

Where there is none

– בדליכא

OVERVIEW

The גמרא explained that the reason (according to ר"ח) that we follow the closest city, but not the city with a greater population, is because (the תורה is discussing a case where) there is no such city (in the vicinity). תוספות questions the legitimacy of contradicting ר"ח from ערופה.

תוספות asks:

תימה דהכא משמע דטעמא דהעיר הקרובה מביאה עגלה ערופה¹ -

It is astounding! From the גמרא here it seems that the reason the closest city brings an ע"ע is -

משום דמתוך הקורבא מוכח שמשם בא ההורג -

Because it is evident from its closeness that the murderer came from that city -

ובסוטה (דף מה,ב) תניא מנין שאם נמצא סמוך לעיר שאין בה בית דין -

However in סוטה מסכת ברייתא teaches, 'how do we know that if the corpse was found close to a city which has no בי"ד; in that case -

שמניחין אותה שאין בה בית דין והולכין לעיר אחרת שיש בה בית דין² -

We set aside that city which has no בי"ד (even though it is closest to the corpse) and we go to another close city which has a בי"ד'. This concludes the citation of the

ברייתא. So תוספות asks -

ואמאי³ והלא מתוך הקורבא נראה שמאותה שאין בה בית דין היה:

But why do we set it aside; is it not obvious from its closeness that the murderer is from that city which has no בי"ד?! תוספות does not answer this question.⁴

SUMMARY

If we follow קרוב ע"ע because it is logical; why is the city required to have a בי"ד?

¹ It is possible to assume that the rule of ע"ע is a גזירת הכתוב that we must go to the closest city and they must bring the ע"ע. However, if it is a גזירה"כ, why is there a discussion how the law of ע"ע can be reconciled with ר"ח. There is no connection between them. Normally we follow the רוב and by ע"ע we follow the קרוב for it is a גזירה"כ. The fact that the גמרא compares the two and needs to answer 'בדליכא'; this shows that the law of ע"ע to follow the קרוב is not a גזירה"כ, but rather it is the same logic as in all cases of רוב וקרוב. The תורה teaches us that קרוב is more likely than רוב.

² We derive it from the פסוק (in ג,כא,ג) (דברים [שופטים]) which states **ולקחו זקני העיר ההיא**. The city must have זקנים – בי"ד.

³ תוספות is (obviously) not asking a question on the תורה! Rather since we see that it is not the closeness per se that determines who brings the ע"ע, for in this case a farther city brings it. Therefore, this proves that this whole ruling by ע"ע is merely a גזירה"כ; how can we question the ruling of ר"ח from ע"ע. See footnote # 1.

⁴ See 'Thinking it over'.

THINKING IT OVER

We should consider the מצוה of ע"ע.⁵ Are we intending to find the murderer in the closest city? Or we are looking to atone for the murder? What is the most proper and effective way for atonement? Who can bring about the atonement? Can these questions minimize the severity of תוספות dilemma?

⁵ See footnote # 4.