

**TALMUDIC METHODOLOGY**  
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**SHIUR #12: *RESHUT HA-RABIM* (PART 2)**

In the previous *shiur*, we outlined two different models of understanding the exemption of *regel* and *shein* payments for damage in a *reshut ha-rabim*. The Rosh claims that the exemption is a purely formal exclusion reflecting little about the nature of *regel* and *shein* damages, while the Rif claims that damages in a *reshut ha-rabim* are too routine and natural to entail payment obligations.

An obvious *nafka mina* between these two approaches would develop in a situation in which the damage occurs in *reshut ha-rabim* but in an unusual manner. We would expect the Rosh to extend the exemption, since the damage occurred in *reshut ha-rabim* (regardless of HOW it took place), but we would expect the Rif to obligate payment, since the form of damage is not normal or routine. In our last *shiur*, we isolated two instances of damages that fall into this category. Firstly, in the case of a non-domesticated animal which causes damage in a *reshut ha-rabim*, Tosafot extended the exemption from *regel* and *shein* payments, indicating possible agreement with the Rosh's position. Secondly, Shmuel's distinction - between lions that first kill their prey and those that devour them immediately - may be gauging the level of normalcy; even slight deviations from the norm may be sufficient to eliminate the *reshut ha-rabim* exemption according to the Rif, and evidently according to Shmuel as well.

The *gemara* in *Bava Kama* appears to present two situations that also reflect this question. The *mishna* (19b) comments that animals that eat food located on the "side of the road" must pay for the damage, even though this road is legally considered a *reshut ha-rabim*. Rav and Shmuel (21a) debate which scenario is described here. According to Rav, if the animal veers its head and snatches food located on the side of the road, its owner must pay. According to Shmuel, however, such a scenario would be exempt from payment, just like ordinary *reshut ha-rabim* cases. The *mishna* actually refers to a case in which the

animal physically relocated itself from the *reshut ha-rabim*, walked upon the side of the road, and ate the food.

Perhaps Rav and Shmuel were debating the same issue as the Rif and the Rosh. Rav claimed, like the Rif, that the exemption of *reshut ha-rabim* stems from the routine nature of the damage. Animals that turn their heads and grab food from alcoves of a *reshut ha-rabim* are not behaving in classically routine fashion and therefore do not enjoy the *reshut ha-rabim* exemption. Shmuel, on the other hand, favored the Rosh's approach. Accordingly, slight deviances in the action of the animal are not sufficient to eliminate the *petur*. Instead, the *mishna* – which DOES exempt payment if food was eaten from the side of the rod - must be referring to a situation in which the animal itself walked in the side of the *reshut ha-rabim*. There is ample halakhic precedent for redefining this area as a virtual *RESHUT HA-YACHID*; for Shabbat and *kinyan* purposes, certain areas known as “*tzidei reshut ha-rabim*” (the margins of a *reshut ha-rabim*, including sidewalks and storefronts) may be attributed *reshut ha-yachid* status. Perhaps Shmuel was “re-zoning” these areas for *Bava Kama* purposes as well.

However, the exemption can only be eliminated if the animal itself leaves *reshut ha-rabim* and relocates to *reshut ha-yachid*.

Rav was concerned with the anatomy of the damage itself, whereas Shmuel was more concerned with the actual formal definition of the area in which the damage occurred, reflecting the fundamental distinction between the Rosh and the Rif.

Of course, this analysis does not seem to conform to our earlier analysis of Shmuel's distinction ([shiyur #11](#)) between lions that devour and those that first kill and then devour. By obligating payment in the case of a lion that deviates from the routine, EVEN IF THE DAMAGE OCCURRED IN *RESHUT HA-RABIM*, Shmuel appears to adopt logic similar to that of the Rif. On the other hand, by displaying concern with the location of the animal and not the nature of the action in his debate with Rav, Shmuel may have indicated an allegiance to the Rosh's view.

A second appearance of this question among the *Amoraim* can be traced to an interesting *machloket* between Rava and Ilfa. The *gemara* (20a) discusses scenarios in which *shein* damages would be obligated in a *reshut ha-rabim*. Rava and R. Hoshia each describe a situation of “*kofetzet*” in which the animal leaps on top of another animal and eats the produce the victimized animal is carrying. In such a case, payment is obligated because the animal has effectively relocated from the *reshut ha-rabim* to a different zone (the back of the victimized animal), and the damage may be classified as occurring in a *reshut ha-yachid*. Ilfa does not require actual relocation to the other animal’s back; as long as the *mazik* STRETCHED ITS NECK and grabbed fruit from the back of the animal victim, damages are obligated. It seems that Ilfa maintains that there is a form of damage that occurs in a *reshut ha-rabim* but is still obligated to pay. Even though the animal has not relocated to a different zone, its *shein* damages are collectable.

The Ramban writes in his *Milchamot Hashem* that Ilfa agreed with the Rif’s version of the *reshut ha-rabim* exemption. The exemption only applies to animals that walk in a routine fashion through a *reshut ha-rabim* and eat the food lying immediately in view, without veering from their typical path, as these damages are TOO ROUTINE to obligate payment. However, if the animal stretches its neck and draws food from another animal’s back, the exemption for ‘routine’ damages can no longer be applied. Rava, on the other hand, agreed with the Rosh and viewed the *reshut ha-rabim* exemption as purely formal; in order to obligate payment for *reshut ha-rabim* events, the animal must actually relocate by hopping on the back of another animal, which may be deemed a virtual *reshut ha-yachid*.

In essence, Ilfa and Rava are debating the very same question that Rav and Shmuel discussed. If the *reshut ha-rabim* exemption is formal, the animal must relocate to a different “marginal” zone in order to be obligated in payment. Both Rava (20a) and Shmuel (21a) issued this requirement, evidently siding with the Rosh that the exemption is formal. However, Ilfa (20a) and Rav (21a) adopted the logic of the Rif that the exemption was logical and based on the routineness of the activity. Once the activity is even slightly deviant (stretching a neck according to Ilfa or even turning a head and eating from the sidewalk

according to Rav), the action is no longer routine and no exemption is in effect. The Ramban indeed highlights the parallel between the two disputes.

An additional scenario of irregular eating that may not enjoy the *reshut ha-rabim* exemption appears in an interesting question posed by R. Yirmiya to R. Zeira about a case of *tzererot* in a *reshut ha-rabim* (19a). Typically, the category of *tzererot* damages is associated with the *nezek* of *regel*. Although Rava and R. Pappa dispute the application of the *mi-gufo* payment cap to *tzererot* (see 3b), all agree that as a derivative of *regel*, *tzererot* should be exempt in a *reshut ha-rabim*. Surprisingly, this unanimous conclusion is questioned by R. Yirmiya.

One *girsa* of the *gemara* suggests that R. Yirmiya's question pertains to *tzererot* performed through aggressive kicking – that is, *tzererot* of *keren*. The resulting mutant form of *tzererot* may indeed display *keren* qualities (payment in *reshut ha-rabim*), and not *regel* traits (exemption in *reshut ha-rabim*). (This hybrid between *tzererot* and *keren* was analyzed in an earlier *shiur* [[shiur #05](#)].) However, most *Rishonim* do not adopt this *girsa*, instead reading R. Yirmiya's question as pertaining to classic *tzererot* damages. Why should these be payable in a *reshut ha-rabim* if *tzererot* is firmly associated with *regel*?

Perhaps R. Yirmiya was probing the nature of the *reshut ha-rabim* exemption. If the exemption is formal, it should apply to all situations of *regel*, INCLUDING *tzererot*. However, if the *reshut ha-rabim* exemption is based on the routine nature of typical *regel* occurrence, it may not cover *tzererot*, which is not a routine event. Theoretically, *tzererot* payments may carry liability without making animal passage through a *reshut ha-rabim* impossible.