



Which Ox Caused the Damage

The *Mishnah* (3:11) deals with cases of damage, where the cause was disputed. The common ruling is based on the principle of "*ha'mitzi mechaveiro alav ha'raaya*" – the burden of proof rests on the one attempting to extract the funds. One case is where one of two oxen own by one person, pursued, gored and killed another. Recall that in the case of an ox that is defined as *tam* – does not have a history of goring – that the owner must pay half the value of the damage caused, and the compensation is taken from the value of the ox that caused the damage. In this case the owner of the ox that was killed claims it was the more expensive of the two that caused the damage, to maximise his compensation. The owner of the two oxen however claims it was cheaper of the two. As explained, the owner of the ox that was killed must prove it was the more expensive of the two otherwise he can only be paid to the value of the cheap of the two oxen.

The *Rambam* (*Hilchot Nezikin* 9:1) rules that in a case like our *Mishnah*'s, if there were witnesses that saw the attack but are unsure which ox caused the damage, the *mazik* (owner of the ox that caused the damage) would be required to make a *shevua* (oath). This is because the owner is admitting to part of the claim that was made against him, The *Raavad* comments that that would only be true if one ox was a *mu'ad* (the owner had been warned after each of the three previous goring incidents) and the other a *tam*. This is because if the *mu'ad* caused the damage, then there is a lien on all the *mazik*'s property to pay for the damage. By admitting that it was the *tam*, it is considered a partial admission. If however, as we explained above, both oxen were each a *tam*, then the *Raavad* maintains that the claim that the small ox caused the damage is not considered a partial admission. The *Maggid Mishneh* however disagrees. He argues that since there were witnesses, there exists an obligation to pay. We need to understand the positions of the *Raavad* and *Magid Mishneh*.

The *Shach* (ChM 400:6) finds the *Maggid Mishneh* difficult. The payment required in the case of a *tam* is defined as a *kenas* (fine) and not *mamon* (compensation). Considering that when one admits to a fine (in the absence of witnesses) that they are exempt from paying it, a *shevuah* in the case where each ox was a *tam* should not be required since once the owner admits he is exempt from payment.

The *Ketzot* (400:1) cites the *Tumim* (88:11) that defends the *Magid Mishneh*. He answers that since there were witnesses to the damage, this case would not be considered as admitting to a *kenas* but rather admission to a payment. The *Tumim* compares this case to a bankrupt individual that stole, was caught and was required to pay double (as a *kenas*). If the thief, then revealed that he has hidden assets, that would certainly not be considered as admitting to a fine. In this case also, the *Torah* obligated the owner with paying for half of the damage caused. In other words, there is no question regarding the obligation and value of the *kenas*. The *Torah* however said that the payment must come from the ox that caused the damage. If its value is less than the damage caused, then the owner of the ox that was killed loses that difference. Consequently, the "admission" in this case should only be considered as directing us to the source of the funds.

The *Ketzot* however disagrees. In the case of the thief, even if the thief was indeed bankrupt, if the funds eventually become available the obligation still exists. In the case of a *tam*, the funds can only be extracted from the ox that caused the damage and no other property. Without identifying the ox, there is no obligation. Consequently, in support of the *Shach*, once the owner identifies the ox that caused the damage, it would be considered as if he incriminated himself, admitting to the *knas* and thereby exempt.

Revision Questions

בבא קמא ג' ג' – ד' ד' ה'

- 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? (ה': ג')
- If two people run into each other who is liable? (ו': ג')
- Is one liable if they were chopping wood in their property and a chip flew out into the street and caused damage? (ו': ג')
- How is compensation calculated if two oxen cause damage to one another if: (ח': ג')
 - 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? (ח': ג')
- How is compensation calculated if: (ט': ג')
 - A *tam* ox worth \$100 killed an ox worth \$200 dollars, leaving a carcass of no value?
 - A *tam* ox worth \$200 killed an ox worth \$200 dollars, leaving a carcass of no value?
- In which two cases would a person be liable if he caused damage but be exempt if his animal caused the same damage, and in which two cases would a person be exempt, but if his animal caused the same damage he would be liable? (י': ג')
- What is the law regarding a case where *Shimon* claims that *Reuven's* ox injured his ox, while *Reuven* claims that *Shimon's* ox's injury was caused when it tripped? (יא': ג')
- What is the law regarding a case where *Reuven* claimed the *Levi's* ox injured *Shimon's* while *Levi* claimed it was *Reuven's* ox that damaged *Shimon's* ox? What if *Reuven's* ox was a *mu'ad* while *Levi's* was a *tam*? (יא': ג')
- Explain both opinions regarding how compensation is calculated in a case where a *tam* ox caused damage to four different oxen. (יב': ד')
- Can an animal be partially *mu'ad*? (יב': ד')
- Is one liable if his ox injured an ox belonging to *hekdesh*? (יג': ד')
- Explain the debate regarding whether a *mu'ad* ox belonging to a *katan* changes its status when the *katan* becomes a *gadol*. (יד': ד')
- What is the special law regarding a *shor ha'itzadin*? (יד': ד')
- What is the difference if a *shor tam* kills a person and if a *shor mu'ad* kills a person? (יד': ד')
- What is the law if an ox kills an *eved*? (יד': ד')

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Bava Kama 4:6-7	Bava Kama 4:8-9	Bava Kama 5:1-2	Bava Kama 5:3-4	Bava Kama 5:5-6	Bava Kama 5:7-6:1	Bava Kama 6:2-3

