A walnut floating **on water** **אגוז על גבי מים לאו היינו הנחתו –**
is not considered to be **at its** proper **resting** position.

Overview

The גמרא discusses the status of an object placed on water; either directly, where it is not considered 'at rest', or in a vessel floating on the water, where we are not sure whether it is a proper הנחה, i.e. if it is considered 'at rest' or not. There are similar cases regarding other הלכות where these same issues arise, with differing and contradictory results. A ship moving in the water is not considered a moving חצר. A person, who is riding an animal, even though he is sitting in one place, is not considered at rest, as far as הלכות כבוד רבו are concerned. תוספות will reconcile these contradictions.

תוספות responds to an anticipated question:

ואף על גב דאמרינן בפרק קמא דבבא מציעא (דף ט,ב ושם) –

And even though we say in the first פרק of ב"מ, regarding the דין of a חצר מהלכת [that a moving property cannot acquire objects that are in it for its owner, as an immovable property can], and nevertheless, a ship moving in the water, is not considered a חצר מהלכת and it is קונה. If fish jumped into a moving ship, the owner of the ship is קונה the fish מדין חצר. The reason the גמרא gives, is that -

ספינה מינח נייחא ומיא הוא דקא ממטי ליה[1] –

The ship itself **is** really **at rest, it is the water that moves it along.** We see from that גמרא, that an object moving (floating) in the water *is* considered at rest, why then do we say here that the אגוז is not at rest in the water[2]?

תוספות answers that –

לגבי קנין שאני דלא אקרי חצר מהלכת –

Regarding the הלכה of **acquiring** objects **through** חצר **קנין**, that **is different** from הלכות שבת. Concerning הלכות קנין חצר a ship moving in the water **is not considered a חצר מהלכת -**

דחצר ילפינן מיד ויד נמי איהו דקא מסגי תותי וקא ממטי לה[3] –

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[1] This (seemingly) poses a difficulty (not only for the query of רבא [regarding אגוז בכלי וכו'], but rather) for the ruling of רבא that אגוז ע"ג מים לאו היינו הנחתו. The אגוז is similar to the ספינה. Since the ספינה is מינח נייח the אגוז ע"ג מים should also be considered מינח נייח. See מנחת איש.

[2] See 'Thinking it over' # 1

[3] See 'Thinking it over' TIE ספינה ד"ה תוס' ב"מ ט,ב which cites the גליון הש"ס here and there.

because the הלכה **that a חצר** is קונה for its owner, **is derived from** the קנין of **יד**,[4] where one acquires an object by receiving it in one's hand (and making a הגבהה, משיכה וכו'), and there is a ריבוי in the תורה that one can also be קונה if the object is placed in his חצר, with the requirement that the קנין חצר be similar to the קנין יד. A חצר מהלכת which moves (away from its master) is not comparable to a יד which doesn't move (from the side of the 'master'). Therefore a חצר מהלכת is not קונה. Conversely, however **the** movement of the **hand** is **also** similar to the movement of the ship, in as much that **it is the person who walks alongside** the hand **and carries** the hand **along** with him**,** therefore the moving ship is like the moving hand, in that there is something else that is causing it to move (the hand by the body and the ship by the water), and it is not a חצר מהלכת. This is the reason why by הלכות קנין חצר, a ship is not considered a חצר מהלכת.

אבל הכא ממשכן ילפינן ושם לא היה מסתמא אלא כדרך שבני אדם מצניעים –

However here by הלכות שבת, we **derive** the מלאכות **from the משכן, and there,** in the משכן, **we may assume that** items **were not** stored in any haphazard manner, but **only in the way people usually store** items**,** and obviously people do not store things on water, therefore it is not a הנחה. We therefore cannot compare at all, the rules of קנין with the rules of שבת, as to what is, or is not, considered at rest.

In summation: neither by קנין חצר nor by שבת are we discussing the technicalities of being 'at rest', *per se,* but rather, we need to ascertain whether it satisfies the halachic requirement for that particular situation.

Now that תוספות made it clear that the concept of 'at rest' for שבת is dependent on מלאכת המשכן, we can now understand the איבעיא of רבא.

ובעי אגוז בכלי וכלי צף על גבי מים אם הוא דרך כך להצניע חפצים או לא[5] –

And רבא inquired what would the הלכה be, in the case where **the walnut was in a vessel and the vessel was floating on the water. T**he query is **if this is a** usual **manner to store items,** and then he would be חייב, **or** perhaps **it is not** usual to store items in such a manner and he is פטור.

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[4] See ב"מ י,ב where the גמרא derives קנין חצר from the פסוק (שמות [משפטים] כב,ג) of אם המצא תמצא בידו וגו' that חצר משום ידא איתרבאי to be an effective mode of קנין.

[5] רבא was not inquiring whether the אגוז is technically 'at rest', for as תוספות will shortly prove, the אגוז בכלי is definitely not 'at rest'.

תוספות proves that the query is regarding if this is considered דרך הנחתן but not if it is considered מונח:

אף על גב דודאי לאו כמונח דמי דקיימא לן רכוב כמהלך דמי[6] –

even though a walnut placed in a floating vessel **is certainly not considered** completely **'at rest', for we established** the principle; that we consider someone who is **riding as if he were walking[7],** and not at rest, even though technically he is sitting in one place.

תוספות will now offer additional proof, that an object placed on a moving person is not considered at rest. Therefore we must say that רבא's איבעיא was not whether the אגוז בכלי וכו' is at rest, but rather whether this is דרך הנחתו.

ובריש פרק בתרא (דף קנג,א) משמע נמי דאם נותן על אדם כשהוא מהלך –

And in the beginning of the last פרק in our מסכת **it also seems that if someone places** an object **on a person while he** (the recipient) **is walking -**

דלא חשיב הנחה –

That it is not considered a proper **הנחה,** since the recipient is moving -

דקאמר[8] מניחו עליה כשהיא מהלכת ונוטל הימנה כשהיא עומדת –

For רב אדא בר אהבה **says** there that **he places** the object **on** the animal **while it is walking[9]**, thereby not causing the animal to make an עקירה[10] **and he takes** the object **off** the animal **when it stands** still, thereby assuring that when the animal will start walking again it will not make an עקירה.[11] We derive from this that placing an object on a moving animal is not considered an עקירה. This proves that an object placed on a moving animal is not 'at rest'. For if it would be 'at rest', then when

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[6] The walnut in this case, is similarly 'riding' in the vessel, and therefore it is to be considered as if it were 'walking' or moving, and certainly not at rest. Therefore we must understand that רבא's inquiry about אגוז בכלי וכו' is not whether the אגוז is literally at rest, for it certainly is not at rest since we say רכוב כמהלך, rather it is a query whether placing an אגוז בכלי וכלי צף ע"ג מים, is a usual and customary way of storing an item or not. See 'Thinking it over' # 8.

[7] Therefore when one sees his רבי riding he must stand up, out of respect for his רבי, just as if his רבי would be walking, since רכוב כמהלך דמי. We do not consider that his רבי is seated, which would not require the student to stand. See קידושין לג,ב for another application of this כלל.

[8] See there קנג,ב regarding a person who was traveling late on ערב שבת (with an animal) and שבת arrived; רב אדא בר אהבה advises (based on the משנה קנג,א) what can he do concerning the articles he needs to take with him, since he is not permitted to carry them on שבת.

[9] For if he placed it on the animal while it is standing, then when the animal will begin to move it will be considered עקירת גופו כעקירת חפץ דמי.

[10] One is not permitted to cause his animals to do a מלאכה דאורייתא on שבת

[11] Even though the animal is making a הנחה, but since it is only a הנחה and not an עקירה והנחה, therefore there is no איסור דאורייתא, and by an animal there is no איסור מדרבנן.

the animal continues to move, it is making an עקירה, in the same manner as it would be making an עקירה when the object is placed on the animal when it is standing[12]. We can assume that the same is true by a person. This is proof that placing an object on a moving person, even though the object *per se* is at rest, we do not consider it at rest since the person is moving. Therefore here too by the אגוז בכלי, even though the אגוז is 'at rest' in the כלי, but since the כלי is moving in the water it is not really 'at rest'.

תוספות cites an additional proof:

ואמרינן נמי בהמוציא (לקמן דף פ,א) הוציא דיו כשיעור שתי אותיות -

And we also say in המוציא פרק **if one carried out** (מרה"י לרה"ר) **a** sufficient **amount of ink** to write **two letters**[13]

וכתבן שהוא מהלך חייב כתיבתם זו היא הנחתם –

And he wrote two letters with this ink **while he was walking** (in the רה"ר)**; he is חייב** for הוצאה even though he did not stop in the רה"ר. The reason is; **writing** with the ink on paper **that is their הנחה,** so even though the person is walking, the ink is considered at rest on the paper that it was written on.

משמע דוקא כתבם שהניחן במקום שישארו שם לעולם –

This seems to imply **that only** by **writing** is it considered a הנחה for the ink, **because he placed** the ink **in a place where it will remain forever**[14] **-**

אבל אם שפך לכלי אחר לא חשיב הנחה כיון שהוא מהלך:

However, if he poured the ink **into another vessel** while he was walking, **it would not be considered a הנחה since he is walking**[15]**.** We see again that placing an object on a moving person does not confer upon the object the status of being at rest, The same is true for אגוז, therefore we must say that רבא's איבעיא was if it is כדרך הנחתו, and not, if it is 'at rest'.

Summary

A ship is not a חצר מהלכת because it is similar to יד. In both cases something else propels them to move (the water and the body respectively).

Placing a walnut in water is not a proper הנחה, since in the משכן we do not find such an unusual הנחה.

The איבעיא of רבא is not if the אגוז is 'at rest', but whether this is דרך הנחתו.

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[12] See 'Thinking it over' # 2 & # 9. See 'Appendix'.

[13] That is the amount of ink necessary to be חייב for הוצאה.

[14] This type of permanence supersedes any other considerations. Alternatively we may consider this דרך הנחתן. See 'Thinking it over' # 4.

[15] See 'Thinking it over' # 3

Any article which is at rest upon another object, in which the latter is moving, is not considered completely 'at rest'. Therefore: a) רכוב כמהלך דמי, b) it will not be considered an עקירה, as in the case of מי שהחשיך, where he places an object on the animal while it is moving, and c) it will not be considered a הנחה as in the case where a person will pour ink into a vessel while he is walking[16].

THINKING IT OVER

1. Is[17] 'not moving' (by a ספינה) the same as 'at rest' (by the אגוז)?

2. Placing[18] an object on a moving animal will certainly not cause the animal to make a עקירה, because the animal is not at rest and there is no עקירת גופו. Placing an object on a moving animal however, can be considered a הנחה relative to the person who is placing it there.[19]

3. It[20] seems that תוספות is taking his point a step further; pouring ink into a bottle is not sufficient, even though the ink is at rest relative to the bottle, which [the bottle] is technically at rest relative to the person, only because the person carrying the bottle is walking.

4. Why would writing something on a paper be a different/better הנחה, than placing it in the ink bottle[21]?

5. How can we differentiate between the proof from רכוב כמהלך דמי and the proofs from מי שהחשיך and the ink?

6. How do we justify the need for the two proofs; from the animal and from the ink?

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[16] In the case of the אגוז בכלי וכו', the reason why it may be is a valid עקירה והנחה is because it is more כדרך (as opposed to the case of מי שהחשיך and the ink). See תוס' הרא"ש. For an alternative explanation see 'Appendix'.
[17] See footnote # 2.
[18] See footnote # 12.
[19] See שפת אמת and 'Appendix'
[20] See footnote # 15.
[21] See footnote # 14.

7. How may we reconcile that which תוספות says that the query is whether it is כדרך, with the way the גמרא explains it, whether we follow the state of the אגוז or the state of the כלי?

8. תוספות asks how we can assume that אגוז בכלי וכלי צף ע"ג מים is at rest since רכוב כמהלך דמי.[22] Seemingly by רכוב כמהלך the person is sitting on a moving animal; however by אגוז בכלי, the אגוז is at rest in the כלי and the כלי is also at rest since it is merely the water that is moving; how does תוספות compare the two?![23]

9. תוספות proves from the גמ' in מי שהחשיך (where he is מניחה עליה כשהיא מהלכת) that placing it on a moving בהמה is not a הנחה for otherwise when he moves it בהמה should be considered an עקירה.[24] Seemingly we can say it is considered a הנחה however since the item is not moving from its place on the animal and the animal was in motion the entire time therefore there is no עקירת גופה! What is תוספות proof?![25]

Appendix

The שפת אמת asks how can תוס' compare the case of placing an object on a moving animal to placing the אגוז בכלי. When the object is placed on the animal while it is moving, we understand why it is not considered an עקירה, even though it may be at rest, because the only way it can be an עקירה is through the עקירת גופו of the animal. Here however the animal is moving already before the object was placed on it, so there is no עקירת גופו. By the case of אגוז בכלי however, we are considering whether the person who places the אגוז בכלי made a הנחה. Here we can say that relative to the כלי the אגוז is at rest, and therefore there is a הנחה. (The same difficulty arises from the case of the ink, since the person is walking all the time even after he poured the ink into the bottle, there is no הנחת גופו.)

Alternatively, the שפת אמת asks, if in the case of the ink (and the animal)

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[22] See footnote # 6.

[23] See מנחת איש.

[24] See footnote # 12.

[25] See רש"ש and אור החמה.

there is no חיוב, because they are not deemed 'at rest', why is there even a question whether in the case of אגוז there should be a חיוב, since תוספות seems to equate them.

One can suggest that perhaps the first question of the שפ"א answers the second. There definitely is a difference between אגוז בכלי and the two cases (the animal and the ink) תוספות brings as proof. In the case of אגוז בכלי the person made a regular הנחה by placing the object on a כלי. In the cases of מי שהחשיך and the ink, however, the animal and the person who are making the עקירה והנחה are moving (either from before the עקירה or until after the הנחה) with the objects, so there is no עקירת גופו והנחת גופו.

תוספות maintains however, that if an article placed on a moving object would be considered ודאי מונח i.e. totally 'at rest', then there would be a regular עקירה והנחה in the cases of the animal and the ink, regardless if the person/animal is moving, since the object is 'at rest'. It would be comparable to someone who is running and he (intentionally) kicks something lying on the ground - while he is running - from the רה"י לרה"ר, is there any doubt that he will be חייב. The same would apply here by the animal and the ink, that since the object is completely at rest (on the animal) so when the animal moves the object is being נעקר from its מקום ההנחה and he would definitely be חייב. Subsequently אגוז בכלי would surely be חייב, regardless if it is דרכו or not, since the אגוז בכלי is definitely totally 'at rest', it is a complete and total הנחה. The fact that in those two cases he is not חייב, proves that an article placed on a moving object is not completely 'at rest' *per se*.

Once we have established that an article placed on a moving object is not completely 'at rest', we can discuss the status of אגוז בכלי, where the concept of עקירה והנחת גופו is irrelevant, because he made a הנחה בידו בכלי. The question arises in such a case, where the הנחה is in a manner where the article is not completely 'at rest', but relative to the מניח it may be sufficiently 'at rest'. This is what we have to derive from the משכן, if this type of הנחה, is כדרך or not