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TALMUDIC METHODOLOGY

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SHIUR 07: KAM LEIH

EXEMPTING MINOR PAYMENTS IN INSTANCES OF CAPITAL CRIMES

One of the more fascinating principles in halakha is known as *"kam leih bi-drabba mineih*" (literally, "let the greater suffice for him"), which exonerates a criminal from receiving a lesser penalty for a given act if that act already incurs a separate and greater penalty. Typically, if a person commits a crime subject to capital punishment, he is not obligated to pay compensatory payments which incidentally accompany the capital crime. For example, if a person burns a field on Shabbat, since he is executed for Shabbat violation, he is not responsible to reimburse the owner of the field (Bava Kama 34b). This provocative 'loophole' elicits dynamic and intriguing discussion throughout the gemara and its commentaries.

The simple explanation maintains that the Torah demands a measure of clemency in administering penalties; thus, a court cannot execute capital punishment and enforce compensation within the same legal suit. Such behavior would appear petty and insensitive. In fact, several *gemarot* (Ketuvot 32b) derive the *kam leih* rule from a phrase in Parashat Ki Tetze *("ke-dei rishato,*" Devarim 25:2), which is expounded as a directive to the court: "You may indict him for one crime, but not for two" ("*Mi-shum risha achat ata mechayevo, ve-i ata mechayevo mi-shum shetei rishayot"*). This is an instruction to limit the implementation of punishments, an interpretation which clearly coincides with the simple reading of *kam leih*.

However, the gemara suggests forms of *kam leih* which do not easily reflect the above model. For example, Rabbi Nechuneya ben Ha-kana (Ketuvot 30a) expands *kam leih* to situations of *kareit*, excision or premature death. If a person were to burn his friend's estate on Yom Kippur, incurring a *kareit* penalty, he would be exonerated from compensating the owner of the field. Inasmuch as *beit din* plays no role in administering the *kareit* penalty, this view makes it difficult to describe *kam leih* as a prohibition for the court of applying two punishments. This extension to *kareit* may be resolved by viewing *kam leih* as a general inhibitor of double penalties, even if the more severe one stems from a different source; once a PERSON is liable to capital punishment – whether administered by the human *beit din* or imposed by Heaven — he cannot be prosecuted for the financial elements of the same incident.

A more striking application of *kam leih* is suggested (Sanhedrin 79b, et. al.) by a student of Chizkiya (the sage, not the prophet): even if the capital

crime was committed unintentionally and no penalty applies, all monetary debts incurred simultaneously are eliminated. If a person incinerated a field on Shabbat without the intention to violate Shabbat, even though he is innocent of any Shabbat penalty, he cannot be obligated to compensate the owner for his field. Evidently, some models of *kam leih* have little to do with preventing dual punishments!

Plainly, a different logic supports the *kam leih* rule. A capital crime – an act which typically yields capital punishment- may not also be considered a monetary crime. A person who murders does not also commit the crime of robbery; the monetary action is 'consumed' by the more severe crime. Categorically, any criminal action defined as capital cannot also be classified as monetary. Even if the capital crime is performed without intent, it is still deemed a capital crime and cannot entail monetary obligations.

In fact, the gemara in Ketuvot (30a) offers a different source for *kam leih* - two *pesukim* in Parashat Mishpatim (Shemot 21:22-23) which portray unintentional manslaughter committed by two sparring individuals. If they murder a pregnant woman ("*im ason yihyeh*") no payment is rendered, whereas if no death occurs then payment is rendered for the miscarried fetus. This *pasuk* is not directed at *beit din* and does not surround the implementation of punishments. Rather, it speaks in more global terms about the absence of monetary debts in situations of death, and, by extension, other capital offenses. An interesting passage in the Talmud Yerushalmi (Terumot 7:1) formulates the rule of *kam leih* as: "*Ha-kol modim she-ein mamon eitzel mita*" ("Everyone concurs that monetary payments do not EXIST in capital situations"). This suggests a very different view of *kam leih* than the *pasuk* which suggests a legal limitation against imposing multiple penalties.

The obvious difference between these two versions of kam lei would be the issue of a moral obligation (*chiyuv la-tzet yedei shamayim*) to compensate the monetary damage. Would the perpetrator possess a non-binding moral obligation to repay the damage? Presumably, if *kam leih* merely obstructs the *beit din* from enforcing the COLLECTION of damages, a moral obligation would still apply; basically, the compensation is owed, but the *beit din* is unable to collect the debt actively. In such instances, moral principle would mandate payment. However, if *kam leih* determines the absence of any monetary obligations in capital crimes, no moral obligation would apply: the absence of any monetary debt does not stem from an inhibition upon the *beit din's* enforcement, but rather from an absence of any baseline obligation. Rashi in Bava Metzia (91a) does imply that non-binding moral responsibility does exist even though *kam leih* exonerates enforceable collection.

Yet another consequence of the differing models of *kam leih* would be *tefisa*, the ability of the victim to unilaterally seize his debt without the aid of the *beit din*. Would he be allowed to perform *tefisa,* grabbing the compensation which is rightfully his, but cannot be appropriated by the *beit din*? Again, if *kam leih* allows a monetary debt which cannot be collected by the *beit din,* we may allow independent collection; however, if *kam leih* determines the utter absence of any debt, any independent seizure would be

invalid, since no actual debt exists. Elaborating upon Rashi's statements regarding moral responsibility, the Ketzot (28:1) cites several opinions regarding unilateral seizure of uncollected debts.

Having discussed two examples of payment independent of the *beit din* and the potential impact of *kam leih,* I will mention a third example. Tosafot in Ketubot (30b) suggest that monetary payments which constitute *kappara* (atonement) are exempt from the *kam leih* exclusion and must be paid. Tosafot endorse this claim to explain the payment for *teruma* grains which were eaten by a non-*kohen*. Although the violator incurs *mita bi-dei shamayim* (execution at the hands of Heaven), he still must offer the payment for the illegally eaten *teruma;* since *teruma* payments are "penitential" and not "compensatory," they are immune to *kam leih*. Tosafot's position is more appealing logically if *kam leih* acts as a *beit din* inhibitor. *Beit din* is restrained from imposing multiple penalties; as *kappara* payments are not enforced by the *beit din,* but merely facilitate *teshuva* (repentance) on the part of the violator, they would not be subject to *kam leih*- as Tosafot themselves rule. If, however, *kam leih* would block the emergence of any monetary debt, we may wonder why the capital crime of eating *teruma* allows ANY monetary form of payment to emerge, even if that payment is penitential in nature.

What about an inverse situation: how would *kam leih* affect payments which are firmly rooted in the court system, but do not emanate from the act performed? Presumably, if *kam leih* blocks *beit din*, the principle may apply in this case, whereas if *kam leih* does not allow monetary obligations to emerge from capital acts, these cases may be exceptional since the monetary debt is triggered by a completely different factor.

The gemara in Ketuvot (32) cites an opinion which asserts that *kam leih* does not apply to *kenasot* (fines) but only to *mamon* compensation. Penal payments of *kenas* differ from compensatory payments of *mamon* precisely in their respective roots: compensatory payments are triggered by the act, while *beit din's* role is merely to litigate and enforce payment. By contrast, a *kenas* is penal in nature, does not stem from the action, but is a debt which the *beit din* GENERATES as a penalty. The clearest indicator of this distinction is the rule of *hoda'a* (admission). Typically, we say that *hoda'at ba'al din ke-mei'a eidim dami* (a litigant's admission is worth a hundred witnesses), and admission obligates payment. However, as a *kenas* must be imposed by the *beit din,* it must be generated by formal testimony offered by impartial witnesses; if the admission serves as the only item of evidence, the *kenas* cannot be administered. This distinction highlights the differing roles for the *beit din* in imposing payments of *mamon* and *kenas* respectively.

Indeed, if *kam leih* demands that the *beit din* behave moderately in inflicting only a single penalty, this attitude should certainly apply to *kenas*. However, if *kam leih* suggests that monetary debts cannot stem from actions which incur a death penalty, a *kenas* may not be affected. Since the *kenas* payments are formed IN the *beit din* and THROUGH the *beit din*, they are not affected by *kam leih*. The notion that a capital crime cannot generate

monetary obligation is irrelevant to kenas which is generated independent of the act or crime.

In many respects, *kenas* payments and *kappara* payments are inverses of each other when considering *kam leih*. *Kappara* payments originate from a person's actions, but are not imposed by the *beit din* at all; by contrast, *kenas* payments are generated by the *beit din,* but do not emerge from the actions of the criminal. How they are impacted by the *kam leih* principle speaks volumes of the manner in which *kam leih* operates.