**לא הרי השור כהרי המבעה – The *Shor* is not similar to the *Mav’eh***

Overview

When the משנה states לא הרי השור כהרי המבעה [or the similar expression of לא ראי זה כראי 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 כראי 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]](#footnote-1) and B lacks factor *a* [the second[[2]](#footnote-2) ולא ראי זה]. 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]](#footnote-3) תוספות, however negates this interpretation.

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**פירוש[[4]](#footnote-4) אין קולתו של שור כקולתו של מבעה[[5]](#footnote-5) -**

**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 לקמן[[6]](#footnote-6) בגמרא למאן דאמר[[7]](#footnote-7) תנא שור לקרנו ומבעה לשינו[[8]](#footnote-8) -**

**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 אין כוונתו להזיק as opposed to שור where it is כוונתו להזיק. We would have maintained that מבעה is פטור even if שור is חייב. This is the meaning of לא הרי השור כהרי המבעה.

תוספות tells us the interpretation which he is negating:

**ואין פירושו כשאר מקומות שבתלמוד לא ראי זה -**

**And the explanation** of לא הרי וכו' 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]](#footnote-9) -

**אלא הצד השוה שבהן גורם הדין -**

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

תוספות anticipates a question and resolves it:

**ושינה כאן התלמוד[[10]](#footnote-10) פירושו מבשאר מקומות[[11]](#footnote-11) -**

**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:**

**Because** the משנה **mentioned the חמור first** in the case of **ולא זה וזה שיש בהם רוח חיים** 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 השור כהרי המבעה 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 השוה 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 ולא הרי האש שאין בו רוח חיים כהרי אלו שיש בהם רוח חיים, and then we could interpret this לא הרי concerning the חומרות like all the other לא ראי זה כראי זה?[[12]](#footnote-12)

1. A lacks factor *b*, the חומרא and seeming cause of rule X by B, and nevertheless rule X applies to A. [↑](#footnote-ref-1)
2. B lacks factor *a,* the חומרא and seeming cause of rule X by A, and nevertheless rule X applies to B. [↑](#footnote-ref-2)
3. According to this understanding, the משנה is teaching us that since שור is lacking the חומרא of מבעה (where יש הנאה להיזקה), 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. [↑](#footnote-ref-3)
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. [↑](#footnote-ref-4)
5. This means that שור is not as ‘mild’ as מבעה; rather מבעה has a קולא that שור dos 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. [↑](#footnote-ref-5)
6. ג,ב (ד,א). [↑](#footnote-ref-6)
7. רב יהודה interpreting שמואל. [↑](#footnote-ref-7)
8. תוספות 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. See פנ"י. [↑](#footnote-ref-8)
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 השוה a new law); however here the (initial) thrust of לא הרי וכו' is to explain why the תורה wrote all the ד' אבות, since we cannot derive one אב from the other (but not that we can derive a new law from the ד' אבות; that comes later).] [↑](#footnote-ref-9)
10. In the משנה itself it does not (seemingly) state clearly by לא הרי השור כהרי המבעה, whether we are discussing the קולות or the חומרות. 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. [↑](#footnote-ref-10)
11. תוספות is asking, why does not the גמרא say that by לא הרי השור כהרי המבעה, we mean that שור is lacking the חומרא of מבעה (for מבעה is יש הנאה להזיקו but not שור) and therefore if the תורה would have written מבעה we could not derive שור from it (and vice versa by לא הרי 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. [↑](#footnote-ref-11)
12. See מהר"ם and נחלת משה. [↑](#footnote-ref-12)