



Volume 10. Issue 4

Responsible Thieves

The sixth *perek* deals with issues regarding culpability relating an ox that was guarded but nevertheless escaped and caused damage. One case is if thieves removed the ox from the enclosure, they are responsible for any damage it caused. We shall investigate this specific case.

The *Gemara* questions the novelty of the *Mishnah's* ruling. Since the thieves pulled the animal out of its enclosure, they performed an act of acquisition (*meshicha*) and they are certainly responsible. The *Gemara* first answers that it is where the thieves did not handle the animal but stood around it leaving only one exit path thereby forcing it to leave. The *Gemara's* second answer is that the case of the *Mishnah* is where the thieves hit the animal with a stick to make move. *Rashi* explains that the novelty in this answer therefore is that this act is equivalent to *meshicha*.

The *Rosh* points out that *meshicha* alone is ineffective unless the owner intends to sell the item. Consequently in a case of theft we cannot say that a formal acquisition was performed. The *Rosh* therefore explains that since an act was performed that is significant in the area of acquisitions, it has the effect of making these thieves responsible for this animal.

The *Tosfot Yom Tov* comments that this understanding of the *Rosh* seems to support the position of the *Rambam*. Both the *Rambam* (on the *Mishnah*) and the *Bartenura* appear to explain the *Mishnah* according

to the first understanding. That silent shepherding, without touching the animal, would make the thieves liable. A formal acquisition would at least require them to call the animals, but this requirement is omitted. The *Tosfot Yom Tov* explains that the *Rambam* understands that the liability of the thieves is therefore based on a *knas* (fine) since a formal acquisition is absent.

There is another question that needs to be addressed. What was the intention of the thieves when they made this ox leave? Does it matter?

The *Baalei Tosfot* cite the *Yerushalmi* that explains that these thieves intended to steal the ox. If however their intention was to remove or simply lose the animal then they would not be liable for the damage it caused. The reference to "thieves" in the *Mishnah* suggests that whoever freed the animal wanted it for them. The *Rambam* however does not make this distinction.

The *Tosfot Yom Tov* notes that this *Yerushalmi* presents a difficulty with our understanding above. If the liability is based on a fine alone, then what difference does the intention of the thieves make? The *Tosfot Yom Tov* suggests that since it would be a rare case where someone set the animals free for them simply to get lost, the *knas* was not instituted in that case.

Yisrael Yitzchak Bankier

Revision Questions

בבא קמא ה' ג' ז' ג'

- If *Reuven* brought his ox into *Shimon's* property and it fell in a pit dirtying the water who is liable and what are they liable? (ה' ג')
- Regarding the previous case, explain the debate if *Shimon* allowed *Reuven* to bring his animal onto his property. (ג' ה')
- How is *d'mei vladot* calculated and in which two cases mentioned in the *Mishnah* is it paid? (ה' ד')
- Is the owner liable for any damage caused by his hole, if he dug a hole in his own property, but the opening of the hole was in the public domain? (ה' ה')
- Why does the *Torah* use the language of "*bor*" when referring to this class of damage? (ה' ה')
- How is liability determined if a pit has joint ownership? (ה' ה')
- Is one liable if an animal injured itself as a result of the echo that resonated from the digging of a pit? (ה' ה')
- List the eight halachic categories where the *Torah* referred to an ox, but implied all *behemot*? (ה' ז')
- Is the owner liable if he locked his animal up properly yet it escaped and caused damage? (ה' ז')
- What is the law regarding the previous case if thieves removed the animal? (ה' ז')
- If a person left his animal outside in the sun, and contained him in that area properly, yet the animal broke out and caused damage (*shen* or *regel*) is the owner liable? (ה' ז')
- In what situation, where an animal ate from the neighbour's garden, is the owner of the animal only liable to pay for what the animal benefited? (ה' ז')
- In the case of *shen*, how is full damage calculated? (ה' ז')
- When do we say that if one's neighbour piled produce in his field and his animals ate from that pile that he is liable? (ה' ז')
- What is the law regarding one that handed a flame to minor, and this child went and caused fire damage? (ה' ז')
- If one person brought kindling and another brought a flame and the resulting fire caused damage who is liable? (ה' ז')
- Regarding the previous question, in what two circumstances will neither be liable? (ה' ז')
- Provide the three cases where if the fire spreads beyond barriers the fire starter is not liable. (ה' ז')
- How is liability calculated if a person lit someone's pile of wheat and there were other items hidden in the pile that were damaged as a result? (Include both opinions) (ה' ז')
- Is one liable for a spark generated by the strike of an axe that caused a fire? (ה' ז')
- When does *R' Yehuda* maintain that a shop owner who left candles outside his shop, and flax on a loaded camel caught fire and spread as a result of the camel's movement, is not liable for damages? (ה' ז')
- What is the definition of a *ganav*? (ה' ז')
- When is a *ganav* obligated to pay four times what he stole? (ה' ז')
- When is a *ganav* obligated to pay five times what he stole? (ה' ז')
- If someone stole from a *ganav* is he required to pay back double the value of what he stole? (ה' ז')
- Is a person obligated to pay four or five times the value if: (ה' ז', ב' ד')
 - If he stole and sold the ox on *Shabbat*?
 - If he stole and slaughtered the ox on *Shabbat*?
 - If he stole and slaughtered the ox for medicinal purposes?
 - If he stole and slaughtered the ox in the *azarah*?
 - If he stole, sanctified then slaughtered the ox?
 - If he stole and slaughtered the ox from his father, then his father passed away?
- Which of the cases in the previous question is debated? (ה' ז', ב' ד')
- What is the law if two witnesses testified that a person stole an ox and two other witnesses testified that he slaughtered that ox and: (ה' ג')
 - Both sets of witnesses are found to be *eidim zomemim* (false witnesses)?
 - One of the first two witnesses is found to be false?

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
10 th March כ"ח אדר	11 th March כ"ט אדר	12 th March א' ניסן	13 th March ב' ניסן	14 th March ג' ניסן	15 th March ד' ניסן	16 th March ה' ניסן
Bava Kama 7:4-5	Bava Kama 7:6-7	Bava Kama 8:1-2	Bava Kama 8:3-4	Bava Kama 8:5-6	Bava Kama 8:7-9:1	Bava Kama 9:2-3

