



Prohibition Regarding Property Damage

Masechet Bava Kama opens with listing the different categories of damage. The *Bartenura* explains inline with the opinion of *Shmuel* that the *Mishnah* is focused on the categories of damage cause by one's property. As we continue the *masechet*, we learn about where and when one is obligated to pay for damage caused by one's property, when they are exempt. The boundaries differ between the categories of damage. Aside from the monetary obligations, one must address the prohibition that is violated when if one's property causes damage and whether the boundaries of the prohibition are shared with the monetary obligation.

The *Birkat Shmuel* (*Bava Kama* 2:1) cites *R' Chaim* that when the *Torah* states "and he did not guard it" it is not simply teaching us about the monetary obligation that one has when their property causes damage. It also teaches that a prohibition has been violated and the *Torah* considers that individual a *mazik* (a damager) and a *rasha* (evil). For example, we find that if one's ox kills a person, the payment is considered a *kapara* (an atonement). It acts as an atonement for the punishment due to him from *shamayim*, since his ox killed someone.

The *Birkat Shmuel* uses this explanation to answer another question. The *Gemara* (55b) lists four cases where one is exempt in this world, but it is held against him in the next. One case listed is where one conceals his friend's property in the path of a spreading fire. The one who lit the fire is liable to pay compensation for the damage caused, but is exempt from paying for those items that were concealed. The person who concealed his friend's property, has caused him a loss since he will not be compensated by the one that lit the fire. One question asked is that *Rashi* could have explained that the case is where the person who concealed the items was

the one that lit the fire; the ruling in that case would have been the same. The *Birkat Shmuel* answers, that *Rashi* did not explain the *Gemara* in that way since the *Gemara* would not have needed to teach that case. Even though one is exempt from paying for the damage caused to concealed items by his fire, it is clear has still violated the prohibition of "and he did not guard it". Even if the items were concealed from the outset, the one that lit the fire would be obligated *min shamayim*.

Consequently, we find that according to the *Birkat Shmuel*, the scope of the prohibition can be broader than the obligation for compensation. How broad then is the prohibition? Does it apply whenever one's property causes any damage?

The *Birkat Shmuel* addresses the case of *Shen* and *Regel* in the public domain. Recall, that in such cases the owner is also exempt from compensation. The *Birkat Shmuel* cites the *Tosfot* (20b) as proof that in those cases even a prohibition is not violated.¹

The *Birkat Shmuel* therefore differentiates between the different exemptions for compensation. In the case of something hidden in the path of fire, or utensils that broke as a result of a pit², in those cases the obligation of *shmira* (guarding) still rested on the owner, despite the exemption for payment. In the case of *shen* and *regel* in the public domain however, the exemption afforded by the *Torah* is that there is no obligation of *shemira*. Consequently, if one's animal damaged another's proper as it walked in the public domain, not only is he exempt from payment, but he free from an culpability even in the heavenly court.³

Yisrael Bankier

¹ See the *Birkat Shmuel* inside for the full proof. Unfortunately, the space afforded by these articles does not allow for a fuller explanation.

² The *Birkat Shmuel* learns this from the fact the *Beit Din* can force one to remove the stones from his collapsed wall that are lying in his friends field, ע"י.

³ The *Birkat Shmuel* uses this distinction to explain why the *Gemara* treats the different *sfeikot* sometimes stringently and other times leniently. (This is the main subject of the above cite commentary.) He explains that if there is a question whether it qualifies as "*lo yishmerno*" – whether there is an *issur* – then we rule stringently like all *issurim*. If however, the doubt is regarding a *petur*, e.g in *esh* or *bor*, then it is a monetary question alone and we rule leniently. ע"י.

Revision Questions

קידושין ד' :י"ג – י"ד

- What profession should a single man refrain from being engaged in? (ד' :י"ג)
- According to R' Yehuda a majority of which professionals are *reshaim*? Are *ksheirim*? Are *tzadikim*? (ד' :י"ד)

בבא קמא א' :א – ג' :ב'

- What are the four *avot nezikim* and how are they different from each other? (א' :א)
- What are the three criteria of objects that one is liable for if he damaged them? (א' :ב')
- In which two domains is one exempt from damage caused by his property? (א' :ב')
- How is compensation determined and where? (א' :ג')
- What are the two criteria placed on witnesses to obligate one to compensate for damages? (א' :ג')
- What does the *Mishnah* mean by the following phrase:
"ויהנוק והמויק בתשלומין" (א' :ג')
- What are the five *Tamin*? (ד' :א)
- What are the five *Mu'adin*? (ד' :א)
- Can a lion ever be considered a tame animal? (ד' :א)
- What are the two differences between a *tam* and a *mu'ad*? (ד' :א)
- Define the class of damages called *Regel*? (א' :ב')
- 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) (ד' :ב')
- 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. (ה' :ב')
- Can a human being ever be defined as a *tam*? (ו' :ב')
- What liability is place on a person that damages in his sleep? (ו' :ב')
- If *Reuven* leaves a bottle in the middle of the street and *Shimon* drives over it, is *Shimon* liable for the damage cause? (ז' :א)
- What if the bottle caused damage to *Shimon's* car, is *Reuven* liable for the damage? (ז' :א)
- If *Reuven* dropped his bottle of juice and it smashed, and then *Shimon* slipped on the juice, is *Reuven* liable? (Explain both opinions) (ז' :א)
- If *Reuven* poured his waste water into the street and *Shimon* slipped on it, is *Reuven* liable? (ז' :ב')

Melbourne, Australia

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10 minutes before *Mincha*
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Melbourne, Australia

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
18 November " כסלו	19 November "א כסלו	20 November "ב כסלו	21 November "ג כסלו	22 November "ד כסלו	23 November "ו כסלו	24 November "ז כסלו
Bava Kama 3:3-4	Bava Kama 3:5-6	Bava Kama 3:7-8	Bava Kama 3:9-10	Bava Kama 3:11-4:1	Bava Kama 4:2-3	Bava Kama 4:4-5

