

The partners

השותפין –

OVERVIEW

All three בבות (including בבא בתרא, בבא מציעא, בבא קמא) as well as other מסכתות including שבועות and מכות comprise סדר נזיקין תוספות. will determine why does בבא מציעא¹ follow בבא בתרא.

כולה נזיקין חדא מסכתא היא –

The entire² order of נזיקין is one מסכת.

כדאמרינן בהגוזל קמא (בבא קמא דף קב,א) ובפרק קמא דעבודה זרה (דף ז,א) –

As the גמרא states in פרק הגוזל קמא³ and in the first פרק of עבודה זרה.

Therefore it is logical to assume that there is a natural continuity between one פרק and another in the same מסכת. Specifically there should be continuity between the last פרק of בבא מציעא and our first משנה here in בבא בתרא.

ואפילו לא הוי חדא מסכתא צריך לפרש למה נשנית מסכתא זו אחר בבא מציעא –

and even if סדר נזיקין was not one מסכת, but rather בבא מציעא, בבא קמא, and בבא בתרא it would still be necessary to explain why was this (etc.) are separate מסכתות⁴ taught after בבא מציעא (בתרא בבא) – מסכת. What connection is there between these two מסכתות?

will offer a proof that the מסכתות were arranged in an organized manner; thus requiring an explanation for their specific order.

כדאשכחן דדייק גמרא בריש מסכת שבועות (דף ב,ב) –

As we find that the גמרא inquires in the beginning of שבועות:

מכדי תנא ממוכות סליק מאי שנה זקתני שבועות וכן בכמה מקומות –

‘Since the תנא concluded מסכת מכות what is the reason that he is teaching after מסכת מכות’, and similarly in various⁵ places the גמרא requires the reason for the specific order of the מסכתות. We derive from those גמרות that there is a reason in the order of the מסכתות. What is therefore the reason that ב"ב is placed after ב"מ?

anticipates a possible refutation of his question:

¹ It perhaps should be in reverse (for instance). Then obviously this מסכת would be called בבא מציעא.

² There is a dispute whether this is referring to the entire סדר נזיקין or only to the three 'בבות'.

³ The 'הגוזל ומאכיל', also called 'הגוזל עצים' as opposed to the second הגוזל, called 'הגוזל ומאכיל'.

⁴ In the גמרא in ב"ק and ע"ז there is a מחלוקת between יוסף ורב הונא if רב הונא מסכת היא or יוסף מסכת היא.

⁵ See נזיר סוטה where the גמרא inquires why does סוטה follow נזיר.

והא דאמר (בבא קמא קב, א) בתרי מסכתות אין סדר למשנה –

And that which the גמרא says that in two מסכתות there is no order to the משניות. This seemingly answers the original question⁶ ([at least] according to the one who maintains כולה נזיקין לאו חדא מסכת היא).

- בתרי מסכת אין סדר למשנה תוספות responds that the statement

היינו לענין מחלוקת ואחר כך סתם⁷ –

was said only concerning the rule of סתם מחלוקת ואח"כ סתם. This rule is valid only if the מחלוקת ואח"כ סתם is in the same מסכת. However if the מחלוקת ואח"כ סתם is in two מסכתות, we cannot follow this rule, as תוספות continues –

משום דרבי לא שנה לתלמידיו כסדר המסכתות ופעמים שנה האחרונה קודם הראשונה⁸ –

Because מסכתות which we follow and at times he may have taught a later מסכת before an earlier מסכת. The question remains (even according to the מ"ד כולה נזיקין לאו חדא מסכת היא); why was ב"ב placed after מ"מ?

תוספות replies:

ואומר רבינו יצחק דהיינו טעמא משום דקאי אהך פירקא דלעיל (בבא מציעא דף קטז, ב) –

And the ר"י says that this is the reason why there is a logical continuity from מ"ב to ב"ב because our משנה is referencing the משנה in the preceding פרק; the last פרק of מ"ב, where it stated –

הבית והעלייה של ב' שנפלו חולקים בעצים וכולי וקרי להו התם בגמרא שותפין⁹ –

⁶ It also poses a problem why does the גמרא seek an explanation why סוטה follows נזיר (and שבוועת follows) [see footnote # 2].

⁷ There is an accepted rule that if in one משנה we find a dispute between תנאים concerning an issue, and in a subsequent משנה, this same issue is resolved in favor of one of the disputants (by stating it in a משנה without mentioning any names – סתם), we follow the ruling of the סתם משנה as opposed to the disputant in the previous משנה. This rule is valid only if the subsequent סתם משנה is in the same מסכת as the previous מחלוקת. If however the סתם משנה is in another מסכת, even if this other מסכת is a 'later' מסכת in the order of ש"ס, the rule does not apply. The reason for this rule (in one מסכת) is that it is assumed that originally רבי (who compiled and organized the משניות) taught us that this issue is in dispute (and no resolution has been made). If in a subsequent משנה (in the same מסכת) the issue was resolved, it obviously means that after his initial uncertainty as to whose opinion should be followed, רבי resolved the dispute.

⁸ Therefore even if we find a מחלוקת in מסכת שבת (for instance) and a סתם in מסכת עירובין, we cannot infer that the סתם in עירובין was taught after the מחלוקת in שבת (even though that in the מסכתות, סדר עירובין follows שבת), for רבי may have learnt with his students עירובין before שבת. It would therefore be a מחלוקת ואח"כ סתם where the הלכה is not necessarily like the סתם, as opposed to a סתם ואח"כ מחלוקת, where the הלכה is סתם. In one מסכת however, רבי taught it in the same order in which he subsequently compiled and organized it. The above notwithstanding, after רבי finished teaching all the סדר משנה to his students (in whatever order), he made a specific order in the משניות as to which comes first and which מסכת follows, etc. He certainly made this order in a reasonable manner. תוספות is searching for the reason in our specific case.

⁹ See 'Thinking it over # 3.

‘A house and an attic that belonged to two people and it collapsed. The two original owners divide the wood, etc.’ amongst the two of them, **and the גמרא refers** to these two owners **as partners**. This is similar to our משנה where we have שותפין and we are also discussing a division of the wall and the property, there is therefore a logical continuity.

ב"מ in משנה continues to show an additional similarity from the very last תוספות:

וקתני נמי (שם דף קיח,ב) ב' גנות זו על גב זו וירק בינתים דהוי ענין שותפות:

And we also have a משנה there concerning **two terraced gardens, one higher than the other** owned by different people **and there was a vegetable** growing in the elevation **between** the two gardens. The משנה discusses who can claim this vegetable as his, **which is also a conceptual שותפות**. They are (in a way) both partners in this plant; the lower garden is offering the plant air and sunshine, while the higher garden is providing the means for the plant to take root.

SUMMARY

There is a dispute whether the סדר נזיקין is one מסכת or many.

There needs to be justification why any מסכת follows its predecessor. The concept of סדר למשנה אין בתרי מסכת is only concerning the rule of סתם ואח"כ הלכה; in that it applies only in one מסכת.

Our מסכת continues where we left off in the end of מציעא. There the משניות were discussing laws of division among joint property owners. This theme is carried over in our משנה.

THINKING IT OVER

1. Can we ask why does פרק המפקיד (for instance) follow פרק הזהב (in ב"מ)?
2. Is תוספות explaining the order of the מסכתות or the continuity of the מסכתות?
3. Why is תוספות quoting that the גמרא calls them שותפין? We are discussing the משניות, not the גמרא!
4. Why does תוספות find it necessary to explain the connection by quoting both the first and last משנה of הבית והעלייה?