



## Kilei Kerem – Recognisable Damage

The *Mishnah* records a debate regarding a case where one takes the branches of his vines and covers the produce of another's field. According to the first opinion, the produce becomes *assur* and the owner of the vineyard must compensate the owner of the produce for the loss. *R' Yossi* and *R' Shimon* however argue that in the context of *kilei ha'kerem*, one cannot make the another's produce *assur*. Previously (Vol 1, Iss 18) we looked at the opinion of *R' Yossi* and *R' Shimon*. In this article we will try to understand part of the opinion of the *Tana Kama*.

The *Gemara* (*Bava Batra* 2b) discusses a similar case, in which a fence dividing a vineyard and field falls. The *Gemara* explains that the owner of the field can instruct the owner of the vineyard to rebuild the fence. *Rashi* explains that ordinarily without a fence, one is not allowed to plant any trees within four *amot* of another's field. *Rashi* (26a) also explains that this is so the owner of the orchard will not stray into the field when ploughing the soil of the orchard. Since this law applies to the vineyard owner, he is responsible for repairing the fence. The *Gemara* continues that if he neglects to do so, then much like in our *Mishnah*, the produce becomes *assur* and vineyard owner must compensate the field owner for the loss incurred.

The *Tosfot* explains that ordinarily we rule, *hezeik she'eino nikar lo shemei hezek* – damage that is not recognizable is not considered damage. One example of this is where one makes another's *taharot tameh* (*Gittin* 53a). The *Tosfot* argues that this case is different because one can see the vines are too close to the field. One might argue, that one can also see a *sheretz* (a source of *tumah*) being placed on the food, so that damage there should also be considered recognizable. The *Tosfot* answer however that even if a *sheretz* was placed on the food, it does not mean that it is *tameh* as the food may not yet have undergone *hechsher*. Consequently, the damage is not recognizable.<sup>1</sup>

The *Tosfot* reject the following alternate solution. One might suggest that in this case, the damage is really not considered recognizable. Nevertheless, we find that in the case of *metameh* the *Chachamim* instituted a *knas* (fine) in order to deter such malicious practices. Similarly, in this case, perhaps the obligation to compensate is simply a *knas*. The *Tosfot* rejects this suggestion since in our case, the vines too must be destroyed. Since the vineyard owner will be losing out as well, there would be no need for an additional deterrent. Furthermore, if it were a *knas* it should only be applied where case was *meizid* – deliberate.

The *Ramban* (*Kuntrus Dinei DeGarmi* 26) provides a different reason to differentiate between our case and the case of *metameh*. He explains that once the vineyard owner gives up on repairing the fence, the mixture is *assur* since the violation is recognizable. He continues that it is different to the "damage" done by the *sheretz* since the mixture of the vineyard and field is one that persists until it is returned to its original state.

*Rav Lichtenstein* (*Shiurei HaRal, Dinei DeGarmi*, p. 67) explains that much like the *Tosfot*, the *Ramban's* position is based on outside observation. However, there is still a fundamental difference. According to the *Tosfot* it appears that distinction is based on whether an observer can recognize whether the violation and resulting damage has occurred. According to the *Ramban* however, the consideration is whether a change has occurred in the identity of the object in question. In the case of *metameh* there has been no change in identity of the food, the change is purely legal – it was *tahor* and now it is *tameh*. In the case of *kilei hakerem* however on a physical level there is a new identity. Previously there was a vineyard and field – both separate and distinct. After the fence falls there a new mixed entity that did not exist before. In other words, for the damage to be recognizable, according to *Ramban*, there must be a recognizable physical change as well as a legal one.

*Yisrael Bankier*

<sup>1</sup> Rav Lichtenstein asks that the same rationale can be applied to *kilei hakerem* in order to define the damage as not recognizable. Recall that if the owner is not happy with the presence of *kilayim* (and makes efforts to remedy the situation) then it does not become *assur*. Since it not apparent to an observer whether the presence of the *kilayim* is pleasing or not then it should be considered *hezek sheino nikar*.

### Revision Questions

כלאים ז' א' – ח' ז'

- Explain what is meant by the term *mavrich*? (ז' א')
- How much earth must cover a sunken shoot such that seeds can be planted over it? When is one allowed to plant seeds if less than this amount covers the vine-shoot? (ז' א')
- If someone is *mavrich* from three vines in a row, when does one regard all six vines as a *kerem*? (ז' ב')
- What is the law regarding planting near a dried-up vine? (ז' ב')
- What are the four cases listed in the *mishnah* where it is forbidden to plant in the area, yet if one does, the grain is not prohibited due to *kil'ei kerem*? (ז' ג')
- Explain the debate regard causing *kil'ei kerem* with one's vine in his friend's field? (ז' ד')
- What was the ruling of *R' Akiva* in the case where someone caused *kil'ei kerem* in their field during the *shmittah* year? (ז' ה')
- What should one do if their property, having been forcefully seized, was returned to them with *kil'ei kerem* during *chol ha'moed*? (ז' ו')
- What should one do if the wind blew his vines such that they bent over other produce? (ז' ז')
- If grain is within a vineyard during which period of time (include the start and finish times) of the growth of both plants do they become *assur be'hana'ah*? In other words, what is the *onat ha'kiddush*? (ז' ח')
- When is it forbidden to place a pot-plant containing a vegetable in a vineyard? (ז' ט')
- Explain the basic differences between *kil'ei kerem*, *kil'ei zeraim*, *kil'ei begadim* and *kil'ei behema*? (ז' י')
- What is the scope of the law when the Torah forbids using an ox and donkey to plough together – does it also apply to other animals? (ז' יא')
- What is the punishment for *kil'ei behema*? (ז' יב')
- Would a passenger in a wagon being pulled by two different animals also transgress this prohibition? (ז' יג')
- Can one tie a horse to the side a wagon that is being pulled by two oxen? (ז' יד')
- Does the prohibition of *kil'ei behema* apply to a horse and an animal which is a product of *kil'ei behema* whose mother was a horse? (ז' טו')
- If one cannot identify the parentage of mules, can they be used together for working in the field? (ז' טז')
- Into what category do the following animals fit?
- Hedgehog?
- *Chuldat HaSna'im*? (ז' טז')
- Dog?
- Pig?
- Elephant and monkey? (ז' טז')
- Does one transgress the prohibition of *kil'ei behema* if a human being and an ox are used together to pull a wagon? (ז' טז')

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### Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
31 July כ"ה תמוז	1 August כ"ו תמוז	2 August כ"ז תמוז	3 August כ"ח תמוז	4 August כ"ט תמוז	5 August א' אב	6 August ב' אב
Kilayim 9:1-2	Kilayim 9:3-4	Kilayim 9:5-6	Kilayim 9:7-8	Kilayim 9:9-10	Sheviit 1:1-2	Sheviit 1:3-4

