



Volume 10. Issue 1

## Seder/Masechet Nezikin

This week we started a new *masechet* and a new *seder* – *masechet Bava Kama* and *seder Nezikin*. In this issue we are going to do something a little different and look at the language used for the names of this *masechet* and *seder* as means for setting the tone for our continuing study.

The *Rambam* in his introduction to *Mishnah* points out that the first three *masechtot* – *Bava Kama*, *Bava Metzia* and *Bava Batra* – are really one *masechet* that has been divided into three.<sup>1</sup> Indeed the *shinui neschaot* cites a manuscript that refers to the three *masechtot* as *masechet Nezikin* and lists the chapters from one to thirty. The *Tosfot Yom Tov* notes that *Masechet Keilim*, another *masechet* made up of thirty chapters, in the *Tosephta* is also divided into three *masechtot* – *Bava Kama*, *Bava Metzia* and *Bava Batra*.

Granted that *kama*, *metzia* and *batra* mean first, middle and last, how do we understand the term “*bava*”. The *Tosfot Yom Tov* explains that we find the word in the *targum* (translation) to *megillat Ester*,<sup>2</sup> as a translation of the word *sha'ar*, meaning gate. He notes that there are many *sefarim* that divide the work into sections naming each as a *sha'ar* or *petach*. He continues explaining that it is fitting that the term given to a section of *Mishnah* be “*sha'ar*”. When learning the *Torah she'bichtav*, the “gates” to understand the minutia of *Torah* law are closed. It can appear difficult to derive legal conclusion with certainty. The *Mishnah, Torah She'Be'Al Pe*, unlocks the gates to reveal *Torah* wisdom.

However as we enter the first gate, we are immediately struck with a difficulty. The *Mishnah* starts by explaining that there are four categories (*avot*) of “*Nezikin*”. What is the meaning of the word? Since it is also the name of the *seder* it is worthwhile understanding its meaning.

The *Tosfot Yom Tov* cites the *Ran* who explains that the term *nezikin* always means, that which causes *nezek* (damage). The difficulty with that explanation is that a more appropriate word should have been “*mazikim*” as a *mazik* means something that causes damage.

The *Tosfot Yom Tov* therefore explains that term *nezikin* is constructed from two different tenses – passive (*nifal*) and active (*mafil*). The passive tense would be *nizakin* and the active *mazikim*. He continues that it should have written *mazikin* however the *nun* was used in the beginning to introduce the passive tense, yet the *yud* remained indicated the active tense. Why? The *Tosfot Yom Tov* explains that in truth the one that causes damage is himself damaged - “*ki nakeh lo yinake*”.

We could suggest therefore that the very name of the *seder* sets the tone for the *seder*. When it comes to much of the civil law that will be studied, there is a tendency to think that the matters are purely financial. If damage is caused, compensation should be paid and the matter is over. One might wrongly conclude that they can cause damage as long as the compensation is paid. The *Rishonim* however note that there are prohibitions transgressed by the mere act of causing (or allowing) damage. Some point to *pesukim* like “Do not steal” (*R' Yonah*) or *pesukim* that demand responsibility is taken for one's property. Yet others however look to different, broader ethical imperatives as the source of the prohibition – “love your neighbor like your self” (*Yad Rama*), “her ways are ways of pleasantness and all her paths are peace” (*Shut Ha'Rosh*) and the obligation to return a lost item (*Rashash*). The *Seder* is therefore given the name with an odd grammatical construct to teach that we are not only going to learn about resolutions to financial disputes but the correct ethical behavior as well.

*Yisrael Yitzchak Bankier*

<sup>1</sup> This is actually a debate in the *Gemara* (102) between *Rav Yosef* and *Rav Huna*. The *Tosfot Yom Tov* understands that the *Rambam* rules like *Rav Yosef* (see inside).

<sup>2</sup> At this point it is worth noting that we are now situated between last week's *parashah* of *Mishpatim*, which contains the source of many of the laws we will be learning, and *Purim* that is next week.

### Revision Questions

קידושין ד' ה' י"ד

- How many generation back does a *Kohen* need to check in his fiancé's past when marrying a *Kohenet*? Or marrying an *Yisraelit*? (ד': די)
- Regarding the previous question to which case is marrying a *Leviya* compared? (ד': די)
- When checking the lineage, if an ancestor had one of which five professions is it then not necessary to continue checking further back? (ד': די)
- Which of a *bat chalal* or a *bat chalalah* can marry a *Kohen*? (ד': די)
- According to *R' Eliezer ben Ya'akov* when is the daughter of a *ger* forbidden from marrying a *Kohen*? (ד': די)
- Is a parent believed when they say that their child is a *mamzer*? (ד': די)
- If a man sent a *shaliach* to marry off his (minor) daughter, but then went and decided to marry off his daughter himself, what is the law if the *shaliach* married off the daughter first? (ד': די)
- What is the law regarding a case where a couple went overseas, yet the man returned with children claiming that his wife that he left with gave birth to these children and then passed away? (ד': די)
- What is the law, relating to *yichus*, regarding a case where a man returns from abroad saying:
  - "This is my wife that I married while away and these are her children"?
  - "I married while away and my wife died, and these are the children from that relationship"?
- Does *yichud* apply where there is:
  - Two men and one woman?
  - Two women and one man? (Include the exception.)
  - A mother and son?
- What profession should a single man refrain from being engaged in?
- According to *R' Yehuda* a majority of which professionals are *reshaim*? Are *ksheirim*? Are *tzadikim*?

בבא קמא

- What are the four *avot nezikim* and how are they different from each other?
- What are the three criteria of objects that one is liable for if he damaged them?
- In which two domains is one exempt from damage caused by his property?
- How is compensation determined and where?
- What are the two criteria placed on witnesses to obligate one to compensate for damages?
- What does the *Mishnah* mean by the following phrase:
 

"וההנזק והמזיק בתשלומין"
- What are the five *Tamin*?
- What are the five *Mu'adin*?
- Can a lion ever be considered a tame animal?
- What are the two differences between a *tam* and a *mu'ad*?

### Local Shiurim

#### Melbourne, Australia

##### Sunday -Thursday

10 minutes before *Mincha*  
Mizrachi Shul  
 Melbourne, Australia

##### Friday & Shabbat

10 minutes before *Mincha*  
Beit Ha'Roeh  
 Melbourne, Australia

#### Efrat, Israel

*Shiur in English*

##### Sunday -Thursday

Rabbi Mordechai Scharf  
 9:00am  
Kollel Magen Avraham  
 Reemon Neighbourhood

#### ONLINE SHIURIM

*Rabbi Chaim Brown*  
[www.shemayisrael.com/mishna/](http://www.shemayisrael.com/mishna/)

*Rav Meir Pogrow*  
[613.org/mishnah.html](http://613.org/mishnah.html)

*Rabbi E. Kornfeld*  
*Rabbi C. Brown*  
<http://www.dafyomi.co.il/calendars/myomi/myomi-thisweek.htm>

#### SHIUR ON KOL HALOSHON

*Rabbi Moshe Meir Weiss*  
 In US dial: 718 906 6400  
 Then select: 1 – 2 – 4

### Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
17 <sup>th</sup> February ז' אדר	18 <sup>th</sup> February ח' אדר	19 <sup>th</sup> February ט' אדר	20 <sup>th</sup> February י' אדר	21 <sup>th</sup> February יא' אדר	22 <sup>th</sup> February יב' אדר	23 <sup>th</sup> February יג' אדר
Bava Kama 2:1-2	Bava Kama 2:3-4	Bava Kama 2:5-6	Bava Kama 3:1-2	Bava Kama 3:3-4	Bava Kama 3:5-6	Bava Kama 3:7-8

