



Volume 4. Issue 3

## Guarding a Mu'ad

Last week we introduced the two subcategories of the class of damage *keren* – *tam* and *muad* – and looked at a finer point in *tam*. This week we will take a closer look at *mu'ad* which will help us to understand *nezikim* (damages) in general.

The last *Mishnah* in the fourth *perek* cites a debate regarding the level of protection required for a *shor mu'ad*. Once that level is provided, if under exceptional circumstance the animal escapes and causes damage, the owner is not liable. *R' Yehuda* maintains that a basic level of protection is required while *R' Meir* maintains that a high level of protection is required (for example the use of iron chains and fencing that can withstand even abnormal winds).

*R' Eliezer* enters the debate remarking that “there is no [sufficient] protection [for a *shor mu'ad*] other than the [slaughter] knife.” What is implied by this statement?

Some *Rishonim* believe that *R' Eliezer* is introducing a third opinion (*Rif*, *Tosfot Rid*, *Bartenura*). No level of protection is sufficient for such a creature and the owner is always liable for any damage caused.

This is at least how the *Gemara* first understood *R' Eliezer* (*Bava Kama* 46a). There *Rava* cited a *pasuk* as the source for this position that no level of protection is enough (“*ve'lo yishmerenu*”). *Abaye* questioned this understanding as there is a linguistic similarity when the *Torah* discusses the class of damage *bor* (pit) (“*ve'lo yechasenu*”) and there, provided that the owner covers the pit he is not liable for any damage caused. Instead *Abaye* explains that *R' Eliezer's* position is rooted in the broader prohibition of housing dangerous objects, for example, a rabid dog or a faulty ladder (“*ve'lo tasim damim be'veitecha*”). How do we understand the *Gemara's* conclusion?

*R' Atlas* (on *Chidushei HaRa'avad*), when explaining the *Rif*, explains that when *R' Eliezer* obligates the owner despite having provided a high level of protection it is not because he considers him negligent (which is the way we ordinarily explain such liability). Instead it is because he has transgressed the biblical prohibition of housing this dangerous creature. He explains that the exemption after having provided sufficient protection is only if the owner acted in accordance to what the *Torah* commanded him.<sup>1</sup>

Other *Rishonim* have a completely different understanding (*Tosfot*, *Ra'avad*). They understand that *R' Eliezer* agrees with *R' Meir* that a high level of protection is sufficient. Instead he is introducing a new component – this biblical prohibition. In other words, if the owner provided a high level of protection and the animal nonetheless somehow causes damage, the owner is indeed not liable. Nevertheless he has still transgressed this biblical prohibition of housing this animal.

This second opinion introduces a fundamental new understanding to damages. Ordinarily one thinks the guilt is a function of the financial liability of the owner of the damaging ox towards the damaged party – what have I done to you? What am I liable? It is a man-to-man issue. Yet there is another component beyond that. It is about the owner himself and by extension his relationship with his Creator. What type of objects is he willing to bring into his home.

This second factor is very important to remember as we study about damages, as we study these *Mishnayot*. It is not just about determining the boundaries of financial liability. There is a second avenue that is also being travelled. We also assess and determine the world that we choose to live in.

David Bankier

<sup>1</sup> The *Tosfot Ha'Rid* explains slightly differently that the monetary obligation is a *knas*, a fine, for having transgressed a *Torah* prohibition.

**Revision Questions**

בבא קמא ד' - ד' - ו' :א'

- Explain the debate regarding whether an *mu'ad* ox belonging to a *katan* changes its status when the *katan* becomes a *gadol*? (ד': די)
- What is the special law regarding a *shor ha'itzadin*? (ד': די)
- What is the difference if a *shor tam* kills a person and if a *shor mu'ad* kills a person? (ד': די)
- What is the law, if an ox kills an *eved*? (ה': די)
- What is the law regarding a case where an ox rubs against a wall causing it to fall and kill a person? (ד': די)
- Explain the debate regarding a case where a *shor ha'midbar* kills someone. (ה': די)
- What is the law regarding a ox that has been sentenced to death yet before it is put-down the owners:
  - Sanctify the animal?
  - Slaughter the animal? (ד': די)
- Do the same distinctions between a *tam* and a *mu'ad* apply if the animal was entrusted to a gaurdian? (ט': די)
- When referring to a *shor mu'ad*, according to who: (ט': די)  
אין לו שמירה אלא סכין
- What is the law regarding a case where an ox gores and a cow, and the cow is found dead with a dead calf next to it? (א': די)
- What other case is comparable to the previous one? (ה': די)
- If a person delivered a package, and it was damaged on the property by the owner's animal who is liable? (ב': די)
- If an *Reuven* brought his ox into *Shimon's* property and it fell in pit dirtying the water who is liable and what are they liable? (ג': די)
- Regarding the previous case, explain the debate if the *Shimon* allowed *Reuven* to bring his animal onto his property. (ה': די)
- How is *d'mei vladot* calculated and in which two cases mentioned in the *Mishnah* is it paid? (ד': די)
- 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': די)
- What does the *Torah* use the language of "*bor*" when referring to this class of damage? (ה': די)
- How is liability determined if a pit has joint ownership? (ו': די)
- Is one liable if an animal injured itself as a result of the echo resonated from the digging of a pit? (ה': די)
- List the eight halachic categories where the *Torah* referred to an ox by implied all *behemot*? (ז': די)
- Is the owner liable if he locked his animal up properly yet it escaped and caused damage? (א': די)
- What is the law regarding the previous case if thieves removed the animal? (א': די)

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**Next Week's Mishnayot...**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
10 <sup>th</sup> June כ"ד סיון	11 <sup>th</sup> June כ"ה סיון	12 <sup>th</sup> June כ"ו סיון	13 <sup>th</sup> June כ"ז סיון	14 <sup>th</sup> June כ"ח סיון	15 <sup>th</sup> June כ"ט סיון	16 <sup>th</sup> June ל' סיון
Bava Kama 6:2-3	Bava Kama 6:4-5	Bava Kama 6:6-7:1	Bava Kama 7:2-3	Bava Kama 7:4-5	Bava Kama 7:6-7	Bava Kama 8:1-2

