SHIUR #06: UNDERSTANDING THE CATEGORY OF REGEL

One of the primary categories of property damages is designated as “regel” and defined as “casual” damages without any distinct trigger or catalyst. If an animal is driven to damage by aggression, the ensuing damage is defined as “keren” and accordingly exhibits certain unique payment guidelines. If an animal causes damage while seeking pleasure, the resulting damage is defined as “shein” and is governed by different parameters. Regel-based damages appear to be similar to shein in that they aren’t incited by aggression, and indeed, regel damages exhibit almost identical halakhot to shein. It would appear, at least initially, that regel is merely a parallel of shein; damage spurred by pleasure-seeking is designated as shein, while damage without the pleasure catalyst is defined as slightly-related regel.

However, the fact that the gemara describes a separate category of regel seems to imply a distinct form of damage, and not merely a derivative of shein that lacks the pleasure component. Perhaps regel damage is not just typical or standard damage, but instead exhibits a unique qualifier distinct from shein.

The mishna portrays regel damages as “derekh hilukha,” damages performed during standard and routine walking. Is this merely the mishna’s manner to differentiate regel from aggressive keren-damage? Aggressive damages are abnormal whereas normal damages are associated with regel/shein. If this were true, regel would indeed be roughly similar to shein and it would not have a “positive” qualifier. It must be regular damage, unlike keren, and it does not stem from pleasure-seeking, unlike shein. Alternatively the Mishna may be identifying a unique quality of regel: the damage occurs during the animal’s walking, without any distinct action. Both keren and shein are triggered by a conscious activity; the former is driven by aggression and the latter by pleasure seeking. By contrast, regel occurs whenever damage happens without any halakhic action occurring. Walking is the most neurologically basic
part of animal life and damages caused by walking have not evolved from a distinct act of nezek. According to this approach, regel is a unique category of property damage, and not simply shein damage absent the component of pleasure-seeking.

This definition would affect the scope of the regel category. Can damages caused by body parts other than the legs, but while walking, be considered regel? For example, would damages caused by aimless head or horn movement be defined as regel? On the one hand, this doesn’t qualify as keren, since the animal isn’t goring; on the other hand, the damage does not result from effortless “walking.” The Rashba (17b) claims that these damages qualify as regel, perhaps indicating that any non-pleasure driven damage is considered regel, even if it not related to the animal’s gait. Alternatively, it is possible that the Rahsba’s willingness to define damages caused by bobbing heads and horns as regel may indicate that he views head movement as an element of animal mobility; since they do not walk upright, animals depend on head movement for leverage and momentum. Thus, the swinging of an animal’s head may be incorporated as part of animal walking, and therefore defined as regel, even if regel is strictly defined as walking-related without a distinct action.

A related question may arise in the discussion in the gemara (19b) regarding damages caused by a stimulated sexual organ. Should such damage be classified as regel or keren? Quite possibly (and apparently, based on the language of the gemara), the question surrounds keren parameters. However, the gemara may have been probing whether damage stemming from movement unrelated to mobility can be classified as regel. Animal mobility is not considered an action, and its resultant damages are defined as regel. The swaying of sexual organs in unrelated to mobility, and hence considered a distinct action. It may not resemble action-less regel damage.

A similar question may surround damages caused by a snake bite. The midrash assumes that snakes were cursed with deadened taste buds, rendering all food with the taste of dust. In the absence of a pleasure component, a snake bite may not be defined as shein. Can it be defined as regel? Tosafot (16a) assume that it can and the Rashba (2b) cites two positions. Perhaps this debate surrounds the aforementioned question. Since a snake bite is not integral to snake mobility, it may not be compatible with the action-less category of regel.
A third example surrounds a pig foraging in a garbage dump for food (17b). The damage performed in the course of actively consuming food is clearly considered shein, but what about breakage while foraging? Rashi claims that this damage is regel, while Tosafot claim that it is shein. There are multiple factors that may influence this dispute (including the nature of pre-shein damages and the definition of indirect tzerorot damages), but it is possible that the debate surrounds the qualities of regel. This breakage is not pleasure driven, but it is also certainly not an action-less damage. Deciding whether to define it as regel or shein may depend upon a looser or stricter definition of the regel category.

Perhaps the most glaring instance of damage that is not driven by pleasure but also not natural to animal ambulation surrounds a situation of an animal squatting upon small objects. Squatting upon larger items is clearly an act of violence and is considered keren. Would squatting upon smaller objects classify as regel? Such an act is natural and non-violent, but it is not an integrated element of animal ambulation. Rashi (16a) indeed defines it as regel (consistent with his classification of breakage during foraging as regel), but the gemara leaves this question open-ended. If the regel category only contains action-less damages, squatting would not be included.

A completely different question may also be influenced by this question about the definition of regel. The beraita (17b) expands the regel category to include damages stemming from animal appendages (saddles and yokes). Would damages stemming from non-natural appendages be considered regel? Perhaps only action-less damages caused by the actual body of the animal may be considered regel. The mishna (17a) describes damages caused by entangled strings on the legs of chickens. This is fairly common occurrence and should be a candidate for regel. Tosafot presume that it would be regel, and are thus forced to redefine the scenario of the mishna, which does not appear to describe this as regel. This question is alluded to by the Ra’avad (whose conclusions are unclear) and fully explicated by the Pnei Yehoshua (19a), and it may be a direct function of the definition of regel. If regel is defined as action-less damages it may be limited to damage by the animal’s body or by natural extensions of the animal’s body. If regel includes all non-pleasure-driven damages then even damages through non-natural appendages can classify as regel.