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TALMUDIC METHODOLOGY
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SHIUR #08: HADA'AH FOR TZEROROT

After raising the issue of *mi-gufo* payments for *tzererot*, the *gemara* Bava Kama 18b) records an additional question that Rava asked about *tzererot*. In the case of *keren*, half-payments ultimately become *nezek shalem* payments after the third goring, at which point a “*shor tam*” becomes a “*shor mu'ad*” (“*hada'ah*”). Relying on the precedent of *keren*, Rava questions whether *tzererot* payments also become *nezek shalem* after third occurrences.

Rava poses his question about regular *tzererot*, not *tzererot* that was performed in an irregular or *keren*-like fashion. It appears from a later discussion that Rava may have ALSO INDEPENDENTLY inquired about implications of *mu'ad* for IRREGULAR *tzererot*, but his primary question (and the one cited in *Bava Kama* 18b) was posed about regular and “natural” *tzererot* cases.

At first glance, it seems that the process of *hada'ah* should NOT apply in a *tzererot* case. After all, *hada'ah* seems tailor made for the *nezek* of “*keren*.” Since *keren* damage is irregular and unpreventable, the owner is only responsible to partially compensate. After repeated damages, *keren* activities become more natural, and therefore more predictable and preventable. Unlike the first three occurrences, the owner can no longer claim innocence or inability to anticipate and prevent unnatural aggressive behavior. He must therefore compensate fully, similar to cases of *shein* and *regel* damages, which are also natural, predictable, and therefore preventable.

Tezererot, however, is very different from *keren*. The initial reduction to half payment had little to do with the unnatural and unpredictable nature of *tzererot* damage. In fact, *tzererot* is firmly established as a *tolada* of *regel*, which is the MOST routine form of damage. The *Halaka Le-Moshe Mi-Sinai* indicates

that since the animal damaged "indirectly," without immediate bodily contact, only half payments are obligated. This concept of *chatzi nezek* should not be affected by repeated occurrences; the payments should not rise to full compensation. Why would Rava suggest that *ha'adah* applies to *tzerorot*?

One option may lie in altering our impression of *ha'adah*. Perhaps the halakhic process of becoming a *mu'ad* is not one of "regularization," but simply a process of REMOVING LENIENT PAYMENTS. The Torah applied lenient payments – explicitly in the case of *keren tam* and through a *Halakha Le-Moshe Mi-Sinai* in the scenario of *tzerorot* – but it also established a limit to these exemptions. After three occurrences of the same damage, full restitution must be offered and no discounts extended. Rava's exploration of the possibility of extending *ha'adah* to *tzerorot* may have been an investigation into the nature of the *mu'ad* process. If the process is geared to established regularity, it has little relevance to *tzerorot*, but if the *mu'ad* process is merely a discount remover, it may very well apply to *tzerorot*, just as it applies to *keren tam*.

A second approach would be to apply the *mu'ad* process to *tzerorot* in a NEW fashion. Just as three goring episodes render this damage "natural" to the animal (and therefore more predictable and preventable), three occurrences of *tzerorot* convert this action to a more DIRECT activity of the animal. In an earlier *shiur* (#04) we demonstrated that the boundary between typical *regel* damage and indirect *tzerorot* damage is not clear cut. For example, a wagon pulled by an animal may be considered part of the animal's body, and the damages it causes would thus require full compensation. On the other hand, a string attached to a chicken – which is physically fastened more tightly than a wagon – may NOT be deemed an extension of the animal, since chickens don't often wrap strings on their legs. Perhaps after an animal flings stones repeatedly, the stones DO BECOME halakhic extensions of the animal and are treated as normal *regel* activity. After all, regarding human beings we rule that "*kocho ke-gufo*" – any projectiles flung by a person are considered direct extensions of his force and are fully liable. It was only regarding animals, which are not cognitively aware, that the *Halakha Le-Moshe Me-Sinai* established that projectiles are not considered natural extensions. If so, *ha'adah* would perform one function for *keren* (regularization) and a totally different one for *tzerorot* (incorporating the stones as integral to the animal's activity), but would ultimately apply to each independently.

If either of these two aforementioned approaches is accepted, Rava's consideration of *ha'adah* for *tzerorot* does not radically alter our image of *tzerorot*. Fundamentally, *tzerorot* has little in common with *keren tam* – other than the INCIDENTAL similarity that they each benefit from reduced *chatzi nezek* payments. In order to extend *hada'ah* to *tzerorot*, we must rethink what *hada'ah* entails. In theory, if Halakha offered a third instance of *chatzi nezek* reduction, we would also consider applying the process of *hada'ah*.

Though these two approaches are plausible, the actual language of Rava's query suggests a third approach: Rava was actually reexamining the identity of *tzerorot*. Rava asked if *tzerorot* is pure *regel* (in which case *ha'adah* is irrelevant) or if it is comparable to *keren* (in which case *ha'adah* may apply). Perhaps the *Halakha Le-Moshe Mi-Sinai* reduced *tzerorot* payments because those damages, LIKE THOSE OF KEREN, occur in UNNATURAL and in a LESS PREDICTABLE and preventable fashion. *Keren* is unnatural because it is infrequent; *tzerorot* is unnatural because it is indirect. In either case, the half payments are a function of the "*meshuna*" nature of the damage. Repeated occurrences convert an activity which was *meshuna* (and only obligated half payments) into one which is "*urchei*" (and requires full payments).

This view would radically alter our view of *tzerorot*. We had previously assumed that *tzerorot* was only legally parallel to *keren* in that either case benefitted from discounted payments, although for different reasons. Our present possibility suggests that *tzerorot* enjoys reduced payments for the EXACT SAME REASON THAT KEREN DOES – because its damage is unnatural and less preventable. In fact the Rabbenu Chananel, in his comments to *Bava Kama* (19) does attribute the *tzerorot* reduction of *chatzi nezek* to the irregular nature of this form of damage. Evidently he also viewed *tzerorot* as a derivative of *keren*.

This *tzerorot* – *keren* connection may illuminate a previously discussed issue. In a previous *shiur*, (#05) we struggled to understand Rava's consideration of applying the *mi-gufo* cap to *tzerorot*. After all, this payment cap is a *keren*-based clause and has no relevance to *tzerorot*, which is firmly identified as *regel*. Rava may have been rethinking that identification with *regel* and defining *tzerorot* as a hybrid *mazik* built on *regel* and *keren*.

This explanation of *Rava* is fascinating because an earlier *gemara* (3b) already declared *tzerorot* as a subset (*tolada*) of *regel*. In fact, R. Pappa highlighted two *halakhot* common to *tzerorot* and *regel*, exemption in *reshut ha-rabbim* and the absence of the *mi-gufo* limit for *tzerorot*. *Rava*, although uncertain about *mi-gufo* for *tzerorot*, conceded that the exemption of payments in *reshut ha-rabbim* anchors the definition of *tzerorot* as "purely" *regel*. Could *Rava* on 18b be reopening a question he had already decided about?

In truth, this may be the case, especially since the *gemara's* discussion on 3b is not a quote of *Rava*, but an analysis of what *Rava* may have thought. Discerning *Rava's* uncertainty about *mi-gufo* and *tzerorot*, the *gemara* asserted: if *Rava* applies *mi-gufo* to *tzerorot* (thereby distancing it from *regel*) what is the link between *regel* and *tzerorot*? The *gemara* answers its own question in *Rava's* name – *tzerorot* IS *regel*-based and this identity is evidenced by the exemption of *reshut ha-rabbim*. *Rava* himself, however, may not have been so convinced, and thus used his question about *ha'adah* to probe *tzerorot's* true identity.

Alternatively, we may be forced to reread the earlier *gemara* on (3b) that seems to fasten *tzerorot* to *regel*. The *gemara* questions, "Why is *tzerorot* considered a *tolada* of *regel*?" but does not respond (as we would have expected it to) that *tzerorot's* inner qualities resemble those of *regel*. Instead, the *gemara* searches for *halakhot* of *regel* that *tzerorot* display (the *reshut ha-rabbim* exemption as well as the non-application of the *mi-gufo* cap). The *gemara* apparently detected that INHERENTLY *tzerorot* is not a PURE BREED of *regel*, but has mixed DNA. The *Halakha Le-Moshe Mi-Sinai* asserts that it shares SOME *halakhot* of *regel*, and the *gemara* tries to uncover these *halakhot*. The *gemara* never identifies *tzerorot* as modeled after *regel*, but merely senses halakhic overlap and tries to determine the degree of HALAKHIC OVERLAP. Even the *gemara* (3b), however, realizes that *tzerorot* may be a mixed breed of *regel* and *keren*, and *Rava* (18b) pushes the question as to whether *ha'ada* would apply to *tzerorot*. By doing so he brings the question of *tzerorot's* identity into sharper relief. Without question, the *Halakha Le-Moshe Mi-Sinai* instructs us to apply *regel halakhot* to *tzerorot*. Does that also mean that *tzerorot* is identified as purely *regel*, or can we detect *keren* elements in *tzerorot* as well?