

ששגג¹ על האוכלין והזיד על הכלי -

He was unwitting regarding the food, but intentional by the vessel

Overview

The גמרא cited a ברייתא; if one carried out food in a vessel he is חייב for the food, but not for the vessel; if he needed the vessel he is חייב also for the vessel. The גמרא explained that when the ברייתא stated that he is חייב also for the vessel,² it is in a case where he took out the food בשוגג, and he took out the vessel במזיד.³ Our תוספות will cite three interpretation of this גמרא.

וחייב על הכלי היינו סקילה⁴ כפירוש רש"י -

And when the ברייתא stated that he is חייב for the כלי, it meant that he is סקילה, this is s' explanation.

The פירש"י disagrees with רשב"ם:

ורבינו שמואל קשה לו לאוקמי ברייתא בחיוב סקילה דבכל דוכתא איירי בחיוב חטאת -
And the חייב אף על הכלי (when it says ברייתא has a difficulty to establish the רשב"ם to mean a סקילה, for in all places (in the משניות וברייתות, etc.) when we say חייב we are discussing a חטאת, חייב, not a סקילה -

והגיה הגירסא כגון ששגג על הכלים⁶ והזיד על האוכלין ולא התרו בו -

So the רשב"ם amended the גירסא to read; where 'for instance he was a שוגג for the אוכלין and a מזיד for the food', but witnesses did not warn him regarding the food -
דליכא באוכלין לא סקילה ולא חטאת ועל הכלי חייב חטאת⁷ -

¹ This גמרא references the תוספות on צד,א.

² Seemingly if he carried out the food and the vessel בשוגג in one העלם (he was not aware that today is שבת, or not aware that carrying is prohibited) he is חייב only one חטאת.

³ Let us say he assumed that one is permitted to carry food (שוגג), but not permitted to carry vessels (מזיד).

⁴ According to רש"י he is חייב a חטאת for the אוכלין (which he carried out בשוגג) and is סקילה for the vessel which he carried out במזיד.

⁵ See ששגג ד"ה צד,א. According to רש"י the גמרא follow up question קתני על הכלי אף is to be understood (as רש"י explains it) that the word 'אף (also)', indicates that the חיוב for the כלי is the same as the חיוב for the אוכלין, namely a חטאת, but not different חיובים; one חטאת and one סקילה.

⁶ The ברייתא stated, על הכלי, [אף] על הכלי, and so according to the רשב"ם the חיוב חטאת must be for the כלי, therefore it was necessary to change the גירסא that he was שגג on the כלי (but not on the אוכלין)

⁷ The גמרא follow up question, 'והא אף על הכלי קתני', is a much stronger question according to the רשב"ם than according to רש"י (see footnote # 5), for the question according to the רשב"ם is obvious; since it states חייב אף על הכלי, this means that he is certainly חייב for the אוכלין; however according to the רשב"ם, he is פטור for the אוכלין (since it was בלא במזיד). See footnote # 10.

So regarding the food there is neither סקילה (for there was no התראה), nor a חיוב to bring a חטאת חטאת (since it was במזיד and not בשוגג); however he is חייב a חטאת for the כלי.

רשב"ם and רש"י both challenge תוספות

ואין נראה לרבינו יצחק לא פירוש הקונטרס ולא פירוש רבינו שמואל בן מאיר -

And the ר"י disagrees with both פרש"י and הרשב"ם, the reason is -

דכשהזיד באחד אינו חייב חטאת על השני ששגג בו -

For when he was a מזיד by one of them (either the אוכלין [like the רשב"ם], or the כלי [like רש"י]) he is not חייב a חטאת for the second item that he carried out (either the כלי or the אוכלין) unintentionally; the reason he is not חייב is because -

דלא שב מידיעתו⁸ הוא כיון שהזיד באחד מהן -

For he would not have refrained from doing the מלאכה had he known it was אסור. We know that he is not a שב מידיעתו, since he was a מזיד in the other one –

A third view:

ונראה דהשתא דמוקי בהזיד בכלי איירי הכל לענין סקילה⁹ -

And it is the view (of the תוספות/ר"י) that now that we have established that he was a מזיד by the כלי, the entire ברייתא is discussing regarding a סקילה -

והכי פירוש דברייטא המוציא אוכלין כשיעור בכלי חייב סקילה על האוכלין -

And this is the explanation of the ברייתא (according to the answer ששגג על האוכלין); 'one who carries out במזיד אוכלין in the proper amount in a כלי, he is סקילה for the אוכלין' meaning where -

כגון שהתרו בו על האוכלין -

For instance they warned him regarding the אוכלין; so he is סקילה -

ופטור על הכלי אם התרו בו משום כלי -

'however he is פטור (from סקילה) for the כלי'; meaning if they warned him regarding the כלי only, he is פטור, (since the כלי is טפל and he has no need to carry it outside); he is פטור even for the אוכלין, since he was not warned for the אוכלין -

ואם היה צריך לכלי חייב סקילה אף אם התרו בו משום כלי -

'However if he had a need for the כלי outside, he is סקילה', even if they warned him regarding the כלי (only). This concludes the explanation of the ברייתא -

⁸ A person brings a חטאת for a שוגג and is forgiven, since he was not aware he is doing an עבירה (and had he known he would not have done it), and now that he is aware he is seeking atonement. However in the cases of רש"י ורשב"ם granted that he was a שוגג, but he cannot bring a חטאת, for even if would have known that this מלאכה is forbidden, he still would have done it, since we see that he carried out the other item במזיד. This shows that this person cannot be considered a שוגג who was שב מידיעתו.

⁹ Even the רישא (of חייב על האוכלין) is also discussing סקילה. See 'Thinking it over'.

ופריך והא אף על הכלי קתני¹⁰ משמע דחייב שתיים:

And the גמרא asked, but the ברייתא taught that he is חייב 'even on the כלי', indicating that he is חייב two; however there can never be two חיובי סקילה.

Summary

One cannot bring a חטאת if together with this שוגג he did an additional מלאכה במזיד.

Thinking it over

Why is it that the ר"י found it necessary to establish even the רישא by חיוב סקילה,¹¹ however רש"י did not find it necessary to do so?¹²

¹⁰ The question והא אף על הכלי קתני according to the ר"י is seemingly the same as according to the רשב"ם, but it is different according to the רש"י (see footnote # 5). Seemingly this question והא אף על הכלי קתני is so strong according to the רשב"ם, that it is difficult to understand what was the reasoning of the one who gave this answer; it is obvious from the חיובים, not one. However according to the ר"י, it may not be so difficult, because we could say that אף על הכלי means that even though that in the רישא (where he did not need the כלי), he is not חייב (כלי), he is חייב אף על הכלי (where he needed the כלי), nevertheless in the סיפא (where he needed the כלי), he is חייב אף על הכלי; even on the כלי, which he was not חייב ברישא. According to the רש"י the תרצן did not understand that אף על הכלי means the same חיוב, it could be a different חיוב.

¹¹ See footnote # 9.

¹² See מהרש"א.