

Shall we warn them initially, etc.

ניתרי בהו מעיקרא כולי –

Overview

רבא¹ said that ע"ז do not receive מלקות, because they cannot be warned. רבא explained if we will warn them (some time)² before they testify, the ע"ז will claim that when they testified they forgot the warning. תוספות explains why the גמרא did not give a different reason why they cannot be warned before they testify.

תוספות asks:

ואם תאמר תיפוק ליה דהויה התראת ספק³ דאין אנו יודעין אם מעידים שקר -

And if you will say; let us exclude (מעיקרא), since it is a ‘doubtful warning’, for we do not know if they are testifying falsely –

תוספות answers:

ויש לומר דהתראת ספק לא הויה אלא כגון אל תותיר -

And one can say, that התראת ספק is only in a case where for instance the warning עדים said, ‘do not leave over the meat of a קרבן beyond the proscribed time’; in which case - שאף למותרה עצמו הוא ספק שסבור שעדיין יש שהות ביום⁴ –

Even for the one who was warned it is a doubt whether he is transgressing or not, **for he assumes there is still sufficient time in the day** to finish eating the קרבן - אבל הכא המותרין יודעין שמעידין שקר:

However here the ע"ז who are being warned not to testify, they know that they are testifying falsely, therefore even though the מתרים do not know, nevertheless it is not a ספק, since the מותרין know.

Summary

A התראת ספק is where the one who is warned is not certain that by disobeying the warning he will be transgressing.

¹ Corporal punishment (מלקות or מיתה) is not meted out unless the transgressor is warned in advance.

² רש"י ד"ה מעיקרא.

³ There is an opinion (see מכות טז,א) that התראת ספק (a doubtful warning) is not considered a התראה. Generally, this means even if the person does the act, which he is warned not to do, it is possible that he will not have transgressed. Here too we are warning them not to testify, but it is possible (as far as the המתרים are concerned) that they are testifying to the truth. Therefore, it seems to be a התראת ספק. See ‘Thinking it over’ # 2.

⁴ Let us assume there is an hour left to finish eating the one-pound קדשים meat. The עדים are warning him, ‘eat it up now for if you do not eat now, it will become נותר’. However, the person assumes that he is able to eat the pound in half-an-hour, so there is no rush. In his mind it is questionable whether the meat will become נותר if he waits a while longer before he eats it.

Thinking it over

1. Is there an advantage in תוספות question (that it is a ספק התראת) over the גמרא's question (that they can claim that they forgot), especially since there is a מחלוקת whether שמה התראה or not?
2. What would be if the ע"ז were warned not to testify falsely, would that be considered התראת ספק, according to the question of תוספות?⁵

⁵ See (footnote # 3, and) שיטה מקובצת.