

## There it was above three

## התם למעלה מג' -

### Overview

ruled (according to the conclusion of the גמרא) that if one stretches out his hand full of פירות to the רה"ר, he is חייב even if he did not place them down on the ground; seemingly because אגד לא שמיא אגד (even though אגד כלי שמיא אגד). The גמרא challenged this from the first משנה where one made an עקירה and the other made the הנחה both are פטור, even though the one who made the עקירה extended his hand to the other רשות, so if אגד לא שמיא אגד, he should be חייב. The גמרא answered that the משנה which states he is פטור is in a case where the extended hand was higher than three טפחים from the ground, however the ruling of רבא (that he is חייב) is where the extended hand is within three טפחים from the ground. Our תוספות discusses this issue.

ונהי דלאו שמיא אגד הנחה ליכא כדפירש בקונטרס<sup>1</sup> -

So granted that אגד גוף is לאו שמיא אגד, nevertheless there is no הנחה and therefore he is פטור, as רש"י explained.

תוספות asks:

הקשה הרב רבינו אלחנן לרבה<sup>2</sup> דמוקי מתניתין בריש מכילתין (דף ד,א) כרבי עקיבא -  
ה"ר asked; according to רבה, who established the משנה, in the beginning of our מסכת, like ר"ע -

דאמר קלוטה כמי שהונחה דמיא<sup>3</sup> בהך בבא דמייתי הכא<sup>4</sup> אמאי שניהם פטורין -

Who maintains דמיא דמיא שהונחה דמיא, so in this case which the גמרא cites here, why are they both פטור -

והלא למעלה מג' לר' עקיבא כמו למטה מג' לרבנן<sup>5</sup> -

<sup>1</sup> בד"ה התם. He is not פטור on account of אגד גוף שמיא אגד (which would mean that since his hand is attached to his body [which is in the רה"ר] therefore we consider as if his hand is also in רה"ר (even though it is in the רה"ר), but rather he is פטור (even though אגד לא שמיא אגד, and we do consider as if his hand is in the רה"ר [which it actually is]), because (since his hand is למעלה מג') it is not at rest; no הנחה was made, therefore he is פטור.

<sup>2</sup> The גמרא there asked why should the ב' בעה"ב be חייב when he placed the item in the hand of the עני, since the עני יד העני is not מקום הנחה (the size needed for a proper הנחה) ד' טפחים על ד' טפחים.

<sup>3</sup> This means that if the item is 'captured' (קלוטה) in the airspace of a רשות, it is considered as if it rested in that רשות, so therefore in the משנה since the item is in the airspace of the רה"ר (in the hand of the עני) it is considered as if it rested in the רה"ר (where there is a ד' טפחים דע"ד).

<sup>4</sup> This is the case where the ב' בעה"ב stretched out his hand to the רה"ר and the עני took it from him.

<sup>5</sup> The גמרא just said that if the hand is below three טפחים, he is חייב because it is considered as if it is at rest, the same should be even above three טפחים according to ר"ע, who maintains דמיא שהונחה דמיא even above three טפחים. The ר"ע should be חייב when he stretched out his hand into the רה"ר. How can רבה establish the משנה like ר"ע; it cannot explain the ruling of פטורים שניהם!

**For is not three טפחים above the רה"ר according to ר"ע, the same as below three טפחים according to the רבנן?!**

answers: תוספות

**ויש לומר דרבה סבר אגד גוף שמיה אגד<sup>6</sup> -**

**And one can say that אגד maintains רבה אגד גוף שמיה.**

offers an alternate approach: תוספות

**ורבינו יצחק מפרש התם למעלה מג' ואית לן למימר דשמיה אגד<sup>7</sup> -**

**And the ר"י explains the גמרא as follows; 'there (in the משנה) it is above three' - פטור and therefore he is אגד<sup>8</sup>, אגד גוף שמיה אגד, so we can maintain that טפחים**

**כדאמר בפרק קמא (דף ג, א) דידו בתר גופו גירי<sup>9</sup> הכא למטה מג' דלאו שמיה אגד:**

**As רבי stated in the first פרק that 'the hand is dragged after the body' (therefore he is פטור; however here in the case of רבא, it is lower than three טפחים where אגד is לא שמיה אגד.**

### **Summary**

always maintains אגד אגד גוף לא שמיה אגד רבא. According to תוספות if it is שמיה אגד we say למעלה מג' however, לא שמיה אגד then למטה מג' is.

### **Thinking it over**

Seemingly the reason why the ר"י differentiates between למטה מג' (where אגד) and למעלה מג' (where שמיה אגד) is because it is considered as if it is resting on the ground and we cannot consider it attached to the גוף in the other רשות. Therefore according to ר"ע who maintains קלוטה we also cannot say אגד גוף (even למעלה מג'), should we also say that רבה disagrees with רבא (even למטה מג')? What would be למטה by מג'?

<sup>6</sup> means that the hand is attached to the body, so if the body is in the רה"ר, the hand (even though it extends into the רה"ר) is considered as if it is in the רה"ר. Therefore even if we say כמי שהונחה דמי, קלוטה בעה"ב will still be פטור, for it is considered as if his hand is at rest in the רה"ר (the רשות where his body is), so no הוצאה was done.

<sup>7</sup> According to the ר"י there is no need for רבה to argue with רבא; they both agree that למעלה מג' (the case of the משנה and קלוטה) we say אגד גוף שמיה אגד and therefore the בעה"ב is פטור, however למטה מג' we say אגד.

<sup>8</sup> The difference between רש"י and the ר"ר conceptually (according to רבא) is that according to רש"י, regarding אגד גוף, it is always אגד whether the יד is למעלה מג' or למטה מג'. The reason why he is פטור in the משנה (even though his hand is legally and factually in the רה"ר) is because since it is suspended in the air there is no הנחה (therefore there is the difficulty according to ר"ע). However the ר"ת maintains that according to רבא there is a difference between למטה אגד גוף שמיה אגד and למעלה מג' אגד גוף לא שמיה אגד. Therefore רבה does not need to argue with רבא. See 'Thinking it over'.

<sup>9</sup> See תוספות there מאי ד"ה regarding the גירסא in the גמרא there.

<sup>10</sup> See אור החמה.