

## The partners – השותפין

### Overview

All three מסכתות including as well as other מסכתות including בבא בתרא, בבא מציעא, בבא בתרא; בבבות; בבבות and מכות, comprise סדר נזיקין will determine why does בבא follow בבא מציעא<sup>1</sup>.

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**The entire<sup>2</sup> order of נזיקין is one מסכת היא**

**As the גמרא – כדאמרינן בהגוזל קמא (בבא קמא דף קב,א) ובפרק קמא דעבודה זרה (דף ז,א) states in פרק הגוזל קמא<sup>3</sup> and in the first פרק of עבודה זרה פרק** 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.

**and even if סדר נזיקין לא הוי חדא מסכתא**, but rather מסכתות<sup>4</sup> (etc.) are separate בבא בתרא and בבא מציעא, בבא מציעא **– צריך לפרש – it would still be necessary to explain – why was this מסכת (namely בבא בתרא) taught after בבא מציעא** 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.

**as we find that the גמרא – כדאשכחן דדייק בגמרא בריש מסכתא שבועות (דף ב,ב) inquires in the beginning of שבועות:**

**מסכת מכות תנא concluded** – **מכדי תנא ממכות סליק** **what is the reason that he is teaching שבועות** – **מאי שנא דקתני שבועות** after מסכת מכות? We derive from that גמרא that there is a reason in the order of the מסכתות.

**and similarly in various<sup>5</sup> places** the גמרא requires the reason for the specific order of the מסכתות. What is therefore the reason that ב"ב is placed after ב"מ?

anticipates a possible refutation of his question:

**and that which the גמרא says that in two מסכתות** **בהא דאמר (בבא קמא קב,א) בתרי מסכתות** **מסכתות**

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

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

<sup>3</sup> The 'First הגוזל', also called 'הגוזל עצים' as opposed to the second הגוזל, called 'הגוזל ומאכיל'.

<sup>4</sup> In the גמרא in ב"ק and ע"ז there is a מחלוקת between רב יוסף and רב הונא if היא מסכת היא.

<sup>5</sup> See בזיר סוטה where the גמרא inquires why does סוטה follow בבא.

**משניות – אין סדר למשנה** – **there is no order to the משניות**. This seemingly answers the original question<sup>6</sup> ([at least] according to the one who maintains מסכת כולה נזיקין לאו חדא מסכת היא).

בתרי מסכת אין סדר למשנה responds that the statement תוספות:

**מחלוקת – היינו לענין מחלוקת ואחר כך סתם** – **was said only concerning the rule of מחלוקת**. There is an accepted rule that if in one משנה we find a dispute between two 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 משנה סתם as opposed to the disputant in the previous משנה. This rule is valid only if the subsequent משנה סתם is in the same מסכת as the previous מחלוקת משנה. If however the משנה סתם 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. 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 –

**because רבי did no teach his students – משום דרבי לא שנה לתלמידיו**

**like the order of the מסכתות** which we follow. **כסדר המסכתות**

**and at times he may have taught a later מסכת before an earlier מסכת**. Therefore even if we find a מחלוקת in 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 סתם ואח"כ מחלוקת, where the הלכה is not necessarily like the סתם, as opposed to a סתם ואח"כ מחלוקת, where the הלכה is כסתם. 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 משנה סדרי to his students (in whatever order), he made a specific order in the משניות as to which מסכת 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. The question remains (even according to the מסכת היא לאו חדא מסכת היא); why was ב"ב placed after מ"ב?

תוספות replies:

**and the ר"י says that this is the reason** why there is a logical continuity from מ"ב to ב"ב **ואומר רבינו יצחק דהיינו טעמא**

**because our משנה is referencing the משנה in the preceding פרק**; the last פרק of מ"ב, where it stated – **משום דקאי אהך פירקא דלעיל (בבא מציעא דך קטז,ב)**

**– a house and an attic that belonged to two people, and it collapsed**. The two original owners –

<sup>6</sup> It also poses a problem why does the גמרא seek an explanation why סוטה follows נזיר (and שבועות follows מכות [see footnote # 2]).

**divide the wood, etc.'** amongst the two of them.  
וקרי ליה התם בגמרא שותפין **and the גמרא refers**<sup>7</sup> 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 the very last תוספות continues to show an additional similarity from the very last משנה concerning –  
וקתני נמי (שם קיה,ב) – **And we also have a משנה** there concerning –  
ב' גנות זו על גב זו – **two terraced gardens, one higher than the other** owned by different people –  
וירק בינתיים – **and there was a vegetable** growing in the elevation **between** the two gardens. The משנה discusses who can claim this vegetable as his.  
דהוי ענין שותפות – **that 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 need be justification why any מסכת follows its predecessor. The concept of סתם ואח"כ in סדר למשנה is only concerning the rule of מסכת; 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 (in ב"מ) follow פרק הזהב (for instance)?
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?

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<sup>7</sup> See 'Thinking it over # 3.