DEFINING THE PARAMETERS OF Tzerorot Damage

One of the most intriguing forms of property damages is a scenario of indirect damage, otherwise known as tzerorot. Based upon a Halakha Le-Moshe Mi-Sinai, payment for this type of damage – which would typically classify as regel – is discounted to half payment (see shiur #06 “Understanding the Category of Regel” for a definition of regel).

What is unclear is the “boundary” dividing classic regel from tzerorot half-payment situations. Direct bodily damages classify as classic regel, while damages caused by projectiles are considered to be in the category of tzerorot, but what is the logical difference between the two? Does classic regel only obtain in situations of direct contact with the animal’s body (or its appendages), while damages caused by direct acts without actual physical contact is classified as tzerorot? Or, is all action-based damage classified as regel, while the hurtling of projectiles is not considered the act of the animal and is thus defined as tzerorot?

To help determine the boundary, Rava draws a surprising analogy between the laws of property damages and the halakhot of zav-imparted tuma. Whatever level of interaction conveys zav-tuma would warrant full regel payment in a scenario of property damages; s whatever would not convey zav-tuma would only mandate half-payments of tzerorot. To illustrate the analogy, Rava provides a test case that would convey zav tuma and warrant full damage compensation: wagons drawn by a zav are comparable to wagons drawn by animals. Just as a zav can transfer tuma by pulling a person sitting on a wagon, an animal that pulls a wagon and thereby breaks items pays full damage. However, Rava asserts this analogy without defining the terms of zav-tuma “conveyance” and the reason for
the *tuma* in the wagon scenario. Thus, the precise definition of *regel* vs. *tzerorot* remains unclear.

In truth, this question stems from two very different logics to understand the unique *tuma* conveyance of a *zav*. Along with *zava* and *metzora*, a *zav* conveys *tuma* through non-contact interactions. The most famous form of *tuma* transfer (and presumably the one Rava was evoking) is referred to as *tumat heset*: If a *zav* creates indirect contact through a held item, he conveys *tuma* to the object that the item touches. For example, if the *zav* touches someone with a rod, the person contacted by the rod becomes *tamei* even though actual physical contact with the *zav* did not occur.

Is *tumat heset* just an extended form of contact? From this perspective, the *tuma* of a *zav* is so unique that any indirect contact is considered actual contact, as if the held item is an extension of the *zav*. Indeed, the *gemara* in *Nidda* (43a) derives *tumat heset* from a phrase that describes actual contact, inviting the possibility that *heset* is merely a virtual form of contact. If this were true, Rava’s analogy to property damages yields a situation in which only direct contact yields full *regel* payment. The comparison to *zav* merely allows creative expansions of animal and human bodies, extending the range of cases in which virtual/halakhic contact has occurred. The case of *zav* demonstrates that contact through a secondary held item is considered contact and qualifies as *regel* damage. Ultimately though full regel payments are a product of contact with the animal; in the absence of contact only half-payment *tzerorot* is required.

A different logic to explain *tumat heset* of *zav* would yield a very different situation for property damages. Perhaps *tumat heset* does not constitute “virtual contact,” but rather “affiliation” and “interaction.” *Tuma* may be conveyed not only through contact (or virtual contact), but by association. By touching someone with a rod, a *zav* has directly applied pressure to the person, thereby creating interaction, which defines the “recipient” as *tamei*. If this were true, the application to *tzerorot* would be quite different than our previous suggestion. Any action of the animal is considered *regel* and mandates full payment. Only secondary projectiles, which are not defined as *ma’aseh be-heimah* – can be considered half-damage *tzerorot*. 
To summarize, there are two very different images that emerge from the association between tzerorot and zav. According to the first version, all damage is tzerorot unless the damage involves direct bodily contact with the animal or its extensions; heset merely expands the possibility of body extensions. The second version asserts that any exerted force of a zav conveys tuma, and likewise any exerted animal force that creates breakage is considered classic regel and warrants full payments.

Apparent nafka minot would include scenarios in which direct pressure was applied by the animal, but no contact – classic or through bodily extensions-occurred. An animal drawing a wagon may be considered to be applying direct contact to the broken utensil since – through the logic of tumat zav – the wagon may be deemed an extension of the animal, and it directly contacts the item upon breakage. But if an animal depresses one side of a large plank, thereby jostling an item perched on the other end and causing it to break, would the situation be deemed classic regel or atypical tzerorot? If classic regel demands direct contact, either with the actual body or an extension, this would fail to meet the criteria and would default to tzerorot; the plank cannot be deemed an extension of the animal. If, however, any action or pressure causing breakage is classic regel, this scenario would qualify. In fact, the Meiri defines this situation as regel, while the Ra’avad deems it tzerorot, perhaps indicating that they debate this very issue about the zav – mapped boundary between regel and tzerorot.

An interesting statement in the Yerushalmi further amplifies this issue: If an animal steps on two dishes piled upon each other, the owner pays full regel compensation for the top item, but only partial tzerorot payment for the lower one. The lower item was clearly damaged by direct pressure and a direct act of damage of the animal. But since no direct contact causes the damage, the case is defined as tzerorot and not regel. It is apparent that the Me’iri would not endorse this position of the Yerushalmi.

A third example may surround the definition of damages caused by urination and defecation. Based on an apparent contradiction, some authorities (cited by the Ri Migash in a response quoted by the Shittah Mekubezet in Bava Kama (19b)) assert a difference between urination-based damages, which would be deemed regel, and defecation damages, which would default to tzerorot.
Presumably, neither situation provides direct contact between the animal and the damaged item, yet this position defines damage from urination as “direct” enough to qualify as classic *regel*. Evidently, any **direct action** that causes damage qualifies as *regel*, even if no contact entails. Since urine is emitted in one stream, it can be considered the **direct** act of the animal (as opposed to defecation, which is emitted in spurts).