



Responsibility for Damage

This week we start *Masechet Bava Kama*, which opens by discussing the obligation to pay for damages caused by one property. The second *Mishnah* shares the principle that *kol she'chvati be shemirato, hichsharti et nizko*. We shall try to understand this principle.

The *Achronim* probe the basis of this obligation. There are two possibilities. The first is that the obligation stems from the fact that one neglected to prevent the damage caused. In other words, it is because of the lack of *shemira* that the *Torah* obligated one to pay. The owner did not directly cause any damage. Nevertheless, since he did not guard his property, the *Torah* obligated him to pay. Alternatively, one is obligated to pay because when one's property caused damage, it is as if the owner directly caused the damage. If however he adequately guarding his property and it nevertheless was able to cause damage, the *Torah* exempted him in that situation. That is because it would be considered like *ones* (beyond one's control) if damage occurred despite proper *shemira*.

The *Ayelet HaShachar* (2a) points to *Rashi* on our *Mishnah*. *Rashi* brings two different explanations. He first explains that anything that I am obligated to guard, if it caused damage then I enabled (*hichsharti*) that damage since I did not guard the animal adequately. The second explanation is that "*hichsharti et nizko*" means that I am responsible to repair – *lehachshir* – (or pay for) that damage.

The *Ayelet HaShachar* explains that the second explanation can be understood according to either understanding. Once damage has been caused, the owner is responsible to pay. That could either be because of the obligation to pay due to neglect in *shemira* or because it is considered as if he caused the damaged. The first explanation in *Rashi* however can only be understood according to one of the understandings. According to the understanding that one is responsible because they

neglected in their responsibility to watch over their property, the explanation that I therefore "enabled" the damage makes sense. If however, the starting point is that when one's property causes damage it is as if the owner did the damage (and it is only adequate *shemira* that would exempt him) then the "enabling" is not relevant.

When the *Rambam* begins *Nizkei Mamon* (1:1) he rules that, "any animal that belongs to a person and causes damage, the owner is obligated to pay, because his property caused damaged..." Note that the *Rambam* does not mention neglect in *shemira*. The *Even HaAzel* therefore explains that the base obligation is because his property caused damaged. This aligns with the second understanding, that when one's property causes damage, it is as if he caused damage, and not because he neglected in his *shemira* responsibility.

The *Even HaAzel* does note that the responsibility of a *shomer* is learnt from the *pasuk* "*ve'lo ishmerono baalav*". This would not present a problem for the *Rambam* because the *pasuk* does not necessary mean that what obligates a person is neglect in *shemira*. According to this understanding, the *pasuk* is simply teaching that the *shomer* takes the place of the owner, such that it is as if his property caused damage, which thereby generates the obligation for compensation.

While the *Shulchan Aruch* (389) uses that same language as the *Rambam*, the *Tur* however writes as follows "just as it is forbidden for one to cause damages to his friend, and if he did is obligated to pay, so too does one need guard the property from causing damage, and if it does cause damage his obligated to pay". We see that according to the *Tur* the obligation to guard one's property is the focus and the neglecting to do so is what obligates one to pay. It would therefore seem that the *Tur* aligns with the first understanding.

Yisrael Bankier

Revision Questions

קידושין ג' ז'-י"ד

- According to *R' Eliezer ben Ya'akov* when is the daughter of a *ger* forbidden from marrying a *Kohen*? (ד': ז')
- Is a parent believed when they say that their child is a *mamzer*? (ד': ח')
- If a man sent a *shaliach* to marry off his (minor) daughter, but then went and decided to marry off his daughter himself, what is the law if the *shaliach* married off the daughter first? (ד': ט')
- What is the law regarding a case where a couple went overseas, yet the man returned with children claiming that his wife that he left with gave birth to these children and then passed away? (ד': י')
- What is the law, relating to *yichus*, regarding a case where a man returns from abroad saying:
 - "This is my wife that I married while away and these are her children"?
 - "I married while away and my wife died, and these are the children from that relationship"?) (ד': י"א')
- Does *yichud* apply where there is:
 - Two men and one woman?
 - Two women and one man? (Include the exception.)
 - A mother and son? (ד': י"ב')
- 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' – ב' 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': ג')
- 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 והמזיק בתשלומין" (א': ג')
- What are the five *Tamin*? (א': ד')
- What are the five *Mu'adin*? (א': ד')
- Can a lion ever be considered a tame animal? (א': ד')
- What are the two differences between a *tam* and a *mu'ad*? (א': ד')
- 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*? (א': ב')
- If an animal consumed something in public domain, what liability is placed on the owner? (א': ב')

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
11 August ז' אב	12 August ח' אב	13 August ט' אב	14 August י' אב	15 August יא' אב	16 August י"ב אב	17 August י"ג אב
Bava Kama 2:3-4	Bava Kama 2:5-6	Bava Kama 3:1-2	Bava Kama 3:3-4	Bava Kama 3:5-6	Bava Kama 3:7-8	Bava Kama 3:9-10

