Bava Kamma 31 - Handout

# Daf 24b

מתני׳ שור המזיק ברשות הניזק כיצד נגח נגף נשך רבץ בעט ברשות הרבים משלם חצי נזק ברשות הניזק רבי טרפון אומר נזק שלם וחכמים אומרים חצי נזק

“An ox which causes damage in the private domain of him that is injured”—how is this so?

If it gored, pushed, bit, lay down, or kicked in the public domain its owner pays only half damages.

But if in the private domain of him that is injured,

Rabbi Tarfon says, “He pays full damages.”

The Sages says, “Half damages.”

אמר להם רבי טרפון ומה במקום שהקל על השן ועל הרגל ברשות הרבים שהוא פטור החמיר עליהן ברשות הניזק לשלם נזק שלם מקום שהחמיר על הקרן ברה"ר לשלם חצי נזק אינו דין שנחמיר עליו ברשות הניזק לשלם נזק שלם

Rabbi Tarfon said to them: “Now, in a case in which the law dealt leniently with regards to damages caused by the foot and tooth in the public domain, in which case he is exempt, and stringently in the private domain of him that is injured to pay full damages, then since they have dealt stringently with damage caused by the horn in the public domain, ought we not deal more stringently with damage cause by the horn in the private domain of him that was injured, so that full damages be imposed.”

אמרו לו דיו לבא מן הדין להיות כנדון מה ברה"ר חצי נזק אף ברשות הניזק חצי נזק

They (the sages) said to him: “It is enough if the inferred law is as strict as that from which it is inferred: if [for damages caused by the horn] in the public domain half damages [are imposed], so also [for like damages] in the private domain of him that was injured, half damages [are imposed].

אמר להם אף אני לא אדון קרן מקרן אני אדון קרן מרגל ומה במקום שהקל על השן ועל הרגל ברה"ר החמיר בקרן מקום שהחמיר על השן ועל הרגל ברשות הניזק אינו דין שנחמיר בקרן

He said to them: “I shall not derive the law in one case of damage caused by the horn from the law in another case of damage caused by the horn. Rather I will derive the law of damage caused by the horn from the law of damage caused by the foot. Now in a case in which the law dealt leniently with regards to damages caused by the foot or tooth in the public domain, they have dealt strictly with damage caused by the horn, ought we not deal more stringently with damage cause by the horn in the private domain.

אמרו לו דיו לבא מן הדין להיות כנדון מה ברה"ר חצי נזק אף ברשות הניזק חצי נזק:

They (the sages) said to him: “It is enough if the inferred law is as strict as that from which it is inferred: if [for damages caused by the horn] in the public domain half damages [are imposed], so also [for like damages] in the private domain of him that was injured, half damages [are imposed].

גמ׳ ור"ט לית ליה דיו והא דיו דאורייתא הוא דתניא מדין ק"ו כיצד (במדבר יב, יד) ויאמר ה' אל משה ואביה ירק ירק בפניה הלא תכלם שבעת ימים ק"ו לשכינה ארבעה עשר יום אלא דיו לבא מן הדין להיות כנדון

GEMARA. Does R. Tarfon really not hold by the principle of “dayo (it is sufficient)?

Is not dayo from the Torah as it is taught: How does the rule of “all the more so (kal vehomer)” work? “And the Lord said to Moses, If her father had spit in her face, should she not be ashamed seven days?” (Numbers 12:14). All the more so after being rebuked by God she should be [shut out] for fourteen days. Nevertheless, it is enough if the inferred law is as strict as that from which it is inferred.

כי לית ליה דיו היכא דמפריך ק"ו היכא דלא מפריך ק"ו אית ליה דיו

He does not hold by the principle of “dayo” when it contradicts a kal vehomer argument, but when it does not contradict a kal vehomer argument, he does hold by dayo.

התם שבעה דשכינה לא כתיבי אתא ק"ו אייתי ארבסר אתא דיו אפיק שבעה ואוקי שבעה אבל הכא חצי נזק כתיב ואתא ק"ו ואייתי חצי נזק אחרינא ונעשה נזק שלם אי דרשת דיו אפריך ליה ק"ו

In the case there (in the Torah) the seven days [for being rebuked by God] are not written, and a kal vehomer comes and makes them fourteen, and then “dayo” comes and reduces seven bringing the total to seven. But here, half damages are written and the kal vehomer argument comes to add another half damages thereby bringing us to full damages. And if you use a dayo argument, the kal vehomer would be refuted.

ורבנן שבעה דשכינה כתיבי תסגר שבעת ימים

And the rabbis? The seven days for being rebuked by God are written, “Let her be shut out from the camp for seven days” (Numbers 12:14).

ור"ט ההוא תסגר דדרשינן דיו הוא

And R. Tarfon?  He holds that the ruling in the words, “Was removed”, is a result of the “dayo” rule.

ורבנן כתיב קרא אחרינא ותסגר מרים

And the rabbis? There is another verse: “And Miriam was shut out from the camp” (Numbers 12:15).

ור"ט ההוא דאפי' בעלמא דרשינן דיו ולא תאמר הכא משום כבודו של משה אבל בעלמא לא קמ"ל

And R. Tarfon? He holds that this verse is necessary to teach that even in general we can make a “dayo” argument, and that we do not say that this argument can be made here due to Moses’s honor, but in general it cannot be made. Therefore it comes to teach us [that we can always make a “dayo” argument].

א"ל רב פפא לאביי הא האי תנא דלא דריש דיו ואע"ג דלא מפריך ק"ו דתניא קרי בזב מניין ודין הוא מה טהור בטהור טמא בטמא טמא בטהור אינו דין שיהא טמא בטמא

וקא מייתי לה בין למגע בין למשא

R. Papa said to Abaye: Behold, there is a Tanna who does not employ the principle of dayo even when it does not contradict a kal vehomer, for it was taught: From where do we know that the semen of a zav [defiles]? This is a logical conclusion: If that which is pure (spit) which is pure in the case of a pure person defiles in the case of an impure person (a zav), should it not be that that which is impure (semen) defiles in the case of an impure person (a zav).

And he applies this both to contact and carrying.

ואמאי נימא אהני ק"ו למגע אהני דיו לאפוקי משא

But why? Let us say that the kal vehomer argument works for contact, and the dayo argument works to exclude carrying.

וכי תימא למגע לא אצטריך ק"ו דלא גרע מגברא טהור איצטריך סד"א (דברים כג, יא) מקרה לילה כתיב מי שקריו גורם לו יצא זה שאין קריו גורם לו אלא דבר אחר גרם לו קמ"ל

If you were to say defilement by contact does not need a kal vehomer argument for it is no less than if [the semen were discharged] by a pure person. This argument is necessary, lest you say “If something happens to him at night” (Deuteronomy 23:11) is written—one whose emission causes him to be impure, which excludes this one whose emission does not cause him to be impure rather something else does. Therefore it comes to teach that [the semen of a zav does defile].

מידי ולא ד"א כתיב

Does this verse say “this, but not something else”?

ומאן תנא דשמעת ליה דאמר שכבת זרע של זב מטמא במשא לא ר"א ולא רבי יהושע דתנן שכבת זרע של זב מטמא במגע ואין מטמא במשא דברי רבי אליעזר ורבי יהושע אומר אף מטמא במשא לפי שאי אפשר בלא צחצוחי זיבה

Who is the Tanna from whom you heard that semen of a zav defiles by carrying? Neither R. Eliezer, nor R. Joshua, for it was taught: The semen of a zav defiles by contact but it does not defile by carrying, the words of R. Eliezer. R. Joshua holds that it also defiles by carrying, for it certainly contains particles of zivah (non-seminal) discharge.

עד כאן לא קאמר רבי יהושע התם אלא שאי אפשר בלא צחצוחי זיבה הא לאו הכי לא

R. Joshua said this only because it is impossible for a zav to have seminal discharge without particles of zivah discharge. But if we could isolate the zav’s semen, in and of itself it would not defile by carrying. In other words, in principle, R. Joshua seems to agree with R. Eliezer.

אלא האי תנא הוא דתנן למעלה מהן זובו של זב ורוקו ושכבת זרעו ומימי רגליו ודם הנדה מטמאין בין במגע בין במשא

Rather it is the following tanna, as it was taught: Above them is the discharge of a zav, his spit, his semen and his urine, and the blood of a menstruant, for they convey impurity both by contact and by carrying.

ודלמא ה"נ לפי שא"א בלא צחצוחי זיבה

But perhaps this is also because it is impossible without particles of zivah?

א"כ לתנייה גבי זובו מ"ש דקתני לה גבי רוקו אלא משום דאתי מרוקו

If this had been the reason, it should have taught it in juxtaposition to zivah discharge. Why did it teach it in juxtaposition to spit? To teach that [the fact that it defiles in and of itself] is derived from spit.

# Mishnah Kelim 1:1

אֲבוֹת הַטֻּמְאוֹת, הַשֶּׁרֶץ, וְשִׁכְבַת זֶרַע, וּטְמֵא מֵת, וְהַמְּצֹרָע בִּימֵי סָפְרוֹ, וּמֵי חַטָּאת שֶׁאֵין בָּהֶם כְּדֵי הַזָּיָה, הֲרֵי אֵלּוּ מְטַמְּאִין אָדָם וְכֵלִים בְּמַגָּע, וּכְלֵי חֶרֶשׂ בַּאֲוִיר, וְאֵינָם מְטַמְּאִין בְּמַשָּׂא:

The fathers of impurity are a: sheretz, semen, [an Israelite] who has contracted corpse impurity, a metzora during the days of his counting, and the waters of purification whose quantity is less than the minimum needed for sprinkling. Behold, these convey impurity to people and vessels by contact and to earthenware by presence within their airspace, But they do not convey impurity by being carried.

# Mishnah Kelim 1:2

לְמַעְלָה מֵהֶם, נְבֵלָה, וּמֵי חַטָּאת שֶׁיֶּשׁ בָּהֶם כְּדֵי הַזָּיָה, שֶׁהֵם מְטַמְּאִין אֶת הָאָדָם בְּמַשָּׂא לְטַמֵּא בְגָדִים בְּמַגָּע, וַחֲשׂוּכֵי בְגָדִים בְּמַגָּע:

Above them are nevelah and waters of purification whose quantity is sufficient to be sprinkled, for these convey impurity to a person [even] by being carried so that he in turn conveys impurity to clothing by contact. Clothing, however, is free from impurity where there was contact alone.

# Mishnah Kelim 1:3

לְמַעְלָה מֵהֶן, בּוֹעֵל נִדָּה, שֶׁהוּא מְטַמֵּא מִשְׁכָּב תַּחְתּוֹן כָּעֶלְיוֹן. לְמַעְלָה מֵהֶן, זוֹבוֹ שֶׁל זָב וְרֻקּוֹ וְשִׁכְבַת זַרְעוֹ וּמֵימֵי רַגְלָיו, וְדַם הַנִּדָּה, שֶׁהֵן מְטַמְּאִין בְּמַגָּע וּבְמַשָּׂא. לְמַעְלָה מֵהֶן, מֶרְכָּב, שֶׁהוּא מְטַמֵּא תַּחַת אֶבֶן מְסָמָא. לְמַעְלָה מִן הַמֶּרְכָּב, מִשְׁכָּב, שֶׁשָּׁוֶה מַגָּעוֹ לְמַשָּׂאוֹ. לְמַעְלָה מִן הַמִּשְׁכָּב, הַזָּב, שֶׁהַזָּב עוֹשֶׂה מִשְׁכָּב, וְאֵין מִשְׁכָּב עוֹשֶׂה מִשְׁכָּב:

Above them is one who had intercourse with a menstruant, for he defiles the bottom [bedding] upon which he lies as he does the top [bedding]. Above them is the issue of a zav, his spit, his semen and his urine, and the blood of a menstruant, for they convey impurity both by contact and by carrying. Above them is an object on which one can ride, for it conveys impurity even when it lies under a heavy stone. Above the object on which one can ride is that on which one can lie, for contact is the same as its carrying. Above the object on which one can lie is the zav, for a zav conveys impurity to the object on which he lies, while the object on which he lies cannot convey the same impurity to that upon which it lies.