taught** later **in our פרק in conjunction with the statement of רב חסדא** (it was *not* said in conjunction of trying to disprove רב יוסף's position that הא מני רבי היא) -

דאמר נעץ קנה ברשות היחיד וזרק ונח על גביו אפילו גבוה מאה אמה חייב –

Who said: if **one stuck a pole in a רה"י and someone threw** an object from the רה"ר, **and it landed on top of** the pole, which is not a מקום ד'; **even if** the pole **is one hundred אמות high,** and it extends above the מחיצות of the רה"י, nevertheless **he is חייב -**

ופריך לימא רב חסדא דאמר כרבי –

and the גמרא there **asks do you mean to say that רב חסדא agrees with רבי,** who ruled in the case of זרק ונח ע"ג זיז כ"ש, that he is חייב even though there was no הנחה ע"ג מקום ד',

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[2] Seemingly תוספות could have proven that our סוגיא requires a מקום ד' from the immediate גמרא which states התינח ברה"י מקורה (that it does not require a מקום ד'), indicating that a רה"י which is not מקורה requires a מקום ד'. However from there we can only derive that a מקום הנחה is required but not necessarily a מקום ד', but from the ruling of טרסקל it is evident that a מקום ד' is required (otherwise why is טרסקל different than ידו).

[3] א,ה.

[4] א,ח – ב,ז.

and רב חסדא agrees with רבי and not with the חכמים, how can that be?!

ומשני דברשות היחיד כולי עלמא לא פליגי כדרב חסדא –

And אביי **answers** there**, that** when the object lands **in a רה"י, there is no argument,** and everyone agrees **with רב חסדא** that a מקום ד' is not required for a הנחה ברה"י. Nevertheless the חכמים maintain that if פטור זרק ונח ע"ג זיז כ"ש, because -

והכא באילן העומד ברה״י ונופו נוטה לרה״ר ומיירי אפילו אין בעיקרו ד׳ –

here the case of זרק ונח ע"ג זיז כ"ש, is when **the tree was standing in the רה"י and its branch extended into the רה"ר; and the situation may be even when the trunk does not have a מקום ד',** since we are following the ruling of רב חסדא who does not require a מקום ד' לכו"ע in a רה"י -

דרבי סבר שדי נופו בתר עיקרו דהויא כרשות היחיד וחייב –

רבי maintains the principle of **שדי נופו בתר עיקרו which makes** us consider **as if** the branch is in **a רה"י, and** therefore **he is חייב** -

אף על גב דלא הוי מקום ד׳ כדרב חסדא –

Even though neither the branch nor the trunk **are a מקום ד',** nevertheless he is חייב, **according to רב חסדא,** who maintains that in a מקום ד' רה"י לא בעינן

ורבנן סברי לא שדי נופו בתר עיקרו –

And the רבנן maintain that we do **not** say **שדי נופו בתר עיקרו,** and since the branch is in a רה"ר he is פטור (for there is no הנחה on a מקום ד' [and he did not throw it ד' אמות ברה"ר]).

In Summation: In the original statement of אביי, where he was explaining that everyone can agree with רב חסדא, that a רה"י does not require a מקום ד', then the concept of שדי וכו' accomplishes that the branch in רה"ר is considered as if it is in a רה"י. We could not have said that the entire tree was in the רה"י, for then according to רב חסדא, everyone would agree that he is חייב. In our גמרא, however we are not following the ruling of רב חסדא, and we require a מקום ד', even in a רה"י, and therefore we could have said that the בריתא is discussing a tree which is entirely in a רה"י, and שדי וכו' will accomplish that the branch is considered a מקום ד'. However, since אביי has already interpreted the בריתא that עיקרו ברה"י ונופו ברה"ר, we go along with that interpretation, with one difference, that regarding the refutation of רב יוסף, the שדי וכו' will accomplish two things; a) that the branch is in the רה"י (like אביי), and also, b) that we consider the branch to be a מקום ד'.

תוספות asks:

אבל קשה אמאי לא משני אביי לקמן באילן העומד כולו ברשות הרבים ויש בעיקרו ד׳.

However there still is **a difficulty, why doesn't אביי answer later,**[5] when the גמרא asked how is it that רב חסדא agrees with רבי who doesn't require a מקום ד' and not

[5] א,ח.

with the רבנן; אביי should have answered that the case of זרק ונח ע"ג זיז כ"ש is when **the tree is entirely in the רה"ר, and the trunk has a 'ד מקום** and he threw the object 'ד - אמות ברה"ר

דרבי סבר שדי נופו וכו' וחשיב מקום ד' -

Where רבי maintains the principle of **שדי נופו etc., and therefore** the branch is **considered** as if it had a **'ד מקום** and therefore he is חייב, for being a זורק ד' אמות ברה"ר -

ולרבנן לא הוי מקום ד'[6] –

While according to the רבנן, who disagree with the principle of שדי נופו בתר עיקרו, **there is no 'ד מקום** and therefore he is פטור.

תוספות responds to an anticipated question. Perhaps the reason אביי did not choose this latter interpretation, is because we are accepting רב חסדא's view, that a מקום ד' is not required [even in a רה"ר]. תוספות explains that this is not so –

דברשות הרבים מודה רב חסדא דבעינן מקום ד' –

For in a רה"ר even **רב חסדא admits that a 'ד מקום is required –**

דברשות היחיד דווקא קאמר רב חסדא כדמשמע לקמן[7] דקאמר –

For רב חסדא said his דין (that a מקום ד' is not required), **specifically** only **in a רה"י as is indicated** in the גמרא **later, where** the גמרא **says** -

ברשות היחיד כולי עלמא לא פליגי כדרב חסדא –

That in a רה"י all agree with רב חסדא that a מקום ד' is not required, which indicates that רב חסדא is ruling only in a רה"י. The question then remains why did not אביי explain that the case of זרק ונח ע"ג זיז כ"ש is when the entire tree with the branch were in a רה"ר and the מחלוקת is whether we say שדי נופו בתר עיקרו to accord the branch the status of a מקום ד'.

תוספות answers:

ויש לומר דברשות הרבים לא מצי לאוקמי[8] –

And one can say; that we are unable to establish this מחלוקת in a case, where the entire tree was in a **רה"ר** -

דאי הנוף למטה מג' לא הוי פטרי רבנן אף על גב דליכא ד' דכארעא סמיכתא היא –

for if the branch was within three טפחים of the ground of the רה"ר, **the רבנן**

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[6] The advantage of this interpretation is that we do not have to qualify this case that the branch and the trunk are in two separate רשויות which is unusual, but rather they are in one רשות, namely a רה"ר which is more likely. In addition, this interpretation of שדי נופו וכו' would accomplish (not like the previous interpretation that it makes the branch, which is in the רה"ר, into a רה"י like the trunk, but rather) that it accords the branch the status of a מקום ד' just like the trunk, which may be more readily acceptable than changing its רשות status from a רה"ר to a רה"י. See 'Thinking it over' # 3.

[7] א,ח.

[8] See 'Thinking it over' # 1 & # 4.

would have never said that he **is פטור, even though the branch is not** a **ד'** מקום **because** anything within three טפחים of the floor of the רה"ר **is considered an extension of the ground,** and it is a רה"ר, and it surely is a ד' מקום, and he would be חייב לכו"ע. Therefore the branch cannot be lower than three טפחים -

ואי למעלה מג' לא הוה מחייב רבי דכרמלית[9] היא אם רוחב ארבע[10] –

And if the branch is three טפחים or **higher** from the ground, then **רבי would not maintain that he is חייב, for if** the branch **is wide four** טפחים by four טפחים it is a **כרמלית[11] -**

או מקום פטור אם אינו רחב ד' –

And if it is not ד' על ד' then it is a **מקום פטור[12].** Therefore in either case he is not חייב, since it did not land in a רה"ר. We cannot therefore say that the entire tree is in a רה"ר and we also cannot say that the entire tree is in a רה"י according to רב חסדא; the only choice remaining to אביי is to say זורק מרה"ר לרה"י for רבי חייב according to and he is באילן העומד ברה"י ונופו נוטה לרה"ר since שדי נופו בתר עיקרו (which accomplishes that the נוף is a רה"י).

תוספות offers an alternate view:

ולרבינו שמשון בן אברהם נראה דברשות הרבים נמי משכחת לה למימר –

The רשב"א however **maintains that** even if the entire tree and branch are **in a רה"ר we can also apply** the principle of –

שדי נופו בתר עיקרו –

Cast the branch after the tree, However, not to consider it a ד' מקום, but rather to consider it a רה"ר; and we can overcome the objections stated above -

כגון שעיקרו פחות משלשה או גבוה ט' ורבים מכתפים[13] עליו דהוו רשות הרבים –

For instance, if the trunk is lower than three טפחים from the floor of the רה"ר, **or** that the trunk is **nine** טפחים above the floor of the רה"ר, **and the people adjust their burdens on it this would make** the trunk **a רה"ר** in both abovementioned cases -

ונופו עולה למעלה מג' –

And the branch extends above three טפחים from the ground. Now, by itself, the branch will be a מקום פטור, nevertheless -

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[9] Any item in a רה"ר which is higher than three טפחים and lower than ten טפחים and is ד"ע is considered a כרמלית. There is no חיוב חטאת for carrying from a רה"ר or רה"י into a כרמלית (and vice versa); only an איסור מדרבנן. If it does not have ד"ע then it is a מקום פטור and one may carry from a רה"ר or רה"י into a מקום פטור.

[10] When תוספות says אם רוחב ארבע or אם אינו רוחב ארבע he is not referring to the נוף per se (since we already established that the נוף is not ד' and the reason why he is חייב is because שדי נופו בתר עיקרו which is ד'), but rather that however we view the נוף (on account of the שדי נופו וכו'), there can be no חיוב.

[11] See 'Thinking it over' # 1a

[12] See 'Thinking it over' # 1b

[13] See גמרא ח,א אמר עולא וכו'. A post which is nine טפחים high is considered a רה"ר if רבים מכתפין עליו.

דלרבי הוי נוף רשות הרבים דשדינן ליה בתר עיקרו –

According to רבי, the branch will be considered **a רה"ר because we accord it the status of its trunk,** even though we are changing the status of its רשות from a מקום פטור to a רה"ר, nevertheless we may do this -

כי היכי דשדינן ליה בתר עיקרו לשויא רשות היחיד –

In the same way that we said according to אביי that **שדי נופו בתר עיקרו will confer** upon the branch **the status of a רה"י,** so too, we can equally say that the principle of שדי וכו' can confer the status of a רה"ר to a מקום פטור

ולרבנן לא הוי כרשות הרבים –

And according **to the רבנן** the branch will not be **like a רה"ר,** but rather a מקום פטור, since we do not say שדי, it retains its original status, and therefore he is פטור.

It is evident that אביי could have interpreted the מחלוקת in a רה"ר; not as תוספות previously suggested, that it would be impossible to have their מחלוקת in a רה"ר -

והא דלא מוקי ליה אביי הכי –

And the reason **why אביי did not interpret** the מחלוקת **in this manner is –**

משום דרב חסדא לא בעי מקום ד' גם ברשות הרבים דמאי שנא –

Because רב חסדא does not require a הנחה on **a מקום ד' even in a רה"ר; for there is no difference** between a רה"י and a רה"ר in regards to הנחה. If there is no requirement for a מקום ד' in one רשות the same rule will apply to the other. Therefore since a מקום ד' is not required in a רה"ר as well, אביי cannot say that the מחלוקת is in a רה"ר, for both רבי and the רבנן agree, according to רב חסדא, that even in a רה"ר a מקום ד' is not required[14].

תוספות responds to an anticipated question: How can we say that רב חסדא maintains that even in a רה"ר a מקום ד' is not required, when: a) why did רב חסדא say his דין only in a רה"י, when it applies equally to a רה"ר, and b) why does the גמרא say later (דף ח,א) that רב חסדא כדרב פליגי לא כ"ע ברה"י, when it is equally valid in a רה"ר as well? The רשב"א continues:

ורב חסדא נקט רשות היחיד משום דבעי לאשמעינן אפילו גבוה מאה אמות –

and the reason why **רב חסדא stated** his דין by **a רה"י**, even though a רה"ר also does not require a מקום ד' **because his intent was to let us know that even if the pole was a hundred אמות high** and it extends above the מחיצות of the רה"י he is still חייב -

משום דרשות היחיד עולה עד לרקיע –

Because a רה"י extends up to the sky. It was not the intent, however, of רב חסדא to tell us that he is חייב even if there was no מקום ד', for according to רב חסדא this applies always in a רה"י

[14] See תוספות ישנים, מהר"ם, מהרש"ל, מהרש"א, לשון הזהב וכו' for their discussion as to what the רשב"א meant. See 'Appendix'.

ורה"ר. The concept of עולה עד לרקיע, however, applies only to a רה"י and this is what רב חסדא taught us.

ואיידי דנקט איהו רשות היחיד נקט נמי בתר הכי ברה"י כולא עלמא לא פליגי כולי -

and since רב חסדא **used the expression רה"י,** which he had to, in order to teach us that **ברה"י כ"ע לא** גמרא the **continued to use the same expression that** רה"י עולה עד לרקיע **פליגי,** even though, that in truth everyone agrees (according to רב חסדא), that even in a רה"ר we do not require a מקום ד'.

Now that the רשב"א has stated that everyone agrees that a מקום ד' is not required according to רב חסדא, a question arises why does theברייתא mention זיז כל שהוא, since the whole idea of שדי וכו' is to change the רשות status of the נוף, why is the size of the נוף relevant. The רשב"א presently addresses this issue.

ולמאי דמוקי לה אביי לקמן[15] אליבא דרב חסדא –

And according to the manner which אביי later interprets this מחלוקת **according to רב חסדא,** who maintains, according to the רשב"א, that a מקום ד' is never required -

הא דנקט זיז כל שהוא דהא אפילו ברוחב ד' נמי פליגי -

The reason the ברייתא **mentions** that it landed on a **זיז כל שהוא, when** seemingly since we are discussing according to רב חסדא, the size of the זיז is irrelevant, **because even if** the זיז **would be wide four** טפחים, **there would be the same מחלוקת,** whether we say שדי נופו בתר עיקרו, to consider the נוף a רה"י, or not, so why mention the size of the זיז?

אומר רבינו שמשון בן אברהם דנקט כל שהוא משום למעלה מי' –

The רשב"א answers that the reason that the ברייתא **mentions** that the זיז was a **כל שהוא because** in a case where the זיז was **higher than ten** טפחים from the ground, then the size of the זיז is relevant, for in such a case -

דאי הוי רחב ד' הוי רשות היחיד ולא הוי פטרי רבנן אפילו[16] גדיים בוקעים תחתיו –

If the זיז **was wide four** טפחים **it would be** considered **a רה"י, even though kid goats pass underneath it**, **and the רבנן** would not have said that he is **פטור,** since it is ten טפחים high and four by four טפחים in area, which constitutes a רה"י as תוספות will soon explain. Therefore in such a case, where the זיז is a רה"י, if he threw from a רה"ר onto a רה"י he is חייב according to the רבנן as well, without the need to apply the principle of שדי וכו'. That is the reason why the ברייתא mentions the size of the זיז that it is a כל שהוא, so according to the רבנן, who do not maintain שדי, it will never be a רה"י and therefore he will always be פטור.

תוספות continues to explain, if it is merely a זיז which is גבוה י' from the ground and רוחב ד', why is it considered a רה"י, since there are no מחיצות. There are many authorities who maintain that a

[15] ח,א

[16] This is the corrected reading, not 'אי אין', see gloss.

רה"י must have walls that extend downwards (from a height of at least ten טפחים) to within three טפחים from the ground, so that kid goats will not be able to pass underneath the wall and thus invalidate the מחיצה, and consequently the רה"י. In our case of the זיז, there are practically no walls at all, so how can we say that the זיז is a רה"י, even if it is גבוה י' ורוחב ד'. The רשב"א explains that nevertheless it may be considered a רה"י -

אי סברי כרבי יוסי ברבי יהודה בהזורק[17] (לקמן דף קא,א) –

If the רבנן of our ברייתא **will agree with רבי יוסי בר' יהודה,** who says **in** פרק **הזורק**, that there is a concept of גוד אחית מחיצתא; if we have a platform which is גבוה י' ורוחב ד', and there are no walls below it, like our זיז, nevertheless the top of the platform is considered a valid רה"י, because 'we draw down the (imaginary) walls' from the top of the platform to the floor beneath it and it is as if the platform has valid מחיצות below it.

The רשב"א explains that the reason why the ברייתא mentioned the size of the זיז, for if it hadn't mentioned its size, we would have assumed that the רבנן hold that he is always פטור regardless of its size even if it were רוחב ד' וגבוה י', which may be misleading. For if our רבנן agree to the שיטה of רבי יוסי בר' יהודה who maintains גוד אחית מחיצתא, this would render this זיז a רה"י, and therefore the רבנן would also agree that he is חייב, because he was זורק מרה"ר לרה"י. Therefore the ברייתא states a זיז כל שהוא, for then the רבנן maintain that he is always פטור.

תוספות presents a dissenting opinion:

ואין נראה לרבינו יצחק דמשמע דמשום רבותא דרבי נקט לה –

The ר"י does not agree with the רשב"א's explanation that the ברייתא states זיז כל שהוא, in order that we should not be mistaken as to the opinion of the רבנן, **for** the simple reading of the text **indicates that** זיז כ"ש **was mentioned** to appraise us **of the novelty of רבי's** position, (that even though it landed on a זיז כ"ש, nevertheless he is חייב). However according to the רשב"א, there is no novelty in being חייב on a זיז כ"ש, because according to רב חסדא a מקום ד' is not required.

ואומר רבינו יצחק דאי הוה נקיט זיז סתמא הוה סלקא דעתך דמיירי ברחב ארבע -

Therefore the ר"י says that the reason why the ברייתא mentioned a זיז כ"ש, was for the purpose of clarifying רבי's opinion, and not the רבנן, **for if the** ברייתא **would have just said זיז**, without clarifying what size it was **we may have thought that it was wide four** טפחים -

וטעמא דרבי לאו משום שדי נופו בתר עיקרו –

And the reason why **רבי** says that he is חייב, is not because we say **שדי נופו בתר עיקרו -**

אלא הוה אמינא דסבר כרבי יוסי ברבי יהודה[18] –

[17] It is also cited here on ה,א.

Rather we would have thought that רבי **agrees with** the aforementioned **ר''י בר''י,** who rules that -

דנעץ קנה ברה״ר ובראשו טרסקל -

if one sticks a pole in the ground **of a רה''ר and on top** of the pole **there was a basket**, and someone threw an object from the רה"ר into the basket he is חייב, because we say גוד אחית מחיצתא, and the basket is a רה"י, therefore he is חייב. I would think that רבי agrees with this and therefore that is the reason why רבי is מחייב, when זרק ונח ע"ג זיז, and I would never know that רבי maintains[19] שדי נופו בתר עיקרו -

להכי נקט כל שהוא לאשמעינן דטעמא דרבי משום שדי נופו כולי –

Therefore the ברייתא **specifies 'כל שהוא' to inform us that the reason** why **רבי** is מחייב, **is because of 'שדי נופו וכו',** and it is not related to the ruling of ר''י בר''י, since it is a זיז כ"ש.

This concludes the שיטה of תוספות, who maintains that the purpose of שדי נופו בתר עיקרו is to change the רשות status of the נוף from a רה"ר to a רה"י and to be מחייב for זורק מרה"ר לרה"י.

תוספות cites פירש"י:

ורש״י שפירש כאן[20] משום שדי נופו בתר עיקרו –

However רש''י who explains our גמרא **here**, that **שדי נופו בתר עיקרו accomplishes -**

והוי כמונח ברשות הרבים על גבי מקום ד׳ –

That it is considered as if (the object which landed on the נוף) **it landed on a מקום ד' ברה''ר**, and he is חייב for זורק ד' אמות ברה"ר -

אי אפשר להעמידה דאי למטה מג׳ לא בעי רחב ד׳ לכולי עלמא –

It is impossible to substantiate s'רש"י position; **for if** the branch **was within three** טפחים of the קרקע רה"ר, **no one requires that it have a מקום ד'**, the רבנן would also agree that he is חייב, for there would be no need for שדי נופו

ולמעלה מג׳ לא הוי רשות הרבים –

And if the branch **was above three** טפחים מקרקע רה"ר, **it would not be a רה''ר,** but rather a מקום פטור since it is a זיז כל שהוא[21], and there would be no חיוב of זורק ד' אמות ברה"ר. The only way to resolve this problem, תוספות continues –

אם לא נעמיד בדבילה שמנה וטח בצד הנוף:[22]

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[18] See 'Thinking it over # 5.

[19] We may have assumed that if the זיז was less than ד' (and in a רה"ר) he would be פטור even according to רבי, for he does not maintains שדי נופו וכו'.

[20] בד"ה שדי.

[21] Or perhaps a כרמלית, if we would assume that since שדי כו' accords the נוף the status of a מקום ד', it may be considered as if it has a מקום ד' for real and therefore it would be a כרמלית. See 'Thinking it over' # 3.

[22] See 'Thinking it over # 6.

unless we say that the object thrown **was a fat** and sticky **fig, and it stuck to the side of the branch,** not on top of the branch, but on the side, so the bottom of the fig is not on the branch, but rather it hovers over the רה"ר, therefore even if the branch is a מקום פטור (or since we consider the branch a מקום ד', because of שדי וכו', the top of the branch is a כרמלית), nevertheless the side of the branch, where the fig is attached and hovering over the רה"ר, is considered part of the רה"ר[23], and therefore he is חייב for ברה"ר ד"א זורק. It is self-understood that this is a very unusual case and it is unlikely that this is what the גמרא meant.

Appendix[24]

The רשב"א says that the reason אביי does not interpret the case of ש"כ זיז ע"ג ונח זרק, in a רה"ר, is because even in a רה"ר, everyone agrees that a מקום ד' is not required according to רב חסדא. The commentaries ask, that nevertheless there still can be a מחלוקת in the case of a tree which is entirely in a רה"ר, and the מחלוקת is whether we say שדי וכו' to consider the branch, which would be a מקום פטור to be a רה"ר.

The רשב"א may be understood in the following manner: The reason why we want to establish this ברייתא in a רה"ר is because that then we would gain that שדי וכו' would be used to accord the branch the status of a מקום ד' (rather than to change רשויות). The advantage of this is because the simple reading of the ברייתא, which says **כ"ש** ונח ע"ג זיז, indicates that the reason that the חכמים are פוטר, is because there is no מקום ד'. We would also gain that the situation is less complicated; the entire tree is in one רשות.

If we were to assume that a רה"ר requires a מקום ד', then we would use the רשב"א's scenario, where the trunk was below ג', etc. and the מחלוקת would be with the tree entirely in the רה"ר. Now however that the רשב"א says that according to רב חסדא a רה"ר does not require a מקום ד', what would be gained if we would say that the tree is completely in the רה"ר. We cannot say שדי וכו' for a מקום ד', because a רה"ר does not require a מקום ד'. Therefore we have to say שדי וכו' to accord the branch the status of another רשות, that instead of being a מקום פטור (or a כרמלית) it will be a רה"ר, which is the same as when עיקרו ברה"י ונופו ברה"ר. So nothing has been gained. We cannot say, that we would gain at least that the tree is in one רשות, so it is more usual than in two different רשויות, because the case which the רשב"א suggests to us in the רה"ר, that the trunk was למטה מג' or exactly ט' and the branch is elsewhere, may even be more complicated, than a regular tree in two רשויות. Therefore, even though it may be possible to establish the ברייתא in a רה"ר, however there would be no advantage over עיקרו ברה"י ונופו ברה"ר.

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[23] See the גמרא (ז,א) לבינה זקופה וכו', see also תוספות שם ד"ה וטח. The מחלוקת between רבי ורבנן is that רבי maintains שדי נופו בתר עיקרו and therefore there is a מקום ד', however the רבנן disagree and since there is no מקום ד' he is פטור even though that it is רואה פני הקרקע (see שיטת ר"ת in the תוספות there).

[24] See footnote # 14.

The question may be asked since the term זיז כ"ש is irrelevant whether we say it is completely in the רה"ר or עיקרו ברה"י ונופו ברה"ר (since a מקום ד' is never required), why choose the latter over the former? It seems that the רשב"א addresses this issue later in this תוספות, when he says that in the case of two רשויות, where the חיוב is for זורק מרה"ר לרה"י, then it is important to say זיז כל שהוא, for otherwise, if it would be a זיז ד', then according to the חכמים, he would also be חייב for a זורק מרה"ר לרה"י. However[25] if it is in one רשות, and the חיוב is for זורק ד' אמות ברה"ר, then according to the חכמים, he will never be חייב for זורק ד"א ברה"ר[26], no matter what the size of the זיז. It will never be a רה"ר, because any object in the רה"ר למעלה מג' is either a כרמלית or a מקום פטור, so why mention a זיז כ"ש. Therefore אביי chose the case of two רשויות, because it satisfies (somewhat) the need for a זיז כל שהוא.

Summary

According to רש"י, the ברייתא of זרק ונח ע"ג זיז כ"ש, according to אביי, is discussing a case where he threw the object ד' אמות ברה"ר, and the argument between רבי וחכמים is whether we say שדי וכו' to accord the זיז כ"ש the status of a מקום ד'

According to תוספות, the argument is whether we say שדי וכו' to confer upon the זיז כ"ש, which is in the רה"ר, the status of a מקום ד' in a רה"י, and he will be חייב for זורק מרה"ר לרה"י.

In s'אביי original statement the principle of שדי וכו', had to accomplish only that the branch has the status of a רה"י, but not that it be a מקום ד', because רב חסדא is of the opinion that a מקום ד' is not required.

There is an argument between the בעלי התוספות והרשב"א, whether רב חסדא maintains that a מקום ד' is not required only in a רה"י, however in a רה"ר, even רב חסדא would agree that a מקום ד' is required, or the שיטה of the רשב"א, that according to רב חסדא a מקום ד' is never required, neither in a רה"י nor in a רה"ר.

Some of the concepts we learn from this תוספות:

The שיטה of רבי יוסי ב"ר יהודה, that we say גוד אסיק מחיצתא that if we have a platform suspended in the רה"ר which is גבוה י' ורוחב ד', and there are no walls below it, nevertheless the top of the platform is considered a valid רה"י, because 'we draw down the (imaginary) walls' from the top of the platform to the floor beneath it and it is as if the platform has valid מחיצות below it.

[25] This conclusion is not part of the s'רשב"א statement.

[26] Even though he may be חייב for זורק מרה"ר לרה"י, but the מחלוקת with רבי concerns זורק ד"א ברה"ר.

Those that argue with ר"י בר"י maintain that if the מחיצה does not reach downward to within three טפחים of קרקעית רה"ר, and therefore גדיים בוקעים תחתיו, it is not a מחיצה.
That any (fixed) object in a רה"ר, that is למעלה מג' and below יו"ד טפחים is either a מקום פטור if it is less than ד' על ד', or a כרמלית if it is ד' על ד' or larger.
Any object that is למטה מג' is a רה"ר no matter its area, because כארעא סמיכתא דמי.
That if an object rests in a רה"ר, in a manner that it is not on top of its resting place but rather attached to its side and hovering over the רה"ר, below ten טפחים, it is considered as if it landed in the רה"ר, even though the top of its resting place may be a כרמלית (or a מקום פטור).
A רה"י is עולה עד לרקיע, above and beyond its מחיצות

THINKING IT OVER

1. תוספות explained that we cannot have the מחלוקת when the tree is entirely in the רה"ר, because if the branch is רחב ד', it would be a כרמלית and less than ד' it would be a מקום פטור[27]. a) How can we think that it is רחב ד', when we are talking about a זיז כל שהוא?[28] b) Why shouldn't the branch be considered a רה"ר because of שדי וכו'?[29]
2. When תוספות suggests that the ברייתא could be discussing a case when the tree is entirely in the רה"ר, there is difference between תוספות and the רשב"א as to what שדי וכו' will accomplish. What is the difference and how do we account for it?

3. When we say that שדי וכו' gives the branch the status of a מקום ד',[30] does it mean that it is actually a מקום ד' or that for הנחה (עקירה ו) purposes we consider it as if it is a מקום ד'? How can this help us perhaps in understanding question # 1? Perhaps it may also answer תוספות question on רש"י.[31]

4. Why is it (according to שיטת התוס' [not שיטת הרשב"א]) that we say שדי נופו to consider it a רה"י but not to consider it a רה"ר?![32]

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[27] See footnote # 8.
[28] See footnote # 11.
[29] See footnote # 12.
[30] See footnote # 6.
[31] See footnote # 21.
[32] See (footnote # 8 and) עולת הבקר ד"ה שוב and אור החמה.

5. The ר"י says[33] that we mention זיז כל שהוא so we should not be mistaken that perhaps רבי agrees to ר"י בר"י that גוד אסיק מחיצתא and therefore he is חייב. If that would be the reason why not be more specific, why say a זיז?

6. תוספות states the פירש"י is untenable unless we are discussing a דבילה שמינה וטח בצד הנוף.[34] Why cannot we say (as the רשב"א suggests) that the עיקר was למטה מג' (or גבוה ט' ורבים מכתפים עליו)?

[33] See footnote # 18.
[34] See footnote # 22.