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Bava Kamma Daf 3

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Source for Shein and Regel

The *Gemora* suggests that Rav Pappa (*when he said that there are some sub-categories that do not have the same laws as the main category*) was referring to *shein* and *regel*.

The *Gemora* asks: where is *shein* and *regel* written in the Torah? It was taught in a *braisa*: (*If a man will lead an animal to a field or a vineyard*) *And he shall send forth (v’shilach) – this denotes regel.* And it is written elsewhere: *That send forth the foot (mishalechei regel) of the ox and the donkey.* And it shall consume (*in the field of another*) – this (*u’vier*) denotes *shein*. And it is written elsewhere: *As the tooth consumes (yiva’er) until its end.*

The *braisa* had stated: *And he shall send forth (v’shilach) – this denotes regel.* And it is written elsewhere: *That send forth the foot (mishalechei regel) of the ox and the donkey.*

The *Gemora* asks: It seems that the only way we know that *v’shilach* denotes *regel* is from the second verse. What would the alternative be? It cannot be referring to the damage of *keren*, for that was expressly stated. It cannot be referring to the damage of *shein*, for that was expressly stated.

The *Gemora* answers: We would have thought that this verse (*v’shilach*) was referring to *shein*, and the other verse (*u’vier*) was also referring to *shein*. One verse would teach us that one is liable if the animal destroys the object completely, and the other verse would teach us that one

is liable if the object was not destroyed completely (*i.e. it ate from a crop early in the season; it will grow back, but it will not be as good as before*). The *braisa* therefore teaches us that *v’shilach* denotes *regel*.

The *Gemora* asks: So how do we know that one is liable if the object was not destroyed completely?

The *Gemora* answers: It is derived from *regel*, where one would be liable whether the animal destroys the object completely or whether the object was not destroyed completely.

The *braisa* had stated: *And it shall consume (in the field of another) – this (u’vier) denotes shein.* And it is written elsewhere: *As the tooth consumes (yiva’er) until its end.*

The *Gemora* asks: It seems that the only way we know that *u’vier* denotes *shein* is from the second verse. What would the alternative be? It cannot be referring to the damage of *keren*, for that was expressly stated. It cannot be referring to the damage of *regel* for that was expressly stated.

The *Gemora* answers: We would have thought that this verse (*v’shilach*) was referring to *regel*, and the other verse (*u’vier*) was also referring to *regel*. One verse would teach us that one is liable if the animal went out by itself, and the other verse would teach us that one is liable if the owner sent the animal out. The *braisa* therefore teaches us that *u’vier* denotes *shein*.



The *Gemora* asks: So how do we know that one is liable if the animal went out by itself?

The *Gemora* answers: It is derived from *shein*, where one would be liable whether the animal was sent out by the owner or whether the animal went out by itself.

The *Gemora* asks: Why didn't the Torah just write *v'shilach*, which connotes both *shein* and *regel* (which the *Gemora* proceeds to prove), and *u'vier* would not be necessary?

The *Gemora* answers: If the Torah would only write *v'shilach*, we would only have learned that one is liable for one of those damages; either *regel* because its damage is usual, or *shein* because it has physical pleasure when damaging (but we would not have learned that there is liability for both types).

The *Gemora* asks: But they are both equal, so let us derive both types of damages from one verse, for which one of them would be excluded?

The *Gemora* answers: If *shein* and *regel* would be derived from one verse, we might have said that one is liable only if the owner sent the animal out; however, one would not be liable if the animal went out by itself and damaged. The Torah therefore writes *u'vier* as well. (2b – 3a)

Sub-categories

The *Gemora* asks: What is the sub-category of *shein*?

The *Gemora* answers: It is when the animal rubbed itself against a wall for its own pleasure (and broke the wall), or when it spoiled fruits (by rolling on them) for its own pleasure.

Now, just as by *shein*, there is a physical pleasure from the damage it does, and the animal is in your possession, and you are liable to watch it, so too this should be with its

sub-categories, which similarly, there is a physical pleasure from the damage it does, and the animal is in your possession, and you are liable to watch it.

Evidently, the sub-category of *shein* is the same as *shein* itself, and when Rav Pappa said that the sub-categories are unlike the main categories, he was referring to *regel*.

The *Gemora* asks: What is the sub-category of *regel*?

The *Gemora* answers: It is when it did damage while walking either with its body or with its hair, or with the load which was upon it, or with the bit in its mouth, or with the bell around its neck.

Now, just as by *regel*, where its damage is usual, and the animal is in your possession, and you are liable to watch it, so too this should be with its sub-categories, which similarly, its damage is usual, and the animal is in your possession, and you are liable to watch it.

Evidently, the sub-category of *shein* is the same as *shein* itself, and when Rav Pappa said that the sub-categories are unlike the main categories, he was referring to *bor* (pit).

The *Gemora* asks: What is the sub-category of *bor*? It could hardly be said that the main category is a pit of ten *tefachim* deep and its sub-category is one that is nine *tefachim* deep, since neither nine nor ten is written in the Torah!?

The *Gemora* answers: That is no difficulty: It is written (concerning an animal that fell into a pit): And the carcass shall be his. And it was established with the Rabbis that a pit ten *tefachim* deep could cause death, whereas one that is merely nine *tefachim* deep might inflict injury, but could not cause death. [Therefore, the main category can be a pit ten *tefachim* deep.]



But, the *Gemora* asks: Is not the pit of ten *tefachim* a main category in the event of death, and the one of nine a main category in the event of injury?

Rather, Rav Pappa's statement must be referring to a stone, a knife or package which were placed in a public domain and did damage.

The *Gemora* analyzes the case: In what circumstances? If they were abandoned there (*the owner declared them to be ownerless*), according to both Rav and Shmuel, they would be considered as a sub-category of *bor* (*and it would have the same halachos*). And if they were not abandoned there, then, according to Shmuel, who maintains that all public obstacles are derived from one's *bor*, they would be included in *bor*, whereas according to Rav, who maintains that in such circumstances, they rather derived from *shor* (*ox; because they are the property of the damager*), they would be a sub-category of *shor*!?

Now, just as by *bor*, where its initial creation was for damage, and the pit is in your possession, and you are liable to watch it, so too this should be with its sub-categories, which similarly, its initial creation was for damage, and it is in your possession, and you are liable to watch it.

Evidently, the sub-category of *bor* is the same as *bor* itself, and when Rav Pappa said that the sub-categories are unlike the main categories, he was referring to *maveh*.

The *Gemora* asks: What is the sub-category of *maveh*? If we are to follow Shmuel, who understands *maveh* to denote *shein* (*tooth*), behold we have already established that the sub-category of *shein* is the same as *shein*! If, on the other hand, Rav's view is accepted, identifying *maveh* as man (*a person who damages*), what main categories and sub-categories could there be in him? If you will suggest that the main category of a man doing damage is

while he is awake, and it becomes a sub-category when he causes damage while sleeping, have we not learnt in a *Mishna* that man is in all circumstances a *mu'ad*, whether awake or asleep (*for he always must make sure that he does not inflict any damage, and if he does damage, he will be liable to pay full damages*)?

Rather, Rav Pappa's statement must be referring to a man's saliva or mucus.

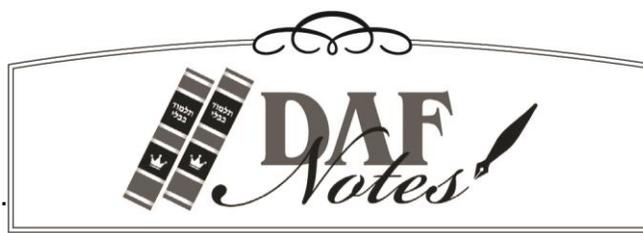
The *Gemora* analyzes the case: In what circumstances? If it did damage while moving (*soiling silks*), it is surely man's direct force (*and should be regarded as the main category of "man"*)! And if the damage resulted after it came to rest, it would be included, according to both Rav and Shmuel, in the category of *bor*!?

Evidently, the sub-category of *maveh* is the same as *maveh* itself, and when Rav Pappa said that the sub-categories are unlike the main categories, he was referring to fire.

The *Gemora* asks: What is the sub-category of fire? If it is a stone, a knife or a package which was placed on top of a roof and they fell down because of a normal wind and caused damage, what were the circumstances? If they did damage while moving, it would be the same as fire. Just as by fire, where another force is mixed in with it (*the wind*) enabling it to inflict damage, and it is in your possession, and you are liable to watch it, so too this should be with its sub-categories, which similarly, has another force mixed in with it, and it is in your possession, and you are liable to watch it.

Evidently, the sub-category of fire is the same as fire itself, and when Rav Pappa said that the sub-categories are unlike the main categories, he was referring to *regel*.

The *Gemora* asks: Didn't we establish already that the sub-categories of *regel* are just like *regel*?



The *Gemora* answers: He was referring to the law of “pebbles” (an animal was walking and stepped on pebbles; the pebbles shot out from underneath its legs and inflicted damage), where the owner only pays half damages, learned out from a *Halachah l’Moshe mi’Sinai*. [This is what Rav Pappa was referring to when he said that there are some sub-categories that are not like the main category, for the main category of *regel* pays full damages, and the sub-category, in the case of pebbles, only pays half damages.]

The *Gemora* asks: So (if it does not pay like *regel*) why is it referred to a sub-category of *regel*?

The *Gemora* answers: It has the *halachah* of *regel* that the owner is liable to pay even from choice property (even if the amount of the damage is more than the value of the damaging animal).

The *Gemora* asks: But Rava actually inquired about this very issue? For Rava inquired: When one is obligated to pay half damages on account of pebbles, does he pay only from the animal itself (not exceeding the value of the animal), or does he pay even from choice property?

The *Gemora* answers: Although to Rava, this issue was unresolved, it was clear to Rav Pappa. (2b – 3b)

Maveh

The *Mishna* had listed *maveh* as one of the four main categories of damages.

The *Gemora* asks: What is *maveh*?

Rav said: It is referring to damages done by man. Shmuel said: It is referring the damage of *shein*.

The *Gemora* cites Scriptural sources for their respective opinions. (3b)

INSIGHTS TO THE DAF

When we are Uncertain Regarding Liability

The *Gemora* asks: Why didn’t the Torah just write *v’shilach*, which connotes both *shein* and *regel* (which the *Gemora* proceeds to prove), and *u’vier* would not be necessary?

The *Gemora* answers: If the Torah would only write *v’shilach*, we would only have learned that one is liable for one of those damages; either *regel* because its damage is usual, or *shein* because it has physical pleasure when damaging (but we would not have learned that there is liability for both types).

The *Gemora* asks: But they are both equal, so let us derive both types of damages from one verse, for which one of them would be excluded?

The *Gemora* answers: If *shein* and *regel* would be derived from one verse, we might have said that one is liable only if the owner sent the animal out; however, one would not be liable if the animal went out by itself and damaged. The Torah therefore writes *u’vier* as well.

The Rashba asks on the *Gemora*’s question: Why would we learn out both damages from one verse based on the fact that we do not know which one of them to exclude? On the contrary! Since we are trying to extract money from the damager, why don’t we apply the principle that the one who is attempting to extract money is the one who is obligated to bring the proof?

A possible answer on this question is that damages are treated as prohibitions, and the rule is with respect to prohibitions that when in doubt, we rule stringently. Accordingly, we can understand why both damages will



be included in one verse since we do not know which one to exclude. Why didn't the Rashba answer like this?

The Chasam Sofer adds that this is even more problematic, for the Rashba himself (2b) uses this principle to answer a different question. The *Gemora* had stated: One might think that when the Torah differentiates between a *tam* (an ox that did not yet gore three times; the owner only pays for half the damage) and a *mu'ad* (an ox that gored already at least three times; the owner pays the full amount of the damage), it is only when the horn is disconnected from the animal (in a case where the animal took its uprooted horn in its mouth and gored; as the case of *Tzidkiyah* was of an unattached set of horns). However, when an animal gores with its horns attached to its head, it should always pay full damages. This is why the *braisa* quotes the additional verse from the Torah.

The Rashba there asked: On the contrary! Let us say that when an animal gores with its horns attached to its head, it should always pay half damages!?

He answered that damages are treated as prohibitions, and the rule is with respect to prohibitions that when in doubt, we rule stringently. Accordingly, when faced with the option of always paying full damages or paying half, the *Gemora* chooses the option of paying in full.

It would therefore seem that the Rashba is contradicting himself! How do we treat damages? Do we automatically rule stringently because it is like a prohibition, or do we rule leniently, for we are attempting to extract money away from the one who possesses the money, and for that, proof is needed?

The Har Tzvi suggests the following answer: The Levush (C" M 378) writes that not only does the Torah obligate the damager to compensate the person who was damaged, but there also is a prohibition to damage

someone else's property, in the same manner that it is forbidden to steal. If someone does not guard his possessions against inflicting damage on someone else's property, he has violated a Biblical prohibition.

Accordingly, the Rashba can be explained as follows: The *Gemora* above was discussing a case where the damager is certainly obligated to pay. The animal inflicted damage with a disconnected horn in its mouth. The *Gemora's* only question was with respect to the amount of the compensation. Should he always (whether it's a *tam* or a *mu'ad*) pay full damages, or should he only pay half. In such a case, we would rule stringently, for the owner has indeed transgressed the prohibition of allowing his animal to cause damage. He now has to "fix" his sin by compensating the owner for his loss. This would be similar to a case where one said to his fellow, "I know that I owed you money, but I do not know if I paid." He would be obligated to pay. However, in our case, where the *Gemora* is not certain if one should be liable at all for *shein* or *regel*; we must rule leniently. For it is quite possible that the Torah did not mandate that there should be any obligation to guard one's property against causing such a damage. This is why the Rashba asks that if we are uncertain if there is any liability at all, we should rule leniently, and apply the principle of the one who is attempting to extract money is the one who is obligated to bring the proof. Accordingly, there is no contradiction at all.

DAILY MASHAL

Mazal is Not Blind Luck

The *daf* teaches us that *negicha* refers to an ox goring a person, while *negifa* refers to an ox goring another animal. It is easier for an ox to gore another animal than a person, since animals, unlike people, have no *mazal* to protect them.



What is *mazal*? Rashi (*Shabbos* 53b; *Megillah* 3a) writes that everyone has a *malach* [angel] called *mazal* who protects him from injury. The Ramban (*Vayikra* 18:25) explains that although *mazalos* are stars, every star has a *malach* in charge of it.

Origins of the word *mazal*: The *Zohar* (*Vayeira* 115:1) explains that the word *mazal* is derived from *mazil* [outpouring], meaning that abundance from Hashem flows to His creations and is transmitted through the *mazalos*. According to the *Tosefos* (*Chulin* 42b, s.v. *ve'amar*), the fact that people have a *mazal* to protect them, while animals do not, has an interesting halachic implication: an animal is called a *treifa* [expected to die within twelve months] when the cerebral membrane is punctured, but a person in the same condition is not considered a *treifa* since his *mazal* prevents him from dying as easily as an animal.

Grass also has *mazal*: R. Tzadok HaCohen *zt'l* of Lublin (*Sichos Malachei HaShares* Ch. 4) raises a difficult question regarding our Gemara based on *Medrash Rabba* (*Bereishis, parshah* 10), which says every blade of grass has a *mazal* [another version reads "*malach*"] that orders him to grow. Apparently there is no difference between a person and any of Hashem's other creations in this respect; all of them have a *mazal* watching over them. R. Tzadok HaCohen *zt'l* reconciles this apparent contradiction, explaining that there are two levels of *mazal*: Vegetation and animals were blessed with a *mazal* whose only task is to ensure that they grow naturally, but, people have a *mazal* that can save them from misfortune as well.

***Mazal* is not blind luck:** HaRav Eliyahu Eliezer Dessler *zt'l* (*Michtav MeEliyahu* IV, *Bechirah VeMazal*, Ch. 1) explains that it is not by chance that some people have good *mazal* and others do not. Everyone's *mazal* stems from his particular task in life. Each individual has the task of

revealing Hashem's honor in a unique manner. Thus Hashem decrees that he must live under certain conditions through which he can realize his task in this world. While one person's task is to sanctify Hashem's name in poverty, another person might be expected to sanctify Hashem's name through wealth.