

TALMUDIC METHODOLOGY
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SHIUR #04: THE BASIC DEFINITION OF TZEROROT

The first *mishna* of the second *perek* of *Bava Kama* lists the various scenarios of the *mazik* (damage) known as “*regel*.” This *mazik* includes damage produced by normal and routine activities of the animal; any damage caused by normal walking and mobility is considered *regel*. The *mishna* discusses one situation in which only half damages (*chatzi nezek*) are reimbursed. This *chatzi nezek* payment (more familiar from the *keren*-type damages) is ultimately decoded by the *gemara* to refer to damages of “*tzerorot*.” The specific case of the *mishna* involves stones that were projected by the walking animal and flew elsewhere, causing damage. Although the damage is classified as *regel*, as it was a result of normal and routine animal activity, there is a special dispensation reducing payment to *chatzi nezek*. The *gemara* debates the source for this dispensation and ultimately decides that it is a *Halakha Le-Moshe Mi-Sinai*. This series of *shiurim* will explore the nature of this unique halakha.

It seems that the *Halakha Le-Moshe Mi-Sinai* reflects the fact that actions performed through the animal’s force (*koach*) are not considered PRODUCED by the animal. Halakha typically DOES view “*koach*” based actions as produced by the person applying the force. For example, if someone throws a stone and thereby causes injury or death, he is liable. Shabbat violations performed through *koach* are just as forbidden as actions performed through more direct personal involvement. Presumably, the *Halakha Le-Moshe Mi-Sinai* instructs that *koach* of AN ANIMAL is NOT considered *ke-gufo* (equivalent to direct actions), unlike cases of human actions. Apparently, since animals do not possess the cognitive awareness of human beings, their secondary actions cannot be traced back to them and are not considered as actions on their part.

This model is apparent in an interesting analogy which Rava makes (17b) between *tumat zav* and *tzerorot*. He claims that any type of activity that would cause the transfer of *tuma* from a *zav* would be considered DIRECT damage in the case of an animal, and thus carry full liability. Any contact that would not convey *tumat zav* would be considered secondary *tzerorot* in the case of the animal, and thus only partially liable. A *zav's tuma* is unique; unlike a *sheretz*, transfer of a *zav's tuma* does not require direct contact. A *zav* conveys *tuma* to items that bear the weight of a *zav* (*mishkav*), items that are moved by a *zav* (*heset*), and items that move a *zav* (*masa*). All these situations represent "interaction" without contact. Similarly, if an animal were to pull a wagon over an item and damage it, full liability would ensue, even though the animal did not actually TOUCH the item itself. Since this interaction would convey a *zav's tuma*, it IS NOT defined as *tzerorot*. If a *zav* however, throws an item on to a *tahor* person, on the other hand, *tuma* is not conferred. In parallel, if an animal throws a projectile and causes damage, only *chatzi nezek* is reimbursed.

By associating *nezek* and *zav*, Rava reinforces our assumption that *tzerorot* is deficient because it is not considered the animal's action. *Tum'at zav* is a perfect template for gauging AUTHORED action since even "non-contact" actions are considered authored by the *zav* and confer *tuma*. However, secondary actions, such as throwing, do not confer *tuma* and are considered *tzerorot* and only partially liable.

This approach toward defining *tzerorot* is challenged by the Yerushalmi, which cites two situations which would appear to be primary actions, yet are considered *tzerorot*. The first case involves an animal that steps upon and breaks a jug containing oil. The owner must pay full *nezek* for the jug, but only *chatzi nezek* for the oil. Similarly, if an animal stepped upon a large plate that was supporting an object, causing the plate to shake thereby damaging the item, only *chatzi nezek* is owed for the broken object, since this damage is *tzerorot*. In both cases, the animal is not throwing a stone or another projectile, but merely damaging an item without DIRECT BODILY CONTACT. Despite the absence of direct contact, these damages should be considered standard *nezek*, since there is no intermediate object to which the animal applies its force (*koach*); yet the Yerushalmi refers to them as *tzerorot*.

Evidently, the Yerushalmi had a different model of *tzerorot* - only damages which occur by DIRECT BODILY CONTACT can be considered classic *regel*. If the animal performed the damage through its action but without that contact, only *chatzi nezek* of *tzerorot* is payable. The Yerushalmi obviously does not cite and is not encumbered by Rava's association between *nezek* and *zav*, a comparison which clearly ignores the role of direct bodily contact, as a *zav* is fully capable of conferring *tuma* without this contact.

Several *Rishonim* (the Rashba among them) cite this Yerushalmi and indicate support for it. These *Rishonim*, who would ostensibly adopt the second model for *tzerorot*, would probably read Rava's *zav* association as non-literal. In fact Tosafot (17b, s.v. *kol*) note deviances between *zav* and *tzerorot* and claim that the equation should not be taken literally.

Upon careful reading, there may be some support for the second *tzerorot* model in several comments of *Rishonim* as well. For example, the Ri Migash comments upon the *gemara* (18b) which refers to animal defecation as *tzerorot* damage. The Ri Migash distinguishes between liquid and solid defecation, referring to the former as standard non-*tzerorot* damage and demanding full *nezek* payment. His logic is that during urination, a DIRECT CONTACT between the animal and object is maintained (through the liquid waste, which halakhically entails contact as witnessed in the laws of *mikva*). Although solid wastes are a product of a more concerted action and would seem more likely to be considered non-*tzerorot* than urination, in the Ri Migash's view, urination sustains contact more significantly than defecation and is therefore considered non-*tzerorot*.

By drawing this distinction the Ri Migash presumably was interested in gauging the level of ACTUAL BODILY CONTACT. Since urination maintains a continuous halakhic contact it is considered conventional *regel* and not *tzerorot*. Had *tzerorot* been attributed to unauthored actions it is unlikely that the action of urination can be considered more authored than the act of defecation.

Another indicator stems from the *mishna*'s description of a string or bucket that becomes entangled in an animal's foot and causes damage. The *mishna* indicates that *chatzi nezek* is required, presumably considering this a case of *tzerorot* (although some argue that the *chatzi nezek* is based on other non-

tzererot considerations). The Ra'avad questions this classification as *tzererot*: why should causing damage with a wagon be considered standard *nezek* while an entangled string is considered only *tzererot* and *chatzi nezek*? The Ra'avad is unable to distinguish between the two cases and thus remaps the *mishna*.

Perhaps the second *tzererot* model allows for this distinction. The critical question determining *tzererot* is whether the animal's body – either the physical body or its extensions - came into direct contact with the damaged item. The *gemara* recognizes that natural appendages, such as the saddle and “bit” of an animal, are *toladot* of *regel* and fully payable; they are considered halakhic and empirical appendages and extensions of the animal. A wagon may also be considered an extension, as it is a natural fixture in the life cycle of the animal. The same cannot be said, however, about a random entangled string, even though the string is PHYSICALLY operated upon by the animal's force in the exact SAME manner as the wagon is. To be considered *regel*, it is not sufficient for an item to be “ACTED” upon DIRECTLY by the animal. The boundary between *regel* and *tzererot* is determined by whether the attached item can actually be seen as an appendage of the animal. Natural items, including wagons, can be seen as EXTENSIONS, whereas unnatural ones, such as strings, cannot.

In fact, the Pnei Yehoshua draws a similar distinction between a wagon which was attached to the animal intentionally and the string which accidentally became entangled. Only through designated attachment can the appendage be considered part of the animals body.