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**Le-toldot ha-ḳaṭegoryah shel isure "‘ovadin de-ḥol"
be-Shabat ve-yo[m] ṭ[ov] ve-yiḥusah la-ḳaṭegoryah shel
isure ha-"shevut"**

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Abstact "לוהב השועש ךרדכ" phrases and the category of "Ovadin de'chol"

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Abstract

"כדרך שעושה בחול" phrases and the category of "Ovadin de'chol"

1. Many of the commentators view statements containing the phrase "כדרך שעושה בחול" ("as he does on weekdays" (hereafter referred to as: "כדשע"ב) in the Tannaitic literature as indicating that the Prohibitions belong to the Prohibitions called "עובדין דחול" ("done in a weekday manner"). These statements are found only in the Tosefta and the Baraitot. We have investigated the various possible interpretations of this phrase against the background of similar comparative or evaluative expressions in the form of "כדרך ש" present in Tannaitic literature. After a thorough analysis of these sources we have come to the following conclusions:

A. The statements in question can be interpreted in three ways.

1. As clauses that contain a description that is apposite to a preceding clause in the statement. For example, an analysis of the statement in the Tosefta (Shabbat Chap. 14, (15), 4) "... ובלבד שלא ירדה בידו ובקופה כדרך שעושה בחול" indicates two parallel descriptions; first: "ובלבד שלא ירדה בידו ובקופה" second:

"ובלבד שלא ירדה כדרך שעושה בחול". In this manner it is clear that there is no indication of reason or category in these statements, therefore the original hypothesis that we are talking about a group of Prohibitions that is different from the "Shevut" Prohibitions is not valid.

2. The clause "כדשע"ב" is a continuation of the previous description, and its function is to limit the Prohibition under discussion to performing in its normal fashion, and to permit it, if it is performed in a different fashion. Even with this

method we still have no indication as to the reason or category to which the Prohibition belongs.

3. The clause "כדשע"ב" contains in addition to the manner of performance a hint as to the reason for the Prohibition : it should not be performed in a "secular" way (and not in the meaning of "weekday" as in the two previous interpretations). We are therefore involved with a special group of Prohibitions that are secular in nature and do not conform to the character of the day.

B. The accepted interpretation does not generally veer from the third proposal, however, it is not, in our opinion, the most satisfactory, as:

1. An investigation of the use of the other clauses "כדרך ש" shows that they do not contain any indication as to the reason for the Prohibition .

2. Most important: we do not find in the Mishna or the Tosefta category indications. The category indications are only shown if there is a reason for it, such as a difference of opinion regarding it. It would therefore be very questionable to suppose that particularly in regard to this specific category the editors stress its special relationship.

3. In our opinion, the reason that the phrases "כדשע"ב" that appear in the Tosefta lack the parallelism of the phrases in the Mishna is that the editor of the Mishna abbreviated them with the intention to shorten the texts before him (one of the important goals in the work of the editorship, as shown by Prof. S. I. Friedman in his recent research), it would then be plausible to assume that the editor of the Mishna saw these latter phrases as shown by our first proposal, that the latter part of the phrase repeats the prior description in another format, saw no reason to preserve them in the text of the Mishna. It would seem questionable to say that he understood the

meaning of the phrases according to our second or third proposal which indicates that what was prohibited was performing it only in a "weekday" manner, a point that is so cogent to understanding the halacha and would therefore not be removed by the editor of the Mishna.

C. We have identified three different syntax forms of the phrase "כדשע"ב as they appear in a sentence:

1. "כדשע"ב לא יעשה אדם" (a person is prohibited from doing an act)
2. "ובלבד שלא יעשה כדשע"ב" (= a person is permitted to perform an act)
3. "שלא יעשה כדרך שהוא עושה בחול" (= a person should not perform an act). Our investigation shows that this third syntax form only appears in the Babylonian Talmud Baraitot, this is cause for speculation, as in the Babylonian Talmud there is no doubt as to how the "כדשע"ב" sentences were interpreted as the relationship word ש (should not...) turns the entire phrase into a definite "reason" phrase. Based on this it is not difficult for us to understand why the later commentators took for granted that in the Tannaitic sentences "כדשע"ב" contain a category relationship.

D. In the Jerusalem Talmud (albeit not in the Baraitot as in Babylonian Talmud, only in the "סתמא דגמרא" we encounter clauses of the type "כדשע"ב" with the syntax of proposal 2. The interpretation for some of the sources is as proposal 3, but we are unable to date the appearance of phrases in the subject matter of the Jerusalem Talmud.

E. Amongst the Babylonian Amoraim there were those (= Abbaye) who saw these clauses as explanatory, whose structure became fixed and known. Opposed to them were other Amoraim (= Rav Acha Bar Yaacov) who did not see in these clauses any indication for the reason of the Prohibition, and were bidden to look for the reason of the halacha in the "גזרות שמא", that were derived from one of the "Melachoth" (work).

This finding supports the first commentary analysis that was presented, and explains the fact, on which we will dwell later, that in the course of time differences of opinion amongst the Amoraim developed - along the possibilities mentioned above - in explaining the Tannaitic sources that were studied in conjunction with the phrase "כדשע"ב".

2. The expression "Ovadin De'chol" (weekday manner) (in our context) appears only in the Tractate Bezah (28, a: 29, a).

A. The subject matter in 29, a, explains why Rabbi Yehuda permitted weighing with a scale using a dish or chopper on Yom-tov while the other rabbis prohibited it. On the other hand, we find that the rabbis were more liberal than him in permitting the filling, of a dish that was used for measuring. The answer is that the rabbis opinion was that the use of a scale is work that is performed in a "secular" manner, which is not the case with a dish used for measuring. Rashi, who connects the "Ovadin De'chol" with the Tannaitic phrases "כדשע"ב", which permit prohibited acts when done with a change from the usual manner (according to the third interpretation, which agrees with the second interpretation, that the phrases "כדשע"ב" permits the acts when done with a change from the usual manner), also explains the weighing with the use of a dish or chopper means doing the act in a "secular" manner. The rabbis therefore prohibited it. This is however difficult to understand as this method of weighing is completely different from the method used on weekdays, as can be inferred from the subject matter in the Mishna. We therefore suggest that the term "Ovadin De'chol" does not indicate that the act is prohibited and is permitted when performed with a change but to tell us that this act (weighing) having a "secular" element interferes with the atmosphere of the day and therefore any form of weighing is not permitted, even if it is done with a dish or chopper which is such an obvious change. This consideration is not a

mitigating one as Rashi presents it, but rather a stricter one, that tells that perhaps the act might be permitted with a change, in this case it is prohibited because of its "secular" nature.

B. In addition, we interpreted the subject discussed on Bezah 28, a, in this fashion stressing the importance of the use of the term "Ovadin De'chol", since the use of the term is not made anonymously as in the previous discussion. In this case, it is used by Abbaye (we indicated this in a separate Appendix). It follows that the term was originated by Abbaye who it seems developed it during his days at the Pumbeditha Yeshiva. Additionally, we pointed out the relationship between the terms "כדשע"ב" in regard to the Sabbath and "Ovadin De'chol" in regard to Yom-tov which were both coined by Abbaye).

3. We now proceed to the post Talmudic commentators.

A. Rashi's commentary on the Talmud is responsible for the creation of the category "Ovadin De'chol". He was the first to distinguish between the phrase "כדשע"ב" as used by the Tannaim and the Amoraim (in all its syntactical forms), and the term used in the Babylonian Talmud in regard to Yom-tov "Ovadin De'chol". From this was born the familiar connection in the halachic literature between "Ovadin De'chol" and "Shinnuy" (change). From this point on, the performance of an act in its usual manner on a weekday will only be termed "Ovadin De'chol" - and when done with a "Shinnuy", will be permitted. This leads to the development of the idea in the commentary literature which is influenced by Rashi - prohibited acts that are permitted by the use of "Shinnuy" belong to the category of "Ovadin De'chol".

B. The spread of Rashi's commentary caused the later commentators to regard it as an integral part of the Talmud. This caused many commentators to interpret the

Rambam's commentary as supporting Rashi's interpretation. As a consequence, in those instances where the Rambam quotes the sources in conjunction with the clause "כדשע"ב" his commentators take him to mean that they belong to the category of "Ovadin De'chol" Prohibitions . If that were not sufficient, those statements in our sources that do not have any connection with "Ovadin De'chol" were interpreted by them as though he had formulated them with the clauses in question, and were explained as belonging to the " Ovadin De'chol" Prohibition category.

It is our opinion, that the above does not conform with the Rambam's methodology because:

1. In every instance in his explanation of the laws of Sabbath he quotes our sources that include the clause "כדשע"ב" he takes the trouble to provide a new justification along the lines of "הגזרות שמא" rulings of one of the Melachot. If our sources already provide the justification of "weekday manner" for the Prohibition why is it necessary to use the new justification?

2. The Rambam does not provide a special place for these Prohibitions, but lists them with the other Prohibitions of "Shevut" in chapters 21-24 of the laws of Sabbath.

3. The language he employs when using the clause "כדשע"ב" proves that he saw in them characteristic clause that comes to indicate that the Melachot to which they relate must be done with a "Shinnuy" to be permitted. Accordingly, it would seem that the Rambam understood the clause "כדשע"ב" in the Tosefta according to the second interpretation shown above. But see what we have written on pages 92-93.

4. In one instance we even found that the Talmud provides an explanation for a Prohibition which leaves no doubt as to its meaning "מראית עין" and the Rambam quotes it with the clause "כדשע"ב".

5. In Letter 306 (Blau) the Rambam clarifies his opinion in this subject. He writes that we are not to understand the clauses "כדשע"ב" as Prohibitions that are done in the manner as done on a weekday, if this were so, he points out, it would be forbidden for us to eat, sit at the table etc. in a weekday manner. He therefore explains Abbaye's teaching as requiring additional explanation (as he does in his work in regard to the Sabbath laws) and his intent is that the Prohibition of performing the act in a weekday fashion is to avoid becoming used to doing the Melacha, that the Prohibition is not because it is "secular" but is prohibited because of the "גזרות שמא".

C. However this presents a problem: in the laws of Yom-tov - in contrast to the laws of the Sabbath - the Rambam does not add to the phrase "כדשע"ב" the "גזרה שמא". We would think that only with the laws of Yom-tov is it the Rambam's opinion that there is a category of "secular manner" Prohibitions. But we would also point out that in regard for the laws of Yom-tov too he uses the clause "כדשע"ב" not as a reason for the Prohibition but as a characteristic description only. His point here is that these acts are to be performed with a "Shinnuy" (as was previously clarified at the beginning of his work on the laws of Yom-tov 1,5: because of the "Simchat Yom-tov" ruling, so that he should do these things before the holiday). As a proof of this:

1. Specifically, in the one source in the Talmud where the reason "Ovadin De'chol" is explained (weighing and measuring with an instrument on Yom-tov) the Rambam does not formulate it with the clause "כדשע"ב" (in the laws of Sabbath he adds this Prohibition to the "גזרות שמא"!).

2. In the majority of the occurrences (8 out of 10) of the clause "כדשע"ב" regarding the laws of Yom-tov, our sources (Tannaitic or Amoraic) there is not any mention of the clause "כדשע"ב" or indication of the category of "Ovadin De'chol". Why would the Rambam think that only these 8 instances belong to the category of "Ovadin De'chol"?

Prohibitions? It is therefore, more logical to conclude that the clauses "כדשע"ב" in his writings are not a full reason (see above) or a categorical indication (we have divided his use of this clause into four ways - see pages 92-93).

D. The methods used by Rashi and Rambam represent in our opinion opposing viewpoints in the interpretation of the clause "כדשע"ב". We are able to explain their opposing views only when we come across the possible explanations inherent in the early Tannaitic texts. However we must ask ourselves: Is it possible to find earlier sources for the views expressed by Rashi and the Rambam?

1. We can show that from a study of the sources of the Rambam's explanation of the Mishna it would seem that in his youth the Rambam had the same viewpoint as Rashi, that there is a group of "secular manner" Prohibitions, and at a later date changed his opinion.

2. It seems that "Ritz Giat" of Spain, who did not know of Rashi's work was also of this opinion, a halachic ruling cited by him in the name of Rav Hai Gaon, indicates that the expression "Ovadin De'chol" is a special category of Prohibition.

3. This also can be proved from a responsum of Sar Shalom Gaon and an unidentified Gaonic responsum.

4. We have shown that indications of the Rambam's method also exist in R. Hananael's commentary on the Babylonian Talmud.

E. An examination of the laws of the Sabbath shows a general trend in the work of Sages during the Tannaitic period to contract and place the majority of the Sabbath Prohibitions under the tree of the 39 major Melachot and their derivatives. Y.D. Gilat showed this in his *the Tannaitic Period*, and A. Goldberg in his work on the

development of the "גזרות שמא" in Babylon. This historical trend fits in well with the Rambam's later opinion in that he added to his predecessors by his adding the כדשע"ב Prohibitions to the "גזרות שמא" group of Prohibitions, that were derived from one of the major Melachot, this being the Rambam's trend in his work as evidenced by the three examples cited.