

פטור he is, טפחים six – If it is wide six רחבה ששה פטור

Overview

זרק כוורת מרה"י לרה"ר understands that the reason אב"י maintains that רה"י is פטור, is because since the כוורת has the dimensions of a רה"י, therefore when it lands (in the רה"ר), it is considered as if it lands in a רה"י¹. The presumption is then, that even though the place upon which it lands becomes a רה"י simultaneously with the act of landing, nevertheless we consider that it landed in an established רה"י. תוספות questions this premise, for אב"י himself maintains elsewhere that עקירה והנחה can not dismantle and certainly not create a רשות simultaneously, through their respective acts. It is not understood therefore, how the הנחה of the כוורת can create a רה"י, that it should be considered as if it landed in a רה"י.

For the כוורת itself becomes a רה"י when it lands – שהכוורת עצמה נעשית רשות היחיד כשתנוח

and it is considered as if he threw the כוורת from a רה"י² to a רה"י³ by the way of a רה"ר⁴, in which case the דין is –

פטור, as previously said, that he is דפטור כדאמר לעיל (דף זא) דלא יליף זורק ממושיט מושיט מרה"י from זורק מרה"י לרה"י דרך רה"ר – מושיט by חיוב (where he is חיוב by חיוב דרך רה"ר).

and even according to ר"ע – ואפילו לרבי עקיבא דאמר קלוטה כמי שהונחה דמיא who maintains the principle of קלוטה כמי שהונחה דמיא, which may lend one to think that he should be חיוב, since when he threw it into the רה"ר, even before it actually landed and became a רה"י, it was נקלט in the רה"ר, and would be considered according to ר"ע, that it is הונחה ברה"ר, nevertheless –

⁵ ר"ע would agree (זרק מרה"י לרה"י דרך רה"ר) – **here – הכא פטור that he is פטור**

for in which ever place that you will consider it at rest, that place is considered a רה"י, because the כוורת, which is a רה"י, is at rest there. Therefore he will not be חיוב even according to ר"ע.

At this point it seems that אב"י certainly maintains – השתא משמע דפשיטא ליה לאב"י

¹ One of the advantages of this interpretation (as opposed to s"l interpretation) may be that it explains why אב"י said זרק לרה"ר (as opposed to זרק ברה"ר [ד"א]).

² The place where he threw it from was a רה"י.

³ The place where the כוורת lands is a רה"י, as self-defined by the size of the כוורת.

⁴ The airspace in which it traveled after it left the רה"י and before it landed.

⁵ Since אב"י did not say that if זרק כוורת then זרק ורבנן or something similar, it seems that his דין is valid לכ"ע.

that it is considered as if the – **דחשיבא כאילו נחה אחר שנעשה רשות היחיד** hive landed after it became a רה"י, otherwise if it becomes a רה"י only after it lands, then at the moment of landing (if) it is not a רה"י, so why is he פטור?

now asks:

queries: פרק הזורק, ר' יוחנן **in** – ובפרק הזורק (לקמן צט"ב) בעי רבי יוחנן

if there is a pit which is **nine** טפחים deep and he dug out from the pit an additional **spade full** of earth, **which completed** the pit to a depth of **ten** טפחים to make it into a רה"י, and he placed the spade full of earth **in the** רה"י, do we say that

the עקירה of the object to be carried out (the spade full of earth), **and the making of the partition** (to confer upon the pit the status of a רה"י) –

they are simultaneous, and therefore he is חייב, because since we consider these two acts as being simultaneous, therefore at the moment of עקירה (of the earth) the pit was at that moment a רה"י

חייב, because when he made the עקירה we do not as of yet consider the pit to be a רה"י. The pit attains the status of a רה"י, only after the עקירה was completed and the pit is then ten טפחים deep.

continues with his query:

and even if you see fit to say in the previous query, **that since originally** at the point of the עקירה, **there was no partition of ten** טפחים, therefore **he is not חייב**, as in the second option mentioned previously – I still have another query, namely –

there was a pit that was **ten** טפחים deep (which makes it a רה"י), **and he placed into** the pit **a spade full** of earth from the רה"י, and thereby **diminished** the size of the partition to less than ten טפחים, (which nullifies its status as a רה"י), **what is** ruling in such a case? Do we say that –

the placing of the article in the pit and the removal of the partition etc. are simultaneous and therefore he is ⁶חייב or not.

and if this is so⁷, then **according to אביי**, who maintains **with certainty** in the case of a rug, **that it nullifies the partition**

for the גמרא says there; if there is a **pit in a** רה"י which is **deep ten** טפחים and **wide eight** טפחים (by four טפחים)

⁶ Even if we maintain in the previous query that even though the two acts are simultaneous, that is not sufficient to make him חייב, that is because there at the point immediately preceding the עקירה, there was no רה"י, here however at the point immediately preceding the הנחה the pit did have the status of a רה"י.

⁷ That there is less reason for simultaneity to be a cause for חייב, when originally there was no מחיצה, as opposed to a case where originally there was a מחיצה, as demonstrated by the לומר.

and he threw a rug into this pit, and the rug landed in a manner that divided the pit vertically into two equal parts each one slightly less than four טפחים wide, he is פטור, even though before the rug landed in the pit, the pit was a proper רה"י, nevertheless he is פטור

because now – at the moment of landing – the pit **is not wide four טפחים**, since the rug divided the pit vertically into two equal parts, in which neither are רוחב ד'. Then it follows that according to אב"י that

he is certainly פטור when he simultaneously makes a מחיצה, as in the first query of ר' יוחנן

since there was no מחיצה of ten טפחים originally – משום דכיון דלא היא מחיצה עשרה מעיקרא

he will not be חייב – לא מחייב

From the two queries of ר' יוחנן, within which the ואת"ל is inserted, we see that there is less reason to consider something a valid רשות, in the case of simultaneity, if prior to the act there was no רשות, and the act must create a רשות simultaneously, as opposed to where it was previously a רשות, and the act is designed to remove the רשות simultaneously. In the latter case there is more reason to maintain that the רשות is valid. Nonetheless since we see that אב"י maintains in the case of מחצלת, where there was a רשות originally (similar to the second query of ר' יוחנן), nevertheless since the רשות was nullified simultaneously (with the הנחה) there is no רשות, then certainly אב"י will maintain in the first case of ר' יוחנן, where we wish to create a רשות simultaneously, that it cannot be done.

and if so (that a רשות that is being created in a simultaneous action is certainly not a רשות), then **here** in the case of כוורת **he should be חייב for this same reason** –

since there was no מחיצה originally; prior to the landing of the כוורת, the space in which it landed was a רה"ר, therefore –

it landed in a רה"ר and he should be חייב, since we cannot create a רשות simultaneously with a הנחה, as explained previously.

answers: תוספות

We can say that the reason of אב"י, in the case of the rug being thrown into the pit, is not (merely) because that a מחיצה which is created or destroyed simultaneously with either a הנחה or an עקירה is not a מחיצה, but rather –

because he does not consider neither an עקירה nor a הנחה to be valid

if it is simultaneous with creating or destroying a מחיצה⁸, therefore by the case of the rug he is פטור, not (so much) because there is no proper רשות, but rather because there is no proper הנחה since the הנחה is destroying the מחיצה

and here too, by כוורת it is not considered a valid הנחה

⁸ Perhaps one can say that an עקירה והנחה is defined as taking place from or into a valid רשות, otherwise if a רשות is either being created or dismantled, there was no עקירה והנחה in a רשות.

since the הנהח and the forming of the מחיצה are simultaneous. – כיון דהנהח ועשיית מחיצה בהדדי קאמו

עקירה asks: Now that we say (according to אב"י), that the problem lies with the מחיצה that are simultaneous with עשיית וסילוק מחיצות, and not (so much) with whether one can create or destroy a מחיצה simultaneously with הנהח ועקירה, we need to understand –

ר' יוחנן⁹ why is דפשיטא ליה לרבי יוחנן טפי בעשיית מחיצות מבסילוק מחיצות more sure that creating a מחיצה simultaneously with עקירה והנהח is more difficult than destroying a מחיצה, in the same manner. If we are to assume the idea of אב"י, that the difficulty is not with creating or destroying the מחיצה, but rather with having a proper הנהח ועקירה by itself without being involved in creating or dismantling מחיצות, so what difference is there in the first query of ר' יוחנן, where he is creating a מחיצה (by an עקירה) to the second query of ר' יוחנן, where he is dismantling a מחיצה (by a הנהח), since in either case there is no proper הנהח ועקירה, since simultaneously he is creating or dismantling a מחיצה?

answers: The reason why ר' יוחנן felt that even if in the first query (where he created a מחיצה through the עקירה) he is not חייב, nevertheless maybe in the second query (where he dismantled the מחיצה through a הנהח), he may be חייב, is not because creating a מחיצה is more difficult than dismantling it, for as stated above the difficulty is not with the מחיצות, but rather with the עקירה והנהח, that they should not be involved with either creating or destroying מחיצות. The difference between the first query of ר' יוחנן and the second is because in the first query the creating of the מחיצה is done through an עקירה, whilst in the second query the dismantling of the מחיצה is done through a הנהח, and as תוספות concludes –

for perhaps only by an עקירה are we דדילמא עקירה בעינן שתהא חשובה – **we require that an עקירה be proper**, therefore it must be from a valid pre-established רשות, not into a simultaneously created רשות

however by הנהח (perhaps) we do not require that it be so proper, therefore it would not matter if during the הנהח a מחיצה is created or destroyed.

Summary

אב"י maintains that to be valid, an עקירה והנהח must take place in a proper רשות where there is no changing of the status of the רשות at the moment of עקירה והנהח.

עקירה ר' יוחנן questions whether this is true at all, or perhaps it is true only by עקירה, that it alone requires that there be a valid רשות preceding the act, but not necessarily by הנהח.

Thinking it over

⁹ If אב"י is correct in explaining תוס' סברא, why should ר' יוחנן disagree with it and vice versa. Also from the סוגיא in הורק it seems that אב"י is continuing in the same vein as ר' יוחנן. See Footnote #5.

1. How should we characterize the concept of קלוטה: A) if it is captured in the airspace that is sufficient to be considered as if it landed in that domain, and an actual landing is unnecessary, or B) if it is captured in the airspace of a domain it is considered as if it actually landed in that domain?
2. Can we say that by stating, that even ר"ע would agree with אב"י, that תוספות is strengthening the presumption that we consider it at rest after it becomes a רה"י?
3. Define clearly the difference between the הו"א of תוספות and the מסקנא concerning the problem with בהדי הדדי קאתי?