



The Pits

One of the categories of damage we learnt about this week was *bor* – literally a pit. Simply put if one digs a pit in the public domain and an animal falls and is damaged, the person who dug the pit is obligated to pay the damages. One *Mishnah* (3:1) taught that if a person's jug broke in the public domain, and someone slipped on its content or the broken shared, then the (original) owner is liable for damages.

A debate in the *Gemara* (28a) ensues regarding the extent of the liability. *Rav* maintains that the liability is only if the victim clothes got dirtied by the water but he is exempt from any physical injuries caused. *Shmuel* argues that the hazard created as a result of the broken jug is equated with the category of *bor*. With respect to *bor*, one is liable for physical damage or death caused to animals or physical damage caused to humans where as they are exempt from damage caused to *keilim* (utensils/movable property). Consequently *Shmuel* takes the opposite position.

Rav responds that obstacles can only be learnt from *bor* in the instance that the owner declared the spill ownerless. In this case however the spill is considered his property. *Rashi* explains that while the spill still belongs to the original owner it is equivalent to damaged caused by his ox.

Rashi explains that the argument here is based on a more general argument relating to *bor* (50b). *Rav* explains that the liability of *bor* is due damaged caused by confined space (*hevel*) created in its digging. The ground however causes the damage resulting from the impact. Consequently impact alone is not the defining characteristic of *bor*. For *Rav* the fact that the person fell and hit the ground does not constitute *bor* – the broken jug was a merely a *garam* (cause) for the damage. *Rav* therefore uses other metrics in order to categorise the damage.¹ *Shmuel* however argues that the digger is obligated for the *hevel* and even more so for the impact. Consequently, since the victim fell as a result of the obstacle it is considered *bor*.

The *Rashba* quotes the *Raavad* who asks that according to *Rav* which category of *shor* does this fall under? Both *shen* and *regel* are exempt in the public domain and if it were *keren* then only half the damages would need to be paid. The *Raavad* answers that it would be derived from *keren* and considered like a *shor mu'ad*. Since the person wishes to retain ownership and the items are a hazard it is equivalent to a *shor mu'ad*, a dangerous ox.

Yisrael Yitzchak Bankier

¹ The *Rashba* explains that *Rav* therefore must hold the *Mishnah* is referring to when the owner is not *maskir* the items that fell and split. Had he been *maskir* than the owner would be *patur* from *keilim* since it is not his *mammon* and exempt from any physical

damaged that is caused since it was caused by the impact of the ground.

Revision Questions

בבא קמא ב' א' ג' ח'

- Define the class of damages called *Regel*? (ב' א')
- Provide two cases of *regel* where the owner is liable only half-damages? (א' ב')
- Define the class of damages call *Shen*? (ב' ב')
- If an animal consumed something in public domain, what liability is placed on the owner? (ב' ב')
- What liability is placed on the owner of a dog that jumped from a rooftop and broke an object upon landing? (ב' ג')
- When does an animal make a transition from being a *tam* to a *mu'ad*? (Include both opinions) (ב' ד')
- In which domain do the *Chacham* and *R' Tarfon* disagree regarding the liability placed on the owner of a animal that gores another? Explain the debate. (ב' ה')
- Can a human being ever be defined as a *tam*? (ב' ו')
- What liability is place on a person that damages in his sleep? (ב' ו')
- If *Reuven* leaves a bottle in the middle of the street and *Shimon* drives over it, is *Shimon* liable for the damage cause? (א' א')
- What if the bottle caused damage to *Shimon's* car, is *Reuven* liable for the damage? (א' ג')
- If *Reuven* dropped his bottle of juice and it smashed, and then *Shimon* slipped on the juice, is *Reuven* liable? (Explain both opinions) (א' ג')
- If *Reuven* poured his waste water into the street and *Shimon* slipped on it, is *Reuven* liable? (ג' ב')
- What is the *takanah* instituted regarding those that leave their compost bins in the street? Who broadens this *takana* to apply to anything that can potentially cause damage? (ג' ג')
- What is the law regarding two potters, *Reuven* and *Shimon*, both carrying their wares, with *Reuven* walking in front of *Shimon*, and *Reuven* drops one of his pots and *Shimon* subsequently trips on it causing damage? (ג' ד')
- Regarding a case where *Reuven* is carrying a beam and *Shimon* is carrying a pot, in which three cases do we say that *Reuven* is liable if his beam breaks the pot, and in which two cases do we say that he is not liable? (ג' ה')
- If two people run into each other who is liable? (ג' ו')
- Is one liable if they were chopping wood in their property and a chip flew out into the street and caused damage? (ג' ז')
- How is compensation calculated if two oxen cause damage to one another if:(ג' ח')
 - Both are *tamim*?
 - Both are *mu'adim*?
 - One is a *tam* and the other is a *mu'ad*?
- According to *R' Akiva* when does a *tam* pay full compensation? (ג' ט')

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/

Rav Meir Pogrow
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
24 th February י"ד אדר	25 th February ט"ו אדר	26 th February ט"ז אדר	27 th February י"ז אדר	28 th February י"ח אדר	1 st March י"ט אדר	2 nd March כ' אדר
Bava Kama 3:9-10	Bava Kama 3:11-4:1	Bava Kama 4:2-3	Bava Kama 4:4-5	Bava Kama 4:6-7	Bava Kama 4:8-9	Bava Kama 5:1-2

