

A. Last time we:

1. Introduced Seder Nezikin
2. Spoke about the division into Bava Kamma, Metziah, Batra
3. We spoke about the notion of categorization of law and the different ordering of laws in the Torah and in the Mishnah
4. Spoke a little about the structure of ch.1-2
5. Discussed 4 or is it 5 or 6 “avot” of damages: Keren (goring), Shen (eating), Regel (treading), bor (pit), esh (fire), and the human.

B. Let’s return to understand the first Mishna:

Mishna 1:1. 4 categories

Av – Damage category	Features	
שור – Ox (goring)	רוח חיים - Alive	Actively Damage
שן רגל and מבעה – Foot and Mouth		
הבער - Fire	No independent life form	Stationary Damage
בור – Pit		

C. Mishna 1:4 “Tam” and “Muad” – see also Mishna 2:4

Tam = unwarned/ unexpected - uncharacteristic = half payment

Muad = warned / anticipated – predictable = full payment

D. Talmud page 15a – HALF DAMAGE

רב פפא אמר ממונא – קסבר: סתם שוורים לאו בחזקת שימור קיימי, ובדין הוא דבעי לשלומי כוליה; ורחמנא הוא דחס עליה, דאכתי לא אייעד תוריה.

The Gemara elucidates: **Rav Pappa says:** The payment is **monetary restitution**, as **he holds** that even **ordinary oxen**, which have not been forewarned with regard to Goring, are **not presumed to be safeguarded**, as their nature does not prevent them from acting in a belligerent manner. Therefore, the owner is responsible to safeguard them, to prevent them from doing so. Accordingly, if an ox causes damage by goring, **by right it** should have been **that** the owner **needs to pay** the **full** cost of the damage. Nevertheless, **the Merciful One had pity upon him, as his ox had not yet been forewarned** and he was not fully aware of the possibility that it might gore, and accordingly, the Torah reduced the extent of his liability.

רב הונא בריה דרב יהושע אמר קנסא – קסבר: סתם שוורים בחזקת שימור קיימי, ובדין הוא דלא לשלם כלל; ורחמנא הוא דקנסיה, כי היכי דלנטריה לתוריה.

Rav Huna, son of Rav Yehoshua, says: It is a **fine**, as **he holds** that **ordinary oxen** are **presumed to be safeguarded**, as their nature prevents them from acting in a belligerent manner. Therefore,

the owner is not responsible for safeguarding them to prevent them from doing so. Accordingly, if an ox causes damage by goring, **by right it should have been that the owner does not pay at all.** Nevertheless, **the Merciful One penalized him in order that he will safeguard his ox**, even before it is forewarned, and decreed that the fine should be given to the injured party even though he is not really entitled to be compensated for his loss.

E. LET’S SEE HOW THIS PLAYS OUT IN THE MISHNA

BAVA KAMMA Ch.1 (Transl. Joshua Kulp)

- There are four primary causes of injury: the ox and the pit and the crop-destroying beast and fire.
[The distinctive feature of] the ox is not like [that of] the crop-destroying beast, nor is [the distinctive feature of] either of these, which are alive, like [that of] fire, which is not alive; nor is [the distinctive feature of] any of these, whose way it is to go forth and do injury, like [that of] the pit, whose way it is not to go forth and do injury.
What they have in common is that it is their way to do injury and that you are responsible for caring over them; and if one of them did injury whoever [is responsible] for the injury must make restitution [to the damaged party] with the best of his land.
- Anything that I am responsible to guard, I have rendered it possible to do injury [for which I will become obligated]. If I have partially rendered it possible to do injury, I must make restitution for that injury as if I totally rendered it possible to do injury. When one damages [property that fits all of the following categories]: property that does not have “sacrilege” [i.e. sacrificial animals or property that belongs to the Temple in Jerusalem], property that belongs to other members of the covenant [Jews], property that is owned, and the injury is done in any place other than the private domain of the injurer and the common domain of the injured and injurer, in these cases the injurer must make restitution for the injury with the best of his land.
- Assessment [of injury] in money or things worth money must be made before a court of law and by witnesses that are free and Children of the Covenant (Jews). Women may be parties in [suits concerning] injury. The injured and the injurer [in certain cases may share] in the compensation.
- Five [agents of damage] rank as harmless and five as an attested danger. Cattle are not an attested danger to butt, push, bite, lie down, or kick. The tooth [of an animal] is an attested danger to eat that which is for it; The leg [of an animal] is an attested danger to break [things] as it walks along; So also is a warned ox [an ox that has gored before]; And an ox that damages in the domain of the damaged party, and human beings. The wolf, the lion, the bear, the leopard, the panther and the snake all rank as attested danger. Rabbi Eliezer says: When they are tame they are not attested danger, but the snake is always an attested danger. What is the difference between that which is harmless and that which is an attested danger? The harmless pays half-damages from its own body and the attested danger pays full damages from the best property (of its owner and guardian).

פרק א'

א. ארבעה אבות נזיקין, השור והבור והמבעה וההבעה.
לא הרי השור כהרי המבעה, ולא הרי המבעה כהרי השור. ולא זה וזה, שיש בהן ריח חיים, כהרי האש, שאין בו ריח חיים. ולא זה וזה, שדרךן לילך ולהזיק, כהרי הבור, שאין דרכו לילך ולהזיק. הצד השוה שבהן, שדרךן להזיק ושמירתן עליה.
ובכשהזיק, חב המזיק לשלם תשלומי נזק במיטב הארץ:
ב. כל שחבתי בשמירתו, הכשרתי את נזקו. הכשרתי במקצת נזקו, חבתי בתשלומין כהכשר כל נזקו. נכסים שאין בהם מעילה, נכסים של בני ברית, נכסים המיוחדים, ובכל מקום חוץ מרשות המיוחדת למזיק ורשות הנזק והמזיק. **ובכשהזיק, חב המזיק לשלם תשלומי נזק במיטב הארץ:**
ג. שום כסף, ושנה כסף, בפני בית דין, ועל פי עדים בני חורין בני ברית. והנשים בכלל הנזק. **והנזק והמזיק בתשלומין:**
ד. **חמשה תמין וחמשה מועדין, הבהמה אינה מועדת לא לגח ולא לגף ולא לשך ולא לרבע ולא לבעט. השן מועדת לאכל את הראוי לה, הרגל מועדת לשבר בדרך הלוחה, ושור המועדת, ושור המזיק ברשות הנזק, והאדם.**
הזאב והארי והדב והנמר והברדלס והנחש, הרי אלו מועדין. רבי אליעזר אומר, בזמן שנהו בני תרבות, אינן מועדין. והנחש מועד לעולם. מה בין תם למועד. אלא שהתם משלם חצי נזק מגופו, ומועד משלם נזק שלם מן העליה:

פרק ב'

CHAPTER 2

1. How is the leg [of a beast] an attested danger to break [what it tramples upon] as it walks along? A beast is an attested danger [only] in so far as it goes along in its usual way and breaks [an object]. If it kicked, or if small stones were tossed out from beneath its feet and it thus broke other vessels, one pays half damages. If it trampled upon a vessel and broke it, and this [broken vessel] fell upon another vessel and broke it, for the first one pays full damages and for the other half damages. Fowls (chickens and roosters) are an attested danger in so far as they go along in their usual way and break [objects]. But if the fowl had its feet entangled, or if it was jumping and it thereby broke any vessel one pays half damages.
2. How is the tooth [of a beast] an attested danger to eat that which it is fit to consume? A beast is an attested danger to eat fruit and vegetables. [If however] it ate clothing or utensils [the owner] pays only half damages. When does this apply? [This applies] in the domain of the damaged party But if it was within the public domain, the owner is not liable. If [the beast] benefited, [the owner] pays what it benefited. How does [the owner] pay what [the animal] benefited? [If it ate] from the middle of the marketplace, [the owner] pays what [the animal] benefited. [If it ate] from the sides of the marketplace, [the owner] pays for the damage [the animal] did. [If it ate] from in front of the store [the owner] pays for what [the animal] benefited. [If it ate] from inside the store [the owner] pays for the damage [the animal] did.
3. If a dog or a goat jumped from a roof and broke vessels, [the owner] must pay full damages, since they are attested dangers. A dog that took a cake [while there was a cinder attached] and went to a stack of grain and ate the cake and burned the stack of grain, For the cake [the owner] pays full damages And for the stack of grain [the owner] pays half damages.
4. Which kind of animal is accounted harmless and which is an attested danger (muad)? An attested danger is one that people have given testimony about [that it damaged] for three days. A harmless one is one that has refrained from damage for three days. This is according to Rabbi Judah. Rabbi Meir says, An attested danger is one that people have given testimony about three times. A harmless one is one that children can touch and it will not gore.
5. “An ox which causes damage in the private domain of him that is injured” how is this so? If it gored, pushed, bit, lay down, or kicked in the public domain its owner pays only half damages. But if in the private domain of him that is injured, Rabbi Tarfon says, “He pays full damages.” The Sages says, “Half damages.” Rabbi Tarfon said to them: “Now, in a case in which the law dealt leniently with regards to damages caused by the foot and tooth in the public domain, in which case he is exempt, and stringently in the private domain of him that is injured to pay full damages, then since they have dealt stringently with damage caused by the horn in the public domain, ought we not deal more stringently with damage cause by the horn in the private domain of him that was injured, so that full damages be imposed.” They (the sages) said to him: “It is enough if the inferred law is as strict as that from which it is inferred: if [for damages caused by the horn] in the public domain half damages [are imposed], so also [for like damages] in the private domain of him that was injured, half damages [are imposed]. He said to them: “I

א. **פיצד הרגל מועדת**. לשבר בדרך הלוחה. הבהמה מועדת להלך בדרך ולשבר. היתה מבעטת, או שהיו צורות מנתזין מתחת רגליה ושברה את הכלים, משלם חצי נזק. דרסה על הכלי ושברתו, ונפל על כלי ושברו, על הראשון משלם נזק שלם, ועל האחרון משלם חצי נזק. התרגולים מועדין להלך בדרך ולשבר. היה דליל קשור בגליו, או שהיה מהדס ומשבר את הכלים, משלם חצי נזק:

ב. **פיצד השן מועדת**. לאכל את הראוי לה. הבהמה מועדת לאכל פרות וירקות. אכלה כסות או כלים, משלם חצי נזק. במה דברים אמורים. ברשות הנזק, אבל ברשות הרבים, פטור. אם נהנית, משלם מה שנהנית. פיצד משלם מה שנהנית. אכלה מתוך הרחבה, משלם מה שנהנית. מצדי הרחבה, משלם מה שהזיקה. מפתח החנות, משלם מה שנהנית. מתוך החנות, משלם מה שהזיקה:

ג. הכלב והגדי שקפצו מראש הגג ושברו את הכלים, משלם נזק שלם, מפני שהן מועדין. הכלב שנטל חררה והלך לגדיש, אכל החררה והדליק הגדיש, על החררה משלם נזק שלם, ועל הגדיש משלם חצי נזק:

ד. **איזה הוא תם, ואיזה הוא מועד**. מועד, כל שהעידו בו שלשה ימים. ותם, משניחזר בו שלשה ימים, דברי רבי יהודה. רבי מאיר אומר, מועד, שהעידו בו שלש פעמים. ותם, כל שיהו התינוקות ממשמשין בו ואינו נוגח:

ה. **שור המזיק ברשות הנזק פיצד**. נגח, נגף, נשך, רבץ, בעט, ברשות הרבים, משלם חצי נזק. ברשות הנזק, רבי טרפון אומר נזק שלם, ויחכמים אומרים חצי נזק. אומר להם רבי טרפון, ומה במקום שהקהל על השן ועל הרגל ברשות הרבים, שהוא פטור, החמיר עליהם ברשות הנזק לשלם נזק שלם, מקום שהחמיר על הקרן ברשות הרבים, לשלם חצי נזק, אינו דין שנחמיר עליה ברשות הנזק לשלם נזק שלם. אומר לו, דיו לבא מן הדיו להיות פנדון, מה ברשות הרבים חצי נזק, אף ברשות הנזק חצי נזק. אומר להם, אני לא אדון קרן מקרן, אני אדון קרן מרגל. ומה במקום

shall not derive the law in one case of damage caused by the horn from the law in another case of damage caused by the horn. Rather I will derive the law of damage caused by the horn from the law of damage caused by the foot. Now in a case in which the law dealt leniently with regards to damages caused by the foot or tooth in the public domain, they have dealt strictly with damage caused by the horn, ought we not deal more stringently with damage cause by the horn in the private domain. They (the sages) said to him: “It is enough if the inferred law is as strict as that from which it is inferred: if [for damages caused by the horn] in the public domain half damages [are imposed], so also [for like damages] in the private domain of him that was injured, half damages [are imposed].

6. Human beings are always an attested danger, whether the damage is caused inadvertently or deliberately, whether the person who caused the damage is awake or asleep. If a man blinded his fellow’s eye or broke his utensils he must pay full damages.

CHAPTER 3

1. If a man left a jug in the public domain and another came and stumbled over it and broke it, he is exempt. And if he was injured by it, the owner of the jug is liable for his injury. If a man’s jug broke in the public domain, and another slipped on the water, or was hurt by the potsherds, he is liable. Rabbi Judah says: “If he [broke the jug] with intention, he is liable, But if he broke it without intention he is not liable.”

2. If a man poured out water in the public domain, and another was injured thereby, he is liable for his injury. 2. If a man hid thorns or glass [in the public domain] or made his fence out of thorns, or if his fence fell into the public domain and others were thereby injured, he is obligated for their injury.

3. If a man put out his chopped straw and stubble into the public domain to make them into fertilizer, and another was injured thereby, he is liable for his injury, and whoever comes first may take possession of them. Rabban Shimon ben Gamaliel says: “Whoever leaves things that are disruptive in the public domain, and these cause damage, must make restitution, and whoever comes first may take possession of them. If a man turned over a piece of cattle dung in the public domain and another was injured thereby, he is liable for injury.

4. Two pot-sellers were walking one behind the other and the first stumbled and fell, and the second fell on the first, the first one is liable for the injury caused to the second.

5. This one comes carrying his jar and another one comes carrying his beam: this one’s jar is broken by that one’s beam, [The owner of the beam] is exempt, since this one has the right to walk along and this one has the right to walk along. If the owner of the beam came first and the owner of the jar came after, and the jar was broken by the beam, the owner of the beam is exempt. If the owner of the beam stopped [walking suddenly], he is liable. If [the owner of the beam had

שְׁהַקֵּל עַל הַשֵּׁן וְעַל הָרֶגֶל, בְּרִשּׁוֹת הָרִבִּים, הַחֲמִיר בְּקֶרֶן, מִקּוֹם שֶׁחֲמִיר עַל הַשֵּׁן וְעַל הָרֶגֶל, בְּרִשּׁוֹת הַנֶּזֶק, אֵינוֹ דִין שֶׁנֶּחְמִיר בְּקֶרֶן. אָמְרוּ לוֹ, דִּיּוּ לִבָּא מִן הַדִּין לְהִיּוֹת כְּנִדּוֹן, מֵהַ בְּרִשּׁוֹת הָרִבִּים חֲצֵי נֶזֶק, אִף בְּרִשּׁוֹת הַנֶּזֶק חֲצֵי נֶזֶק:
ו. **אֲדָם מוֹעֵד לְעוֹלָם**, בֵּין שׁוֹגֵג, בֵּין מְזִיד, בֵּין עֵר, בֵּין יָשׁוּן. סָמָא אֶת עֵין חֲבֵרוֹ וְשִׁבַּר אֶת הַכְּלִים, מְשַׁלֵּם נֶזֶק שְׁלָם:

משנה מסכת בבא קמא פרק ג

משנה א [*] המניח את הכד ברשות הרבים ובא אחר ונתקל בה ושברה פטור ואם הוזק בה בעל החבית חייב בנזקו נשברה כדו ברשות הרבים והוחלק אחד במים או שלקה בחרסיה חייב רבי יהודה אומר במתכוין חייב באינו מתכוין פטור:

משנה ב [*] השופך מים ברשות הרבים והוזק בהן אחר חייב בנזקו המצניע את הקוץ ואת הזכוכית והגודר את גדרו בקוצים וגדר שנפל לרשות הרבים והוזקו בהן אחרים חייב בנזקו:

משנה ג [*] המוציא את תבנו ואת קשו לרשות הרבים לזבלים והוזק בהן אחר חייב בנזקו וכל הקודם בהן זכה רבן שמעון בן גמליאל אומר כל המקלקליון ברשות הרבים והזיקו חייבין לשלם וכל הקודם בהן זכה ההופך את הגלל ברשות הרבים והוזק בהן אחר חייב בנזקו:

משנה ד [*] שני קדרין שהיו מהלכין זה אחר זה ונתקל הראשון ונפל ונתקל השני בראשון הראשון חייב בנזקי שני:

משנה ה [*] זה בא בחביתו וזה בא בקורתו נשברה כדו של זה בקורתו של זה פטור שלזה רשות להלך ולזה רשות להלך היה בעל קורה ראשון ובעל חבית אחרון נשברה חבית בקורה

said] “Stop” to the owner of the jar, he is exempt. If the owner of the jar came first and owner of the beam came after, and the jar was broken by the beam, [the owner of the beam] is liable. If the owner of the jar stopped [walking suddenly], he is exempt. If [the owner of the jar had said] “Stop” to the owner of the beam, he is liable.

6. [If] two were walking along in the public domain, the one running and the other walking, or both running and they injured one another, neither is liable.

7. [If] a man was splitting wood in the private domain and injured anyone in the public domain, or if he was in the public domain and injured anyone in the private domain, or if he was in a private domain and injured anyone in another private domain, he is liable.

פטור בעל הקורה ואם עמד בעל הקורה חייב ואם אמר לבעל החבית עמוד פטור היה בעל חבית ראשון ובעל קורה אחרון נשברה חבית בקורה חייב ואם עמד בעל חבית פטור ואם אמר לבעל קורה עמוד חייב וכן זה בא בנרו וזה בפשתנו:

משנה ו [*] שנים שהיו מהלכין ברשות הרבים אחד רץ ואחד מהלך או שהיו שניהם רצים והזיקו זה את זה שניהם פטורין:

משנה ז [*] המבקע ברשות היחיד והזיק ברשות הרבים ברשות הרבים והזיק ברשות היחיד ברשות היחיד והזיק ברשות היחיד אחר חייב: