

## He inverted the כוורת to land on its opening כפאה על פיה –

### Overview

The גמרא taught that if he threw the כוורת with the open side down then if it is שבעה ומשהו he is חייב however if it is שבעה ומשהו he is פטור.

maintains that the דינים of כו' פיה וכו' follow the same pattern as the previous דינים of אביי, namely that the חיוב ופטור depends if the כוורת is deemed a רה"י when it lands.

The question then arises, why שבעה ומשהו is deemed a רה"י, and שבעה ומשהו is not deemed a רה"י; seemingly in both cases the דין of לבוד should be able to extend the מחיצות to the necessary ten טפחים required to consider it a רה"י.

נראה לרבינו יצחק בן אשר דארחב ששה<sup>1</sup> קאי וכי איכא שבעה ומשהו חייב –

The ריב"א maintains, that this statement: כפאה על פיה וכו' is referring to the case where the כוורת was six טפחים wide<sup>2</sup> (so there is the necessary area to form a רה"י, nevertheless) even when the height of the כוורת is at most a bit more than seven טפחים, he is still חייב, because it is still considered as if it landed in a רה"ר (as opposed to where the כוורת was שבעה ומשהו [see following 'תוס']). The reason is –

דכשמגיעות המחיצות תוך שלש אין המחיצות גבוהות י' –

For when the partitions of the כוורת, come within three טפחים from the ground, the מחיצות of the כוורת are not ten טפחים high (even with adding a bit less than three טפחים on account of לבוד), and therefore it is not a רה"י, as in the case of שבעה ומשהו.

anticipates the following question: If the מחיצות הכוורת are שבעה ומשהו, and if as soon as it is a שלש תוך משהו we say לבוד, then it seems that there is a height of ten טפחים; seven of the כוורת and three on account of לבוד, so why is he חייב; it should be considered as if it landed in a רה"י<sup>3</sup>? תוספות explains:

ועובי השוליים אין מצטרפין דבעינן מחיצה שרואה את אויר הכלי שיהא גבוה י' –  
for the thickness of the base (in this case of the inverted כוורת – the top)

<sup>1</sup> רחבה ו' who maintains that we are discussing a כוורת which is not רחבה ו' and he is פטור because –on account of לבוד – it is considered as if it landed למעלה מ' (see ד"ה אבל), for as Tosfos states later שבעה ומשהו that if it is not רחב ו' it is חייב לבוד, so why is he חייב; it should be considered as if it landed in a רה"י<sup>3</sup>?

<sup>2</sup> See ([‘Overview to] (הא) ‘Thinking it over’ # 1. and) ‘תוס' ד"ה רחבה (הא) ‘Thinking it over’ # 1.

<sup>3</sup> See the following שבעה ומשהו.

**cannot be combined** with the walls of the **כוורת** to provide us with the necessary ten **טפחים**, **for we require a מחיצה which 'sees' the inner airspace of the utensil** (i.e. the **כוורת**);<sup>4</sup> **that** this aforementioned **מחיצה be ten טפחים high**, and since the **שוליים** are by definition not **אור הכלי**, therefore they are not part of the **מחיצות**. The total height of the **מחיצות** which are **אור הכלי** are therefore less than seven **טפחים**, for we subtract the height (thickness) of the **שוליים**, hence even after adding the three **טפחים** of **לבוד**, we still do not have ten **טפחים** to consider the **הכוורת** as a **רה"י**.

anticipates the following question:

**ואף על גב דהיכא דכוורת גבוה י' מצטרפין השוליים להיות על גבו רשות היחיד – and even though where the כוורת itself is exactly ten טפחים high we do combine the base with the מחיצות, to confer the status of a רה"י on the top of the כוורת, that since the כוורת is ten טפחים high if one places an object on the top of the inverted כוורת it will be deemed as if he placed it in a רה"י. We know this to be true from what we previously learnt –**

**כדאמר לעיל<sup>5</sup> בית שאין תוכו י' וכולי –**

**as was previously said: 'A house, which inside it is not ten טפחים high, etc.'** but combined with the thickness of the roof there is a height of ten **טפחים** from the roof to the ground, the **דין** is that on the roof, it is a valid **רה"י**, and similarly here on the inverted **כוורת**, if it were ten **טפחים** high, the top of the **כוורת** would be a **רה"י**, which means that we do combine the thickness of the roof or the base with the **מחיצות**, to provide the necessary ten **טפחים**,

**וכיון דעל גבו רשות היחיד פטור הזורק –**

**And since the top of the כוורת is a רה"י, one who throws this כוורת from a רה"י is פטור<sup>6</sup>, then why in the case of שבעה ומשהו, do we not consider the עובי השוליים as part of the מחיצות?<sup>7</sup>**

responds:

<sup>4</sup> This means that only that part of the **מחיצה**, which encircles the inner 'airspace' of the **כוורת**, is deemed a **מחיצה**. The **מחיצה** which is part of the **עובי השוליים**, however, encircles the material of the **שוליים** and not the inner 'airspace' of the **כוורת**.

<sup>5</sup> דף זב, "אמר רב גידל וכו'".

<sup>6</sup> As the **גמרא** previously taught that **י' וכו' פטור**, and as (ד"ה רחבה הב') explained because it is considered as if it landed in a **רה"י**.

<sup>7</sup> What difference is there if the ten **טפחים** are from the **כוורת** itself, or if the ten **טפחים** are a combination of **שבעה** from the **כוורת** and **שלש** from **לבוד**? Why in one case do we count the **עובי השוליים** and not in the other?

מכל מקום כיון דאין גבוה י' אלא מחמת לבוד אין אויר פחות מג' מצטרף –  
Nevertheless, the case of שבעה ומשהו is different, since the כוורת by itself is not ten טפחים high, it is being considered ten טפחים high, only on account of לבוד, therefore we cannot combine this airspace of less than three טפחים to complete the required ten טפחים, according to the guidelines of לבוד –

אלא אם כן יהיו המחיצות גבוהות י' לבד השוליים –  
Unless the total height of the מחיצות (including the three טפחים of לבוד) will be ten טפחים high besides the base

דלא אמרינן לבוד אלא במחיצות<sup>8</sup> כדפירש בקונטרס<sup>9</sup> –  
For we do not apply the rule of לבוד unless there are proper מחיצות of ten טפחים total that are רואה פני האויר as רש"י explains.

תוספות proves his point:

תדע דבשולים למטה לא אמרינן לבוד<sup>10</sup> –  
You can know that what was said is true, because in a כוורת where the base is on the bottom, we do not apply the rule of לבוד, i.e. that even if it was more than seven (and a half) טפחים high he will still be חייב; we do not combine the necessary additional three טפחים on account of לבוד (as in the case of an inverted כוורת), because since the base is on the bottom there are no discernible מחיצות as the כוורת is coming to land within the three טפחים (the 'ground' so to speak, 'sees' only שוליים approaching, but no מחיצות), so we cannot say לבוד, similarly here since when it reaches within the three טפחים, we do not 'see' (peering from the ground up into the כוורת) מחיצות of ten טפחים, because the מחיצות of the שוליים are not encircling 'airspace' and cannot be 'seen', therefore we do not say לבוד

## SUMMARY

In order to extend מחיצות that are less than ten טפחים to be considered as if they are ten טפחים high, through תורת לבוד, it is required that there be valid מחיצות of שבעה ומשהו that are רואה פני האויר, otherwise we do not say לבוד. Therefore the שוליים of a כלי cannot be part of the שבעה ומשהו required for תורת לבוד.

## THINKING IT OVER

<sup>8</sup> See 'Thinking it over' # 2.

<sup>9</sup> רש"י ד"ה אבל גבוה.

<sup>10</sup> See 'Thinking it over' # 3.

1. In order to say לבוד do we require an airspace of טפחים or can it be ד' including the thickness of the walls (does the כוורת need to be רחב ג' חומשי and ה' טפחים [for we need an airspace of ד'] or can it be wide)?<sup>12</sup>
2. How is it that תוספות maintains that if there are no מחיצות עשרה we do not say מג' לבוד בפחות מג',<sup>13</sup> when there are דינים, that when an object is מג' from the ground we consider it as if it is on the ground,<sup>14</sup> even though there are no מחיצות (at all)?<sup>15</sup>
3. How can we differentiate (as opposed to proof)<sup>16</sup> concerning לבוד between a כוורת that is landing on its שוליים, to an inverted כוורת that is שבעה? ומשהו?<sup>17</sup>
4. Is תוספות saying that since we do not consider the עובי השוליים, therefore we do not have מחיצות י' , or is תוספות saying that since we do not consider עובי השוליים then we do not say לבוד and we have מחיצות less than שבעה? And למאי נפקא מינה between these two approaches?

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<sup>11</sup> See footnote # 2.

<sup>12</sup> מחנת איש.

<sup>13</sup> See footnote # 8.

<sup>14</sup> See for instance the גמרא on א,ה that וקבלה מג' למטה ידו לשלשל ידו למטה מג' וקבלה, etc.

<sup>15</sup> פני אברהם בד"ה רש"י ד"ה אבל and שבת של מי בסוף ד"ה זה.

<sup>16</sup> See footnote # 10.

<sup>17</sup> תוס' הרא"ש ש.