

אחד¹ כדרכה ואחד שלא כדרכה -

One in a natural manner and one in an unnatural manner

Overview

When one is חמישים שקל of קנס a חייב he is בתולה שלא כדרכה a מאנס/מפתה she still remains בתולה. If another is חמישים שקל of קנס a חייב he is afterwards כדרכה her מאנס/מפתה. When זירא cited this case he states, one כדרכה and the other שלא כדרכה, in which case the second one (שלא כדרכה) would not be חייב a קנס, since she is no longer בתולה, for she was already נבעלה כדרכה by the first person. תוספות discusses the order of the phrases in this and other places.

שלא כדרכה הוי ליה למינקט ברישא² אלא כן דרך הש"ס שאינו חושש³ -

should have mentioned כדרכה first, but rather this is the manner of the גמרא that he is not concerned about us misunderstanding the proper order -

כדנקט לעיל (דף לה,א) בתנא דבי חזקיה⁴ בין מתכוין⁵ לשאין מתכוין -

As the גמרא mentioned previously when it cited תנא דבי חזקיה, which stated that regarding wounding an animal the תורה did not distinguish 'whether it was intentional or whether it was unintentional' -

דהוי ליה למינקט שאין מתכוין ברישא כדקתני בין שוגג למזיד⁶ -

When he should have mentioned אין מתכוין first, as he stated initially 'whether it was accidental or premeditated' -

אלא כן דרך הש"ס במקום שצריך לשנות הן' ולאן:

Rather the reason he said מתכוין first is because this is the manner of the גמרא in

¹ This תוספות is referencing the גמרא on מ,ב.

² (פגומה a בועל and the second one was בועל a שלימה when one was קנס (when one was ר"ז should have said אחד (the first one) כדרכה, so she is still בתולה, and אחד (the second one) כדרכה. However the first one had to be בתולה in order for the second one to be חייב קנס. See 'Overview'. ר"ז should have said אחד (the first one) כדרכה, so she is still בתולה, and אחד (the second one) כדרכה.

³ The גמרא knows that we will understand ourselves the proper sequence of events. (ר"ז did not say ראשון כדרכה ושני (אחד וכו' ואחד וכו' merely, שלא כדרכה.)

⁴ The תד"ה reads מכאדם ומכה בהמה מה מכה בהמה לא חילקת בו בין בשוגג בין במזיד בין מתכוין לשאין מתכוין וכו' לפוטרו ממון אלא מתכוין וכו' לחייבו ממון וכו'.

⁵ There is more reason to hold one liable by מתכוין, rather than by שוגג.

⁶ There is less reason to hold one liable by שוגג than by מזיד. Initially the תד"ה mentioned the novelty (שוגג) first, and then the more obvious case (מזיד) later; he should have done the same by mentioning אין מתכוין (the novelty) first, and then מתכוין.

⁷ When he is mentioning שוגג ומזיד, where there is no 'positive' (yes) and 'negative' (no), he prefers to mention the novelty (שוגג) first. However when it comes to מתכוין (a positive [he is having intent]) and אין מתכוין (a negative [he is not having intent]), he prefers the positive. Here too כדרכה in the positive (normal way) is negative (not normal way), therefore he mentions כדרכה first, even though that in the case of ר"ז the כדרכה שלא כדרכה happened first, but ר"ז was sure that we would understand that.

instances where he has to teach a positive and a negative that he mentions the positive first.

Summary

The גמרא may mention things not in the proper order, in order to cite the positive before the negative.

Thinking it over

Seemingly תוספות proof from מתכוין וכו' by תד"ה is insufficient, There (by תד"ה) it really does not matter that much which one is stated first, the main idea there is that the law applies in all cases equally, however here by ר"ז there is a major difference whether the כדרכה was first (in which case there is no קנס for the second person), or the שלא כדרכה was first (when there is a קנס for the second person); so why say it in the wrong order?! How can תוספות compare the two cases?!