What did he do – מאי[1] קעביד

Overview

The גמרא seeks examples of הכשרתי במקצת נזקו וכו'. In the proposed example of מרבה בחבילות the גמרא asks[2] if the fire would have traveled to his neighbor without his additional wood, then מאי קעביד; what did he do! רש"י[3] interprets this to mean, since מאי קעביד (in the case of the ox; it could have been watched without him); therefore he should be completely פטור. Our תוספות initially rejects this interpretation, and later modifies it.

בכולה שמעתין צריך לומר מאי קעביד טפי מאחריני וישלם כל אחד חלקו –

It is necessary to say concerning **this entire discussion**[4] that the expression **מאי קעביד** means '**what did he do more that the others'** and therefore (since he did not do more than the others) **each one should pay his share.**

תוספות anticipates an objection and refutes it:

ואין לומר דליפטר דתניא פרק הפרה (לקמן נא.) –

And we cannot say that the meaning of מאי קעביד **is that** (since he did not do anything [for the fire would have traveled anyways] therefore) **he should be exempt** from payment; we cannot say that **for we learnt in a ברייתא in פרק הפרה** that if -

אחד החוקק בור לי' ובא אחר והשלימו לעשרים ובא אחר והשלימו לשלשים –

One person dug out a pit to a depth of **ten** טפחים **and another came and completed it to** a depth of **twenty** טפחים[5], **and another came and completed it** to a depth of **thirty** טפחים. Subsequently an animal fell into this בור and died, the rule is that -

כולם חייבין אף על גב דבלאו איהו הוה מתה –

They are all obligated to pay, **even though that without him** (referring to the second and third person) the animal **would have died**, nevertheless (since he dug ten טפחים which can cause death by itself); he is considered to have contributed equally with the first digger to the death of this animal. Similarly here too even though the fire would have traveled without him (just as the pit would have killed without him), nevertheless since he contributed equally with the initiator (just as the second two diggers

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[1] See following footnote # 2. It would therefore seem that this תוספות precedes the תוספות ד"ה כגון.

[2] The גמרא asks the same question concerning מסר שורו וכו' and ה' שישבו וכו'. This תוספות is apparently discussing all three cases. (It seems from the end of תוספות that this ד"ה is referencing the case of מרבה בחבילות in particular.)

[3] בד"ה מאי קעביד. This רש"י is concerning מסר שורו; however since רש"י offers no other interpretation on the following מאי קעביד, we may assume that they also mean that he should not be חייב.

[4] The expression 'מאי קעביד' is used regarding the question of ר' זירא concerning מסר שורו וכו', the question of מרבה בחבילות, and the question of ר' פפא concerning ה' שישבו וכו'.

[5] The second (and third person each) dug an additional ten טפחים.

contributed equally with the first); he is equally liable as they are (just as in the case of the pit).

תוספות modifies slightly what he previously said:

מיהו בזה צריך לדקדק וכי בשביל שהשליך איש עץ בתוך אש גדולה יתחייב –

However it is necessary to be precise in this analogy and distinguish between various cases; would we say for instance **that if a person threw a piece of wood into a large fire** (where this wood alone would not be capable of traveling and doing damage)**,** and the fire did damage, **would** the (last) thrower (also) **be liable?! -**

הא לא דמי אלא לאחד שחופר בור י' ובא אחר והשלימו לי"א:

This aforementioned case of the fire **cannot be compared** to the case of ובא אחר והשלימו לכ' וכו', **but rather** it should be compared to a case **where one dug a pit of ten** טפחים **and another completed it to eleven** טפחים**.** In such a case the last person would be פטור, since the killing was done by the first person who dug ten טפחים. The additional טפח of the second person accomplished nothing. Similarly in the case of the fire, the last person who added some wood to the fire did not enhance the power of the fire to do damage. He should be פטור. It is only in the case of והשלימו לכ' וכו', that all three are חייב, since they each dug ten טפחים; each of their actions separately can cause an animal to die. However by the aforementioned case of fire it is comparable to והשלימו לי"א.

The actual case of מרבה בחבילות, however is discussing where the fire made by the מרבה בחבילות can also cause damage on its own (as much as the original fire). This case therefore is similar to והשלימו לכ' and they would both be חייב.

It would now seem that in the case of the bench, where even without the last person, the bench would have been broken by the original five, and the last person by himself could not break it; this should be more similar to the case of והשלימו לי"א than to the case of והשלימו לכ' and the last one should be פטור.[6]

Summary

Three people who dug ten טפחים to complete a בור of thirty טפחים are all equally liable for the death of an animal that fell into this pit. If one dug ten

[6] It appears that the case of the bench is similar and different both from והשלימו לכ' and from והשלימו לי"א. In one sense it is similar to the case of והשלימו לכ' since all the participants did the same amount of damage; they dug the same amount in the pit, and they sat equally together on the bench. However it is different from והשלימו לכ' for there each individual could by his own action cause the entire damage (they each dug ten טפחים); however by the bench none of them individually can cause the bench to break. Conversely it is similar to והשלימו לי"א for when the last person sat down, the bench would have been broken even without him; the damage was already done; he is not causing any damage. In this sense it is similar to והשלימו לי"א. However none of the first five is doing any more damage than the sixth. He is doing the same amount of damage as they are. In this sense it is not similar to והשלימו לי"א where the first digger did all the damage. This would seemingly depend on whether we view the first five as one entity or as five separate entities. If we view them as one entity then it is similar to והשלימו לי"א (the first five [as a unit] 'broke' the bench and he merely sat down on a broken bench; he did not do what the five [as a unit] did). However if we consider the five as separate individuals, then it is not comparable to והשלימו לי"א since none of them did any more damage than he did. If one is liable then all are liable; it would be more similar to והשלימו לכ'. וצע"ג בכהנ"ל.

and the other one more for a total of eleven טפחים, then only the first is חייב. Similarly by מרבה בחבילות, if the second fire could damage on its own (as much as the first) then they are both חייב. However if one could not damage only the other, then the חיוב is only on the one who could damage.

Thinking it over

1. תוספות proves that by מרבה בחבילה the last one is also חייב from the case where the first dug י' and others dug an additional י' (each), where they all are חייב. We can perhaps distinguish between these two cases. By בור it did not do any היזק until it was twenty (or thirty) טפחים deep. The בור that was מזיק is a joint effort of all the diggers. However by מרבה בחבילה as soon as the first one made the fire (which was capable and ready to go and damage) the היזק began already[7], therefore the second one could be פטור![8]

2. How can we derive from בור י' וכ' ול', that by מסר שורו לה' בנ"א, the one that was פשע (initially) has to pay like the others. By בור each one dug י', therefore he is חייב. However by שור even after he was פושע, if the others would have watched, the שור would be guarded, why should he have to pay; he left the שור by responsible שומרים?![9]

[7] The היזק of the בור does not begin, until someone falls into the בור; however by אש the היזק begins with the lighting of a fire that is capable of damaging ברוח מצויה (especially according to the מ"ד of אשו משום חציו).
[8] See אמ"ה and בל"י אות ש' בד"ה וכתב.
[9] See חי' ר"נ אות ש"ע.