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

Overview

תוספות will explain the reason אביי maintains that זרק כוורת מרה"י לרה"ר is פטור, is because the כוורת has the dimensions of a רה"י, and therefore when it lands (in the רה"ר), it is considered as if it lands in a רה"י[1]. 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. Our תוספות examines this premise.

תוספות explains the reason he is פטור if he threw a כוורת רחב ו' וגבוה י' into a רה"ר is -

שהכוורת עצמה נעשית רשות היחיד כשתנוח –

For the כוורת itself becomes a רה"י when it lands

והוי כזורק מרשות היחיד לרשות היחיד דרך רשות הרבים דפטור –

And it is considered **as if he threw** the כוורת **from a רה"י[2] to a רה"י[3] by the way of a רה"ר[4]**, in which case the דין is **that he is פטור** –

כדאמר לעיל (דף ד,א) דלא יליף זורק ממושיט –

As previously said, for we do not derive זורק from מרה"י לרה"י דרך רה"ר **מושיט** מרה"י לרה"י דרך רה"ר (he is חייב by מושיט but not by זורק).

תוספות responds to an anticipated question:

ואפילו לרבי עקיבא דאמר קלוטה כמי שהונחה דמיא –

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

הכא פטור דכל מקום שהיא מונחת חשיב רשות היחיד –

Here (as opposed to זרק מרה"י לרה"י דרך רה"ר) even ר"ע would agree[5] **that he is פטור for in which ever place** that you will consider it **at rest,** that place **is**

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[1] One of the advantages of this interpretation (as opposed to רש"י's interpretation) may be that it explains why אביי said זרק לרה"ר (as opposed to זרק [ד"א] ברה"ר). See תוה"ר, רע"א וכו' for other advantages over פרש"י.

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

[3] The place where the כוורת lands is a רה"י; as defined by the size of the כוורת.

[4] The air in which it traveled after it left the רה"י and before it landed is a רה"ר. See 'Thinking it over' # 2.

[5] Since אביי did not say that by זרק כוורת then באנו למחלוקת ר"ע ורבנן or something similar, it seems that his דין is valid לכו"ע. See 'Thinking it over' # 1.

considered a רה"י, because the כוורת, which is a רה"י, is at rest there. Therefore he will not be חייב even according to ר"ע.

תוספות analyzes the ruling of אביי:

השתא משמע דפשיטא ליה לאביי דחשיבא כאילו נחה אחר שנעשה רשות היחיד –

It seems now that it is obvious to אביי that it is considered as if the כוורת **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, he should be חייב!

תוספות now asks:

ובפרק הזורק (לקמן צט,ב) בעי רבי יוחנן –

However in פרק הזורק we find that **ר' יוחנן queries:**

בור ט' ועקר ממנו חוליא והשלימו לי' והניחו ברשות הרבים –

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"ר,** do we say that

עקירת חפץ ועשיית מחיצה בהדי הדדי קאתי ומחייב או לא –

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; **or perhaps** he is **not 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) so that at the time of the עקירה the בור was not a רה"י.

ר' יוחנן there continues with an additional query:

ואם תמצא לומר כיון דלא הוי מחיצה י' מעיקרא לא מחייב –

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 –

בור י' ונתן לתוכו חוליא ומעטו מהו הנחת חפץ וסילוק מחיצה כולי –

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"ר, and thereby **diminished** the size

of the partition to less than ten טפחים, (which nullifies its status as a רה"י), **what is the** 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 חייב[6] or not.

ואם כן אביי דפשיטא ליה במחצלת דמבטל מחיצתה –

And if this is indeed **so**[7]**,** then **according to אביי, who** maintains **with certainty in the** case of a **rug, that it nullifies the partition -**

דקאמר התם בור ברשות הרבים עמוק י' ורוחב ח' וזרקו לתוכו מחצלת וחלקו פטור -

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

משום דהשתא לא הויא רוחב ד' –

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 אביי that -

וכל שכן דפטור בעשיית מחיצה –

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

משום דכיון דלא הויא מחיצה עשרה מעיקרא לא מחייב[8] **–**

For since there was no מחיצה of ten טפחים originally **He will not be חייב!**

ואם כן הכא הוי ליה לחיובי מהאי טעמא כיון דלא הויא מחיצה מעיקרא –

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**

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[6] Even if we maintain in the previous query that although the two acts are simultaneous, it is not sufficient cause 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 חיוב, when originally there was no מחיצה, as opposed to a case where originally there was a מחיצה, as demonstrated by the ואם תמצא לומר.

[8] 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 אביי 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 אביי will maintain in the first case of ר' יוחנן, where we wish to create a רשות simultaneously, that it cannot be done.

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 -

הרי נח ברשות הרבים וחייב –

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

תוספות answers:

ויש לומר דטעמא דאביי משום דלא חשיב לא עקירה ולא הנחה כי אתי בהדי הדדי –

And one can say that the reason of אביי, 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 [9]מחיצה, 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 -

והכא נמי לא חשיבה הנחה כיון דהנחה ועשיית מחיצה בהדדי הדדי קאתו –

And here too, by כוורת **it is not considered a** valid **הנחה since the הנחה and the forming of the מחיצה are simultaneous.**

תוספות anticipates the following question: Now that we say (according to אביי), that the problem lies with the עקירה והנחה that are simultaneous with עשיית וסילוק מחיצות, and not (so much) with whether one can create or destroy a מחיצה simultaneously with עקירה והנחה, we need to understand -

והא דפשיטא ליה לרבי יוחנן טפי בעשיית מחיצות מבסילוק מחיצות –

Why is [10]ר' יוחנן more sure that creating a מחיצה simultaneously with עקירה והנחה is more difficult **than destroying a מחיצה,** in the same manner.[11]

תוספות answers:

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[9] 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. (See אור החמה.)

[10] If תוס' סברא in explaining אביי is correct, why should ר' יוחנן disagree with it and vice versa. Also from the סוגיא in הזורק it seems that אביי is continuing in the same vein as ר' יוחנן.

[11] If we are to assume the idea of אביי, that the difficulty is not with creating or destroying the מחיצה, but rather with having a proper עקירה והנחה 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 הנחה), since in either case there is no proper עקירה והנחה, since simultaneously he is creating or dismantling a מחיצה? (See לשון הזהב).

דדילמא עקירה בעינן שתהא חשובה אבל בהנחה לא -

for perhaps[12] only **by an עקירה** are we concerned that it should not create or destroy a מחיצה, because **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 הנחה** (perhaps) **we do not** require that it be so proper, therefore it would not matter if during the הנחה a מחיצה is created or destroyed.

Summary

אביי maintains that in order to be valid, an עקירה והנחה must take place in a proper רשות where there is no changing of the status of the רשות at the moment of עקירה והנחה.

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

Thinking it over

1. How should we characterize the concept of קלוטה:[13] 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?[14]

2. What would the ruling be by a כוורת (גבוהה י' ורוחב ו'), if he was מושיט the כוורת from one place to another in the רה"ר?[15]

3. If the כוורת was less than ten טפחים, he should still be פטור for it should be considered as if he threw it from a רה"י into a כרמלית?[16]

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[12] 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 הנחה), 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 והנחה, 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 *הנחה*, as תוספות concludes.

[13] See footnote # 5.

[14] See אור החמה.

[15] See (footnote # 2 and) ([בסוגריים] ראש יוסף (בד"ה והנה בטעמא and מנחת אריאל אות כז.

[16] See (רע"א (בד"ה גמ' אמר אביי and עולת הבוקר.