

והלכה ונחה בחור כל שהוא באנו למחלוקת רבי מאיר ורבנן –

And it traveled and landed in a miniscule crevice, this depends on the argument between רבי מאיר and the רבנן

OVERVIEW

A. אביי maintains that חורי רה"ר כרה"ר דמי. The גמרא had a difficulty with אביי's position, as follows: The משנה states¹ 'הזורק למטה מ' כזורק בארץ' and he is חייב for זורק ד"א ברה"ר. There is a proper הנחה, as רבי יוחנן explains, for we are discussing a case where he threw a דבילה שמינה and it stuck to the wall (למטה מ'). This is obviously an unusual situation. The גמרא asks since אביי maintains that חורי רה"ר כרה"ר דמי, let us say that it landed in a crevice in the wall facing the רה"ר, which would render it a proper ברה"ר?

The גמרא resolves this difficulty, (in one answer) that the משנה cannot be discussing a crevice in the wall, for then we would have a problem with the פטור of the משנה which states that כזורק באויר, and he is פטור. Now if the משנה is discussing a case where it landed in a crevice, why is he פטור, since it is למעלה מ' it is a רה"י (since the [thickness of the] wall is presumably דע"ד), so he should be חייב for throwing לרה"י.

The גמרא (rhetorically) attempts to refute this resolution; by asking: let us say it did land in a crevice; and as to your question why he is פטור למעלה מ', the answer is that the crevice is smaller than דע"ד².

To which the גמרא replies that this is no refutation, for even if the crevice is not דע"ד, he should still be חייב, since ר"מ maintains חוקקין להשלים.

In conclusion: we cannot say that the משנה is discussing a case where it landed in a crevice, because we would not understand why פטור מ' למעלה מ' since זורק מרה"ר לרה"י³, so he should be חייב for חוקקין להשלים.

B. In order to be מחוייב במזוזה, a doorway must have an opening of at least

¹ לקמן ק,א

² The explanation why if it is not דע"ד he is פטור can be understood as either; a) if it is not דע"ד it is not a רה"י (which would seem to be the more simple interpretation), or b) if it is not דע"ד, there is no proper הנחה (which may present a difficulty, for the גמרא should have perhaps worded it 'דלא נח ע"ג מקום ד' (וכ"ת דלא נח ע"ג מקום ד' See footnote # 14.

³ It is important to remember this sequence to help us understand (especially the second half of) תוספות.

ten טפחים high by four טפחים wide. If a doorway is ten טפחים high and four טפחים wide, however the doorposts curve or arc inwards (like an archway), so that as we go higher on the doorway it is less than four טפחים wide, before it reaches a height of ten טפחים, there is a מחלוקת ר"מ ורבנן as to the status of חזקת חזקת for this doorway. ר"מ maintains that it is מחוייב במזוזה, for we say חזקת חזקת, that is we imagine as if the doorposts were carved out sufficiently to provide an open doorway that is ten by four טפחים; the רבנן argue and maintain that it is פטור ממזוזה because we do not say חזקת חזקת.

will be discussing how can we compare חזקת חזקת by חזקת חזקת to חזקת חזקת. Consequently that will compel חזקת חזקת to reinterpret the question חזקת חזקת and the s' apparent acceptance that we follow the ruling of ר"מ against the majority opinion of the רבנן.

asks:

תימה לרבינו יצחק דבפרק קמא דעירובין (דף יא: ושם) בכיפה דפליגי בה רבי מאיר ורבנן
The ר"י finds this astounding! For we learnt in the first פרק of עירובין **concerning a doorway shaped as an arch**, in which there is a מחלוקת between רבי מאיר ורבנן whether it is מחוייב במזוזה -

אמרינן התם דלא אמרינן חזקת חזקת להשלים לרבי מאיר -

We say there that (even) according to ר"מ (who maintains that it is מחוייב since חזקת חזקת, nevertheless) **we do not say that 'we carve out the arch in order to complete'** the necessary dimensions for a doorway (which is ten טפחים high by four טפחים wide) -

אלא ביש ברגליה ג' וגובהה י' פירוש גבוה ג' טפחים שיש בהן רחב ד' -
unless the legs (the lower portion) of the doorposts (before it begins to arch) **are three טפחים and the height of the doorway is ten טפחים; the meaning of 'יש ברגליה ג' is** that at the bottom of the doorway there is an open area **that is at least three טפחים high and is at least four טפחים wide**⁴, before the arch begins to curve inwards, narrowing the upper opening of the doorway to a width less than four טפחים -

⁴ The reason we require that it be four טפחים wide for a height of (at least) three טפחים, is because if the width of four טפחים would be limited to less than three טפחים high above the ground, it would be considered as part of the ground, and not the doorway, due to the concept of לבוד, and it would be as if there is no width of four טפחים at all.

אבל אין ברגליה ג' או שאינה גבוה (מ') לא אמרינן -

If however the sides do not extend vertically upwards for a height of at least **three** טפחים with a width of four טפחים **or the doorway is not high(er than) ten** טפחים from the bottom of the door till the high point of the arch **we do not say** the rule of 'חוקקין להשלים'. We see from here that in order to be 'חוקקין' we require that at least at one point it should have the proper dimensions both in width (four טפחים) as well as in height (ten טפחים) -

ואם כן היכי אמרינן הכא חוקקים להשלים לרבי מאיר בחור כל שהוא -

If so how can we say here by this miniscule crevice, that 'חוקקין להשלים' according to ר"מ, since the crevice does not have the proper dimensions (דע"ד) at all, at any point, neither in length nor in width?⁵

answers: תוספות

ואומר רבינו יצחק דאירי בחורין שדרכן לעשות בשעת הבנין -⁶

And the ר"י answers that the statement of כ"ש **is discussing** such crevices that are usually made when the walls are built -

שמפולשין לרשות הרבים -

Which penetrate the entire wall and extend from the רה"י **into the רה"ר -**

ובצד רשות היחיד הם רחבים ד' אבל לא מצד רשות הרבים -

And on the side facing towards the רה"י these crevices **are four** טפחים **wide** **however on the side** facing towards the רה"ר they **are not** wide four טפחים, for as they approach the רה"ר the crevices narrow, to a point, that when they open into the רה"ר they are miniscule in size⁷ -

ולכולי עלמא הוי חור רשות היחיד דהא חורי רשות היחיד כרשות היחיד דמי -⁸

And everyone (ר"מ ורבנן) agrees that the crevice has the status of a רה"י **for the rule is that חורי רה"י כרה"י דמי**, and these crevices are open to the רה"י on the inside -

⁵ There is (seemingly) no place where the crevice is ד' טפחים long or ד' טפחים wide.

⁶ See תוספות הרא"ש. As the wall was being built higher they would insert triangular slats of wood between the rows of the bricks which extended from the wall as 'scaffolding' for them to stand on to enable them to build higher. When the wall was finished they removed the scaffolding leaving crevices in the wall.

⁷ We may picture the crevice (looking down at it from the top of the wall) as (an) a (isosceles) triangle; the base of four טפחים facing the רה"י on the inside, and the 'apex' of the triangle opening into the רה"ר piercing the entire thickness of the wall, which is assumed to be more than ד' טפחים.

⁸ שפ"א (ד"ה) [See however גבוה י' since it is not רה"י since it is חורי רה"י which is a רה"י לכו"ע (who disputes this.)] The answer is that it need not be גבוה י' since it is חורי רה"י (חוקקין להשלים). See footnote # 10.

ולא פליגי אלא לשוויה מקום ד' על ד' -

And the argument between ר"מ ורבנן **is only whether we consider this** crevice as having **an area of** טפחים **על ד'** טפחים, which is the required מקום הנחה

דלרבי מאיר חוקקין להשלים והוי כד' על ד' -

according to ר"מ we apply the rule of **הוקקין להשלים**, for we have here the proper dimension of ד' על ד' at one point; on the side of the רה"י it is wide ד' and the length of the crevice (from the רה"י to the רה"ר) is also ד' **and** therefore since it has the proper dimensions at one point **it is considered as** a מקום ד' על ד' -

אבל ממש בחור כל שהוא אפילו רבי מאיר מודה דלא אמרינן חוקקין להשלים –

However had it been actually a miniscule crevice even ר"מ would agree that we do not apply the rule of חוקקני להשלים -

וכן משמע בירושלמי דגרסינן התם⁹ -

And it also seems so from the תלמוד ירושלמי, for it states there:

על דעתיה דרבי מאיר בין שיש שם ד' בין שאין שם ד' רואין את הכותל כגמום –

The opinion of ר"מ is whether the crevice is wide four טפחים, or whether it is not wide four טפחים we view it as if the wall was carved out¹⁰ to contain a crevice which is ד' על ד'.

תוספות responds to an anticipated question:¹¹

ודוקא אותם שלמעלה מי' חשיבי חורי רשות היחיד –

And specifically only those crevices that are above ten טפחים from the ground are considered - תורי רה"י

אבל שלמטה מעשרה אין בני רשות היחיד משתמשין שם –

However those crevices that are below ten טפחים from the ground, they are not considered דמי כרה"י חורי רה"י, since the dwellers of the רה"י do not make use of them -

מפני בני רשות הרבים שמשתמשין בהן -

⁹ מנחת איש and שפ"א, פני אברהם. See בין שיש בו is גירסא Our . שבת פי"א ה"ג

¹⁰ See מהרש"א, who explains that תוספות derives proof from this ירושלמי, which discusses only the דע"ד aspect but not the גבוה requirement, that there is no need for גבוה since it is חורי רה"י. See footnote # 8.

[illegible]

on account of the people of the רה"ר who use them.¹²

גמרא proceeds to explain the תוספות

והכי פירוש¹³ וכי תימא דלית ביה ד' ואף על גב שהם חורי רה"י -

And this is the explanation of the גמרא: 'If you will say that the reason he is not חייב if למעלה מ' is not חור, it is because the חור **was not** ד' על ד'; and we do not mean here that since it does not have ד' על ד' it is not a רה"י, but rather **even though** these crevices **are considered** חורי רה"י, since they penetrate the entire wall, which confers upon them the status of a רה"י, nevertheless -

הוי כזורק באויר לפי שלא נח על מקום ד' והאמר רב יהודה כולי -

It is considered as if one threw an object **in the air** without landing in a proper place, that he is פטור, and the same should be here **since it did not rest on a** ¹⁴מקום ד'; To which the גמרא responds: but this is not so **for רב יהודה said etc.**, that according to ר"מ in such a situation we apply the rule of חוקקין להשלים and therefore there is a ד' מקום ד' and he should be חייב. However since the משנה says that he is פטור that proves that we are not discussing a case of a (penetrating) crevice.

anticipates the following question:

והא דלא מוקמינן מתניתין בחור כל שהו ממש דלא אמרי' חוקקין לכולא עלמא -

And the reason why we do not establish that the ¹⁵משנה **is discussing an actual miniscule crevice** (that does not penetrate from the רה"י to the רה"ר, but it is only on the side of the wall facing the רה"ר) **where everyone agrees that we do not** apply the rule of חוקקין להשלים, as תוספות proved previously, and therefore it is understood why if פטור מ' למעלה מ', זרק בזרק, because then it would be considered a מקום פטור, and we revert to the original question on אביי, why does רבי יוחנן have to say that the משנה is discussing the unusual circumstance of a fat fig sticking to the side of the wall¹⁶.

¹² See 'Thinking it over' # 4.

¹³ Now that we have ascertained that the חור is a רה"י, we have to understand what is the question וכ"ת דלית ד' on the חור, it is seemingly irrelevant whether it has ד' or not, since it is a רה"י regardless.

¹⁴ Once תוספות maintains that the חור is a רה"י, he is compelled to interpret the question וכ"ת דלית ב' ד' to mean that there is no ד' מקום ד', even though the more apparent interpretation would seem to be that if it is not ד' על ד' it is not a רה"י. See footnote #2. See 'Thinking it over' # 1.

¹⁵ That says: הזורק למעלה מ' כזורק באויר

¹⁶ This is according to אביי, who maintains that חורי רה"ר כרה"ר דמי and therefore חייב למטה מ' if it landed in a חור, and פטור מ' למעלה מ' because it landed in a חור. See מהר"ם.

responds: תוספות

היינו משום דסתם חורים כך הם –

The reason is that this is the usual manner in which crevices are found¹⁷. Therefore since crevices customarily penetrate the entire wall, which makes them a רה"י, and according to ר"מ who maintains חוקקין; if it would have landed in one of these crevices מי למעלה he would have been חייב according to ר"מ. That is why we say that it did not land in a crevice but rather it was a שמינה דבילה.

משנה בחר כל שהוא ממש the offers another explanation why we cannot establish the

ועוד דעל כרחך הוצרך לאוקמי בדבילה שמינה –

And furthermore we must say that this משנה is discussing a case of דבילה, and cannot be discussing a ממש כ"ש חור; and explains - תוספות

דבחר כל שהוא ממש דלא אמר ביה חוקקין להשלים ליכא לאוקמיה –

For if the משנה would be discussing a ממש כ"ש חור where we do not apply the rule of חוקקין להשלים, which (even though it) would properly explain why if כזרק באויר ופטור מי' למעלה זרק, nevertheless we cannot establish the משנה in such a situation -

דאם כן למטה מי' אמאי כזרק בארץ והא לא נח על גבי מקום ד' –

for if it is so, that we are discussing a ממש כ"ש חור, why does it say in the משנה that if he threw it מי' למטה it is as if כזרק בארץ and he is חייב; why is he חייב, since it did not come to rest on a ע"ד מקום ד', for it is a ממש כ"ש חור, where everyone agrees that we do not say להשלים¹⁸. Therefore we cannot be discussing a ממש כ"ש חור.

Now that we say that we cannot be discussing a ממש כ"ש חור, for we would not understand why למטה מי' חייב, since there was no ע"ג מקום ד', we will now understand why the גמרא assumes that the משנה of וכו' follows the ruling of ר"מ concerning חוקקין להשלים (if it would be discussing a ממש כ"ש חור) instead of the majority opinion of the רבנן.

ואין צריך לומר כפירוש רש"י דפריך מכא דסתם מתניתין רבי מאיר היא –

And it is not necessary to follow the interpretation of רש"י, that we reject the option that the משנה is discussing a situation where it landed in a

¹⁷ A non penetrating miniscule crevice would – according to this answer – seemingly be more unusual than (or equally unusual to) a שמינה דבילה.

¹⁸ It would seem that this second answer is seemingly more convincing than the first answer of סתם חורים כך (for which תוס' offers no support). As to why תוס' does not give this as the first (and perhaps only) answer, see further in תוספות justification of פירש"י.

crevice, because of the rule **that 'an anonymous משנה is ascribed to ר"מ**, and ר"מ maintains חוקקין, so if it landed in a crevice why is he מי' פטור למעלה מי'. However, according to this explanation the refutation is based on the assumption that this משנה סתם is ר"מ, which while it is a valid assumption; nevertheless it is not definite, because perhaps this משנה follows the majority view of those who maintain חוקקין אין. The question would then remain, let the משנה be discussing the case of a crevice, and he is מי' – because פטור למעלה מי' חוקקין אין –

Therefore תוספות concludes that we have a stronger reason for assuming that the משנה is in accordance with ר"מ of חוקקין, as follows:

אלא על כרחך אי מיירי בחור כל שהוא שאינו רחב ד' –

Rather we would be forced to say that the משנה follows the ruling of ר"מ, **for if we establish** the משנה is discussing the case of a (penetrating) crevice **which does not have** the full dimension of ד"ד, then -

צריך לאוקמה כרבי מאיר דאמר חוקקין להשלים -

we must establish that the משנה is **in accordance with ר"מ who maintains** חוקקין להשלים; the reason is -

דלרבנן אמאי למטה מי' כזורק בארץ –

For according to the רבנן we have a difficulty, why if it was thrown למטה מי' **is it כזורק בארץ מי'** and he is חייב, there is no ד' מקום ע"ג הנחה?! Therefore we must say that it is in accordance with ר"מ, who maintains חוקקין, therefore there is a ד' מקום ע"ג הנחה. But then why is מי' פטור, since ר"מ maintains להשלים חוקקין? And that is the reason why we cannot establish the כ"ש בחור כ"ש.

In summation: The משנה cannot be discussing a penetrating crevice, because we would have to assume that we go according to ר"מ that חוקקין להשלים in order to satisfy the need for a ד' מקום ע"ג הנחה in the case of מי' חייב, consequently we would not understand why מי' פטור if we assume להשלים חוקקין. If we would discuss a non penetrating crevice, we would understand why מי' פטור, but we would not understand why מי' חייב, since there was no ד' מקום ע"ג הנחה.

פירש"י justifies תוספות:

ויש ליישב פירוש רש"י דהוצרך לפרש משום דסתם מתניתין רבי מאיר קפריך –

However, one may justify רש"י's interpretation that it is necessary to interpret that the refutation, which is based on the assumption that this משנה follows the opinion of ר"מ regarding להשלים חוקקין, is because of the

rule that **סתם מתניתין ר"מ**, and **רש"י** may be justified in not accepting proof as mentioned above -

דאי לאו הכי הוה ליה למפרך בהדיא -

For it were not so the way **רש"י** maintains, but rather the way תוספות maintains that if the משנה does not follow the opinion of **ר"מ** we will have the difficulty of why למטה מי' is חייב since **ע"ג מקום ד'** לא נח, if this is **correct** the גמרא should have refuted outright, when asked -

וכי תימא דלית ביה ד' למטה מי' אמאי כזורק בארץ:

לית בי' **Perhaps you will say that** the reason he is **פטור למעלה מי'** is because **בי'**, so instead of getting involved whether we say חוקקין, the גמרא should have responded that it cannot be discussing a **דע"ד** for if so **why** **by** **למטה מי' is it כזורק בארץ** and he is חייב, there is no **ע"ג מקום ד'** ¹⁹. Somehow the גמרא was not bothered by this issue, therefore **רש"י** will maintain that we cannot say that the משנה must follow the opinion of **ר"מ**, for otherwise how are we to understand of למטה מי', for since the גמרא was not concerned, neither should we. And the basis of the גמרא accepting the opinion of **ר"מ** is based on the rule that **סתם מתניתין ר"מ** היא.

SUMMARY

The rule of להשלים according to **ר"מ**, is valid only, when at least at one point there is the proper width and length. Therefore the חור under discussion here is a **רה"י** on the side of the **רה"י** and חור מפולש מרה"י לרה"י.

We cannot ask on אב"י that we should establish the משנה in הזורק by a **חור כ"ש**, for two reasons: 1) because the חור מפולש was more usual, 2) if the משנה is discussing a **חור כ"ש** where we cannot say להשלים, then why in the סיפא by **למטה מי'** he is חייב since there was no **ע"ג מקום ד'** **הנחה**. The question **וכ"ת דלית בי' ד'** has to mean that there was no **ע"ג מקום ד'** **הנחה**,

¹⁹ Therefore we may assume that the גמרא wished to discuss each part of the משנה separately, to see if it could be discussing a **חור כ"ש** on its own merits, therefore the גמרא does not give this aforementioned proof from the סיפא to reject whether in the רישא we are discussing a **חור כ"ש**, and consequently, we cannot use it to prove that the רישא of the משנה must follow the opinion of **ר"מ** (or perhaps that this משנה does not require a **מחשבתו** משיא ליה מקום וכו'). See 'Thinking it over' # 3.

Alternately, the גמרא maybe felt that according to אב"י, who maintains דמי כרה"ר חורי רה"ר a **חורי רה"ר** is not required for חורי רה"ר (since it is actually a part of the רה"ר itself and not an object in the רה"ר, therefore the רה"ר is certainly a **מקום ד'**, somewhat akin to **למטה מג'**, or some other explanation). (Consequently we may even extend this reasoning – according to **רש"י**, that חורי רה"י, also do not require a **מקום ד'**, thereby negating completely תוס' rendition of the question **וכ"ת דלית בי' ד'** that it refers to a **ע"ג** **הנחה** **ד'**, **רצע"ג** **ואכ"מ**.)

and not that it is not a רה"י, for since it is מפולש לרה"י it has the status of חורי רה"י.

This דין that חור has the status of a רה"י, is limited to למעלה, however, חורים למטה מי, are not חורי רה"י since בני רה"י refrain from using them since בני רה"י use them.

The גמרא assumes that the הזורק וכו' follows the ruling of ר"מ, if we were to assume that it landed (כ"ש) בחור, because otherwise we would not understand why in the סיפא למטה מי חייב, since there was no ע"ג מקום ד'.

The difficulty with all this is, why did not the גמרא itself respond to its own rhetorical question וכ"ת דלית בי' ד', by saying that it cannot be so, for if it is so, then why למטה מי פטור, which gives justification for רש"י's opinion that we assume that the משנה is כר"מ, only because ר"מ.

THINKING IT OVER

1. Can we derive from תוספות, that the more simple explanation of וכ"ת דלית בי' ד', would mean that it should not be a רה"י?²⁰

2. What is more usual a חור מפולש or a חור כ"ש ממש, explain.

3. When the גמרא asked: וכ"ת דלית בי' ד', why did the גמרא quote the מימרא of ר' חייא concerning חוקקין, the גמרא could have responded if there is no ד', then why are you חייב in the סיפא?²¹

4. Tosfos states that חורי רה"י כרה"י is only למעלה מי but not למטה מי since the בני רה"י also use it and not בני רה"י;²² indicating that if בני רה"י would use it למטה מי it would be חורי רה"י and not חורי רה"י. How is it that the individuals of the רה"י can be מבטל the usage of the רבים in the רה"י?²³

²⁰ See footnote # 14.

²¹ See footnote # 19 and תוס' הרא"ש.

²² See footnote # 12.

²³ See עולה הבוקר and שפ"א.