SHIUR #08: HADA’AH FOR TZEROROT

After raising the issue of mi-gufo payments for tzerorot, the gemara Bava Kama 18b) records an additional question that Rava asked about tzerorot. 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 tzerorot payments also become nezek shalem after third occurrences.

Rava poses his question about regular tzerorot, not tzerorot 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 tzerorot, but his primary question (and the one cited in Bava Kama 18b) was posed about regular and “natural” tzerorot cases.

At first glance, it seems that the process of hada’ah should NOT apply in a tzerorot 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.

Tzerorot, however, is very different from keren. The initial reduction to half payment had little to do with the unnatural and unpredictable nature of tzerorot damage. In fact, tzerorot 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 \( ha'ada'h \) 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 \( ha'ada'h \) is irrelevant) or if it is comparable to \( keren \) (in which case \( ha'ada'h \) 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 or 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 \( mi-guco \) 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?