



Another look at Tam

The fourth chapter begins by dealing with a case of a *tam* that attacks a number of other oxen. Since, as we have learnt, regarding a *tam* compensation collected cannot be in excess of the value of the offending ox, the *Mishnah* addresses how the compensation is paid and if necessary divided.

Before we look at the opinions in the *Mishnah* we need some background. The *Gemara* (36a) records a debate about the nature of the relationship between the owner of the *tam* and the owner of the injured ox. *R' Yishmael* explains that the later has the status of a lender (*baal chov*). While the debt is to be collected from the offending ox, initially he has no rights in that ox. *R' Akiva* understands that both owners become partners in the *shor tam*.

Let us return to the *Mishnah*. *R' Meir* maintains the owner of the last ox that was damaged collects compensation first. If there are any funds remaining, then the owner of the ox that was damaged just prior, can collect compensation and so forth. *R' Shimon* however understands that after the first act of damage the first owner and the owner of the *tam* have 50% shares in the ox. After the subsequent offense, their shares are diluted by 50% and owner of the latest victim takes a 50% share, and so on.

The *Gemara* is comfortable with the position of *R' Shimon* as it aligns with the position of *R' Akiva*, i.e. the owner of the *tam* and the owner of the damaged ox become financial partners. The position of the *R' Meir* however is questioned. If *R' Meir* held like *R' Yishmael* then it would be the first owner who would have the first claim since his "debt" precedes all others.

The *Gemara* answers that *R' Meir* is ruling regarding a case where the owner of the damaged ox quickly seized the offending ox in order to collect the damages. At that point he effectively becomes a *shomer sachar* (paid guardian) and is responsible for the damaged that is caused. This

happens with each subsequent case; therefore the last owner can make the first claim.

There are a number of difficulties with this explanation. The *Mishnah* stated that the *tam* offended four or five times. If that was the case it should no longer be a *tam*, but rather a *mu'ad* and the owner should subsequently pay full compensation. The *Tosfot Yom Tov* provides two answers. The first is *Rashi's*, that the ox did not damage in succession and there were instances in between (of varying number) where the *tam* was placid. Alternatively, the *Tosfot Yom Tov* suggests that the owner had not yet been warned in front of *Beit Din* three times, which is necessary to turn the ox into a *mu'ad*.

The *Tosfot Chadashim* explains why *Rashi* did not provide this simpler answer suggested by the *Tosfot Yom Tov*. Had the case in the *Mishnah* been that the owner of the offending ox had not yet been brought to *Beit Din*, then the position of *R' Shimon* later in the *Mishnah* is difficult. How can they become partners in the *tam* prior to *Beit Din* passing judgment? Now if one suggests that it refers to where the ox was seized for payment, then *R' Shimon* would agree with *R' Meir* that he become a *shomer sachar*. The *Tosfot Chadashim* explains that we must say that the cases had come before *Beit Din*, but the *shor* is still not a *mu'ad* because of the situation as described by *Rashi*.

We can site a *Tosfot* in defense of the *Tosfot Yom Tov*. The *Tosfot* assume that our *Mishnah* is referring to a case where the owner has not been brought to *beit din*. Consequently they have a difficulty with the position of *R' Shimon* that the two parties can be come partners in this *shor tam* before it commits its next offense. The *Tosfot* answers (albeit admitting the answer is strained) that since the owner can immediately bring witnesses and therefore claim his share, he shares in the obligation to protect it from causing further damage.

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Revision Questions

בבא קמא ג' ט' ה' ב'

- How is compensation calculated if: (ג' ט')
 - 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? (ג' י')
- 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? (ג' י"א)
- 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*? (ג' י"א)
- Explain both opinions regarding how compensation is calculated in a case where a *tam* ox caused damage to four different oxen. (ד' יא)
- Can an animal be partially *mu'ad*? (ד' ב')
- Is one liable if his ox injured an ox belonging to *hekdes*? (ד' ג')
- Explain the debate regarding whether a *mu'ad* ox belonging to a *katan* changes its status when the *katan* becomes a *gadol*. (ד' ד')
- What is the special law regarding a *shor ha'itzadin*? (ד' ד')
- What is the difference if a *shor tam* kills a person and if a *shor mu'ad* kills a person? (ד' ה')
- What is the law if an ox kills an *eved*? (ד' ה')
- What is the law regarding a case where an ox rubs against a wall causing it to fall and kill a person? (ד' ו')
- Explain the debate regarding a case where a *shor ha'midbar* kills someone. (ד' ה')
- What is the law regarding an ox that has been sentenced to death yet before it is put-down the owners:
 - Sanctify the animal?
 - Slaughter the animal? (ד' ח')
- Do the same distinctions between a *tam* and a *mu'ad* apply if the animal was entrusted to a guardian? (ד' ט')
- When referring to a *shor mu'ad*, who maintains: (ד' ט')
אין לו שמירה אלא סכין
- What is the law regarding a case where an ox gores a cow, and the cow is found dead with a dead calf next to it? (ד' יא)
- What other case is comparable to the previous one? (ד' יא)
- If a person delivered a package, and it was damaged on the property by the owner's animal who is liable? (ד' יב')

Local Shiurim

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
3 rd March כ"א אדר	4 th March כ"ב אדר	5 th March כ"ג אדר	6 th March כ"ד אדר	7 th March כ"ה אדר	8 th March כ"ו אדר	9 th March כ"ז אדר
Bava Kama 5:3-4	Bava Kama 5:5-6	Bava Kama 5:7-6:1	Bava Kama 6:2-3	Bava Kama 6:4-5	Bava Kama 6:6-7:1	Bava Kama 7:2-3

