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

Perhaps the second tzerorot model allows for this distinction. The critical question determining tzerorot 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 tzerorot 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.