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Bava Kamma Daf 25

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### **Mishna**

The ox which causes damage in the domain of the damaged party, how so? If it gored, pushed, bit, lay down, or kicked in the public domain, he pays half damages; in the domain of the damaged party, Rabbi Tarfon says: He pays full damages, and the *Chachamim* say that he pays half damages.

Rabbi Tarfon said to them: If in the place where it was lenient with respect to *shein* and *regel* in the public domain where he is exempt, it was stringent with them in the domain of the damaged party to pay full damages; so in a place where it was stringent with regard to *keren* in the public domain to pay half damages, should we not certainly be stringent with regard to it, in the domain of the damaged party to pay full damages?

They said to him: (*Dayo!*) It is sufficient for that which is deduced by a *kal vachomer* to be like that from which it is inferred: Just as *keren* in the public domain pays half damages, so too, *keren* in the domain of the damaged party should be half damages.

He responded to them: I shall not deduce *keren* from *keren*, I shall deduce *keren* from *regel*: If in the place where it was lenient with respect to *shein* and *regel* in the public domain (*that he is not liable to pay*), it was stringent with *keren* (*to pay half damages*); so in a place

where it was stringent with *shein* and *regel* in the domain of the damaged party (*to pay full damages*), should we not certainly be stringent with *keren* (*to pay full damages*)?

They said to him: It is sufficient for that which is deduced by a *kal vachomer* to be like that from which it is inferred: Just as *keren* in the public domain pays half damages, so too, *keren* in the domain of the damaged party should be half damages. (24b – 25a)

### **Dayo**

The *Gemora* asks: Does Rabbi Tarfon not hold of the principle of “*dayo*”?! But “*dayo*” is a Biblical principal! For we learned in a *braisa*: How does a *kal vachomer* work? And Hashem said unto Moshe: *If her father had but spit in her face, would she not be humiliated for seven days?* How much the more so then in the case of a rebuke by the Divine Presence should she be humiliated for fourteen days? Yet the number of days remains seven, for it is sufficient if the derived law is equivalent to that from which it is inferred!?

The *Gemora* answers: The principle of “*dayo*” is ignored by Rabbi Tarfon only when it would nullify the entire purpose of the *kal vachomer*, but where the *kal vachomer* would not be nullified; even he maintains the principle of “*dayo*.”



The *Gemora* explains: In the instance concerning Miriam, there is no mention made at all of seven days in the case of the rebuke by the Divine Presence; nevertheless, by the working of a *kal vachomer*, fourteen days may be suggested. There follows, however, the principle of “*dayo*,” so that the additional seven days are excluded, while the original seven are retained (*because of the kal vachomer*). However, in the case of the *Mishna*, the payment of half damages has been explicitly written in the Torah in all domains. When therefore a *kal vachomer* is employed, another half payment is added for damages occurring in the damagee’s domain, making thus the compensation complete. If, however, you apply the principle of “*dayo*,” the sole purpose of the *kal vachomer* would thereby be nullified (*and therefore the principle of “dayo” is not applicable here*).

Rav Pappa asked Abaye: Behold, there is a *Tanna* who does not employ the principle of “*dayo*” even when the *kal vachomer* would not be nullified, for it was taught in a *braisa*: From where do we know that the semen of a *zav* causes *tumah* either by touching or by carrying (*just like his zav-fluid and his spit*)? It may be derived through the following *kal vachomer*: If a discharge (*spit*) that is *tahor* in the case of a *tahor* person is *tamei* in the case of *zav*, is it not logical to reason that a discharge (*semen*) which is *tamei* in the case of a *tahor* person, should be *tamei* in the case of *zav*!? Now this reasoning applies to both touching and carrying. But why not argue that the *kal vachomer* serves a useful purpose in the case of touching, while the principle of “*dayo*” can be employed to exclude *tumah* by carrying?

If, however, you maintain that regarding touching, there is no need to apply the *kal vachomer* on the grounds that a *zav* could surely not be less *tamei* than an ordinary *tahor* person, I may contend that this is not

so, and that a *kal vachomer* may still be necessary. For I could argue: The Torah stated: *through a semen-emission of the night* to imply that the law of *tumah* applies only to those whose *tumah* has come about naturally, excluding the *zav*, whose illness has caused the discharge. Therefore it is the *kal vachomer* that serves the purpose of letting us know that a *zav* is not excluded from *tumah* through touching.

The *Gemora* asks: But where in the verse is it stated that the *tumah* must not have resulted from any other cause (*and therefore a kal vachomer is not necessary, for the verse would teach us that there is tumah by any semen emission, even if caused by an illness*). [Accordingly, the *kal vachomer* teaches us the halachah of *tumah* through carrying, and therefore, the principle of “*dayo*” is not applicable here.]

The *Gemora* asks: Who is the *Tanna* that holds like this (*the semen of one who is a confirmed zav can contaminate through carrying even if it is not touched directly*)? It cannot be in accordance with Rabbi Eliezer or Rabbi Yehoshua, as we learned in the following *braisa*: Rabbi Eliezer said: The seminal discharge from a confirmed *zav* will convey *tumah* through touching, but not through carrying. Rabbi Yehoshua, however, said: It will contaminate through carrying, for it is impossible for it not to contain in it some drops of *zivah*. It emerges that even Rabbi Yehoshua said that it can contaminate through carrying only because of the drops of *zivah*; however, he never said this in regards to pure semen! (*We were referring to pure semen, so it cannot be following Rabbi Yehoshua’s opinion.*)

Rather, it is in accordance with the following *Tanna*, as we learned in a *Mishna*: Above them are (*the Mishna had listed primary sources of tumah which transmit tumah only through touching, but not through*

*carrying*): The *zav*-fluid of a *zav*, his spit, his semen and his urine, and the blood of a *niddah*; these transmit *tumah* through touching and carrying.

Rav Acha of Difti asked Ravina: Behold, there is a *Tanna* who does not employ the principle of “*dayo*” even when the *kal vachomer* would not be nullified, for it was taught in a *braisa*: Where do we learn that mats can become *tamei* if they are in a room where there is a corpse (*tumas ohel*)? It can be derived through the following *kal vachomer*: If tiny earthenware jugs (*a finger cannot fit through its opening*) that remain *tahor* by a *zav*, and yet they become *tamei* when they are in a room where there is a corpse, does it not follow that mats, which even in the case of *zav* become *tamei* should certainly become *tamei* when they are in a room where there is a corpse. Now this reasoning applies not only to the law of *tumah* for a single day (*as is the halachah by tumah from a zav*), but also to *tumah* for seven days (*as the halachah is by tumah from a corpse*). But why not argue that the *kal vachomer* serves a purpose regarding the *tumah* for a single day, while the principle of “*dayo*” can be employed to exclude *tumah* for seven days?

Ravina answered him: The same question had already been raised by Rav Nechumei ben Zachariah to Abaye, and Abaye answered him that the *Tanna* derived this *halachah* (*that mats can become tamei with corpse tumah*) from the *tumah* of a *sheretz* (*the Torah enumerates eight creeping creatures whose carcasses transmit tumah through contact*) through a *gezeirah shavah* and the *braisa* is actually teaching us something else: Where do we learn that mats can become *tamei* from a *sheretz*? It can be derived through the following *kal vachomer*: If tiny earthenware jugs (*a finger cannot fit through its opening*) that remain *tahor* by a *zav*, and yet they become *tamei* when they come in contact with

a *sheretz*, does it not follow that mats, which even in the case of *zav* become *tamei* should certainly become *tamei* when they come in contact with a *sheretz*.

The *Gemora* cites the *gezeirah shavah* which teaches us that a mat can become *tamei* with corpse *tumah*. The *Gemora* explains that the words used in this *gezeirah shavah* must be extra, for otherwise, we would have been able to ask that we cannot compare the case of *sheretz* to that of corpse *tumah*, for a *sheretz* can transmit *tumah* even from the size of a lentil, whereas a corpse cannot transmit *tumah* unless it is the size of an olive. (25a – 25b)

## DAILY MASHAL

### *Hashem's Kal Vachomer*

Why did Hashem respond to Moshe through a *kal vachomer* (*and not any other way*)?

The Baal Shem Tov answers that Moshe Rabbeinu *davened* to Hashem to heal Miriam by saying: “*Keil na, refa na lah*” – Please Hashem, heal her now. It is known that the thirteen principles of biblical hermeneutics correspond to the Thirteen Attributes of Mercy. The first of the biblical hermeneutics is a *kal vachomer*. It corresponds to “*Keil*” of the Thirteen Attributes of Mercy. Since Moshe opened his *tefillah* with “*Keil*,” Hashem responded with a *kal vachomer*.

### *When Rabeinu Gershom Sat a Double Shiv'ah for his Son*

By: Meoros Hadaf Hayomi

The Rishonim relate the sad story that the son of Rabeinu Gershom *Meor Hagolah* together with his mother, Rabeinu Gershom's second wife, left the



Jewish faith. Subsequent *halachic* authorities record that Rabeinu Gershom sat *shiv'ah* for his son for a period of 14 days.

Maharam of Rottenberg remarks in his Responsa (\$544) that there is no obligation to sit *shiv'ah* for those who convert to another religion (*Shulchan Aruch, Y.D. 340:5*) but that Rabeinu Gershom did so out of his extraordinary sorrow.

Radvaz confirms the fact that Rabeinu Gershom sat *shiv'ah* for his son, not mourning his death but rather that his son had not repented while alive (Responsa Radvaz, III, 558).

Other sources, though, report that he mourned for his son while he was still alive and as for the 14-day period, the *Or Zarua* (II, 428) offers an explanation in the name of his mentor, Rabbi Shimshon zt"l: Rabeinu Gershom learnt his behavior from our *sugya* concerning Miriam. Hashem's honor is double that of even a parent and if a person mourns seven days for a human who has left this world, one should surely mourn 14 days for the loss of a soul to Hashem by apostasy.

The Gerer Rebbe zt"l, author of *Imrei Emes*, wondered about this reasoning: According to our *sugya*, Hashem Himself ruled that even though by ordinary logic, His honor is double that of a parent and Miriam should have been punished for 14 days – still, "*da'yo...*" - that which is learnt from another instance should not be more severe" and she was therefore punished for only seven days. Why, then, did Rabeinu Gershom mourn for 14 days? The *Imrei Emes* explains in the name of his brother-in-law, the Rabbi of Bendin zt"l, that only Hashem could apply "*da'yo*" to forgo His honor whereas **we** cannot ignore Hashem's honor and the

logic of extending the mourning to 14 days still holds for us [*Michtevei Torah, 55-56*].

### ***And if her Father Spat in her Face***

HaGaon Rav M.M. Krenkel zt"l expressed a wonderful idea about the story of Miriam described in our *sugya*: The Midrash (*quoted by Rashi on Shemos 2:1*) relates that when Pharaoh decreed for every newborn son to be thrown into the Nile, Miriam's father Amram left his wife Yocheved and all the Israelites followed suit. Miriam, though, protested to Amram that his decree was worse than Pharaoh's: "Pharaoh issued a decree against the sons but you issued a decree against both sons and daughters!" Miriam thought she was justified in admonishing her father as, in her opinion, he had transgressed the Torah: after all, according to Beis Shamai, a person has fulfilled the *mitzvah* to be fruitful and multiply only if he begets two sons and, at that time, Moshe had not yet been born. Still, when many years later Miriam complained about Moshe because he isolated himself from his wife, she was also punished for upbraiding her father as Moshe already had two sons, Gershom and Eliezer.