

The *Shor* is not similar to the *Mav'eh*

לא הרי השור כהרי המבעה –

OVERVIEW

When the משנה states לא ראי זה [or the similar expression of מבעה זה] it can be understood to mean that שור [or the first 'זה'] is not similar to מבעה [or the second 'זה']; in the sense that the first case (שור) is lacking something which the second case (מבעה) possesses.

We derive certain laws by a process which is known as a צד השוה – a common factor. A certain law, 'X', applies to 'A' and 'B'. We want to apply this law, 'X', to 'C' as well. However we cannot derive C from A, because A possesses a certain factor, 'a', which may explain why this rule (X) should apply only to A and not to C, which lacks this factor 'a'. Similarly we cannot derive C from B, because B possesses a different factor, 'b', which C lacks. However A does not possess factor b, and B lacks factor a. [In the גמרא language this is stated as לא ראי זה כראי זה ולא ראי זה. A is not similar to B, and B is not similar to A.] Therefore we reason, that it cannot be factors a or b which cause A and B to possess rule X, for A lacks factor b [the first לא ראי זה],¹ and B lacks factor a [the second ולא ראי זה].² However, A, B, and C all share a common factor 'c'. We assume that since A, B, and C share factor c, so just as A and B have rule X; similarly C too should have rule X.

In conclusion: the term לא ראי זה refers to the חומרא [the seemingly contributing factor of the second זה], which the first זה is lacking.

If we were to follow this approach concerning the phrase לא הרי השור כהרי המבעה in our משנה; it would mean that שור is lacking the חומרא of מבעה (just as by a צד השוה, where the phrase לא ראי is discussing the חומרא).³ תוספות, however negates this interpretation.

פירוש⁴ אין קולתו של שור כקולתו של מבעה⁵ -

¹ A lacks factor b, the חומרא and seeming cause of rule X by B, and nevertheless rule X applies to A.

² B lacks factor a, the חומרא and seeming cause of rule X by A, and nevertheless rule X applies to B.

³ According to this understanding, the משנה is teaching us that since שור is lacking the חומרא of מבעה (where יש הנאה), therefore if the תורה would have written only מבעה, we would not be able to derive שור from מבעה, since מבעה is more חמור than שור.

⁴ The term פירוש is used in תוספות to indicate that the explanation is somewhat different from what we may have assumed. The explanation תוספות is negating will be stated shortly in this תוספות. See footnote # 3.

⁵ This means that שור is not as 'mild' as מבעה; rather מבעה has a קולא that שור does not possess. The phrase לא הרי השור כהרי המבעה is to be understood (see 'Overview') that שור is lacking something which מבעה has. It can be interpreted in regards to a קולא or a חומרא. תוספות maintains that it is concerning a קולא.

The explanation of the phrase 'לא הרי השור כהרי המבעה' is that **the mildness of שור is not similar to the mildness of מבעה** -

כדמפרש לקמן⁶ בגמרא למאן דאמר⁷ תנא שור לקרנו ומבעה לשינו⁸ -

As the גמרא explains later according to the one who maintains that שור refers to קרן and מבעה refers to שן; they do not have the same קולא -

משום דשור כוונתו להזיק ומבעה אין כוונתו להזיק -

Because by שור (which refers to קרן) **his intent is to do damage** (maliciously); however by מבעה (which refers to שן) the animal **has no intent of doing damage** (he is eating to satisfy his hunger; there is no malicious intent). מבעה has this קולא of אין כוונתו להזיק, that שור is lacking -

ולפיכך אי כתב רחמנא שור לא אתי מבעה מיניה שהוא קל מיניה -

So therefore if the תורה would have (only) written that שור is חייב, **we could not derive from שור that מבעה is חייב, since מבעה is milder than שור**; for מבעה is חייב as opposed to שור where it is חייב. We would have maintained that מבעה is פטור even if שור is חייב. This is the meaning of 'לא הרי השור כהרי המבעה'.

ואין פירושו כשאר מקומות שבתלמוד לא ראי זה -

ואין פירושו כשאר מקומות שבתלמוד לא ראי זה -
And the explanation of 'לא הרי השור כהרי המבעה' here is not like in the other places in the תלמוד where the גמרא uses the phrase 'this is not comparable', etc. -

דהתם פירושו אין חומרא של זה כחומרא של זה ולכך אין החומרות גורמות זה הדין -

For there (elsewhere) the interpretation of the phrase 'לא ראי זה' means that the severity of this one (A) is not similar to the severity of the other (B), and vice versa; A is lacking the severity factor that B possesses, and nevertheless the rule that applies to B, applies to A as well (and the converse is also true). Therefore we can understand that it is not the חומרות (of A or B) that cause this law (since A is lacking the חומרא of B and vice versa)⁹ -

אלא הצד השווה שבהן גורם הדין -

But rather it is their common factor that causes this law. In the phrase 'לא ראי זה' we are discussing the חומרות of the השווה; צד השווה; however here we are discussing the קולות.

⁶ ג,ב (ד,א).

⁷ שמואל interpreting רב יהודה.

⁸ פנ"י. See גמרא. chose this interpretation of שור (instead of the conclusive opinion that it refers to רגל), perhaps because it is the first opinion mentioned in the גמרא.

⁹ See 'Overview'. [Elsewhere, the intent of the 'לא ראי זה' is to explain why this particular factor (חומרא) cannot be the cause of this rule (and therefore we can derive from the צד השווה a new law); however here the (initial) thrust of 'לא ראי זה' is to explain that the תורה needed to write all the אבות ד', since we cannot derive one אב from the other (but not that we can derive a new law from the אבות ד' [as in a regular צד השווה]; that comes later).]

anticipates a question and resolves it:

ושינה כאן התלמוד¹⁰ פירשו מבשאר מקומות¹¹ -

And the reason the גמרא here changes its usage of the phrase לא הרי from all other places is -

משום דהזכיר החמור תחילה בלא זה וזה שיש בהן רוח חיים:

ולא זה וזה שיש בהם רוח in the case of the חמור first mentioned the משנה as opposed to אש which has no רוח חיים; and therefore אש cannot be derived from the previous two (שור and מבעה). The משנה made it clear in this latter case that we cannot derive the second (אש) from the first (two, שור ומבעה); the same pattern must also exist in the first לא הרי (שור); the reason must be that we cannot derive the second (מבעה) from the first (שור), The reason must be that שור is more חמור than מבעה; meaning that מבעה has a קולא which שור is lacking.

SUMMARY

In our משנה the term לא הרי means we cannot derive the second from the first because the second is more קל than the first. In a צד השווה the term לא ראי זה means that the חומרא of the second is not the cause for the rule since the first does not possess it.

THINKING IT OVER

Why did not the משנה state חיים כהרי אלו שיש בהם רוח חיים, and then we could interpret this לא הרי concerning the חומרות like all the other לא גמרא?¹²

¹⁰ In the משנה itself it does not (seemingly) state clearly by מהרי המבעה, לא הרי השור כהרי המבעה, whether we are discussing the חומרות or קולות. It is not clear from the משנה if לא הרי השור כהרי המבעה means that if שור would be written we could not derive מבעה, or it means the converse; if מבעה would be written we could not derive שור. However, the גמרא clearly states that it is the former and not the latter.

¹¹ Tosfos is asking, why does not the גמרא say that by מהרי המבעה, לא הרי השור כהרי המבעה, we mean that שור is lacking the חומרא of מבעה (for מבעה is להזיקו but not שור) and therefore if the תורה would have written מבעה we could not derive שור from it (and vice versa by מהרי המבעה כהרי השור). This interpretation would make this לא הרי similar to all the other לא הרי, in the sense that we are discussing the חומרות.

¹² See נחלת משה and מהר"ם.