



Intent to Shame

The *Mishnah* (3:10) contrasts the laws that apply when one's animal hurts someone and when a person injures another. One difference raised is if a person hurts another. Other than paying for the damage caused (*nezek*), they must also compensate them for the shame (*boshet*). That is not the case if one's ox causes damage. We shall focus on this point.

The *Bartenura* provides two explanations. The first is that the obligation to compensate for the shame is derived from a *pasuk* that refer specifically to an "*ish*" (person) and not *shor* (ox) (see 42a). The second reason is that that one is obligated to compensate for shame when they shamed intentionally, and an ox cannot have intent to shame.

The *Tosfot Chadashim* however finds the *Bartenura*'s second answer difficult. He cites the *Gemara* that one is obligated to compensate for shame as long as there was intent to cause harm, even if there was no intent to shame (in the process). The *Tosfot Chadashim* directs our attention to the *Tosfot Yom Tov* to stress this point.

The *Tosfot Yom Tov* cites the *Nemukei Yosef* who notes that when a person injures another, they are obligated to pay five elements of compensation. In addition to the two already mentioned, there is also *tzaar* (pain endured), *ripui* (medical costs) and *shevet* (lost opportunity to work). These are also only applicable when a person causes the damage but not an ox. Why then did the *Mishnah* only select *boshet*?

The *Nemukei Yosef* explains that the *Mishnah* compared a person and animal to contrast the rulings under the same circumstances. In other words, the ox can only really have intent to harm, but not intent to cause shame. In that case, where there is intent to harm and no intent to shame, the ox is exempt, and the human would be liable. Put simply, as long as the human had intent to cause harm, even if he did not have intent to shame, he would be liable to *boshet*.

R' Akiva Eiger cites the earlier *Gemara* (27a) as the source for the requirement for intent to cause damage for one to be liable to *boshet*. The *Gemara* there discusses the case of *ve'shilcha yada ve'hechzika bimvushav*. The *Gemara*

understands that the additional wording *ve'hechzika* teaches that as long as there is intent to cause damage, she would be liable, "even if there was no intent to cause shame".

R' Akiva Eiger however finds that *Gemara* difficult. Granted that it was necessary to teach that intent to cause damage is necessary, his difficulty is the *Gemara* adding "even if there was no intent to cause shame". That point should be self-evident. He directs our attention to the later *Gemara* (cited above in the *Bartenura*) that excludes an ox from compensating for shame. If you think that intent to shame was necessary, then we would not need a *pasuk* to exclude the case of an ox. He leaves this question requiring further thought.

Perhaps we can find an answer based on the *Raavad*'s understanding of that *Gemara*. The *Shita Mekubetzet* (27a) cites the *Raavad* who asks how one can separate intent to harm and intent to shame. Explains that *boshet* is part of *nezek*. Where do we find *nezek* without *boshet*? The *Raavad* answers that it would be in a case where the injury would be in a concealed place. Consequently, when the *Gemara* says "even if there was no intent to cause shame" it means that even if the person intended to give the other a concealed injury but injured him in a place that would cause *boshet*. The *Gemara* teaches that he would nevertheless be liable to *boshet*.

We find from the *Raavad* that when the *Gemara* is discussing that intent to shame, it does not mean that the culprit wanted to embarrass the individual. Indeed, it is self-evident that that is not required. Instead, according to the *Raavad* intending to inflict an injury that would be embarrassing, is intent to shame. The *Gemara* is instead addressing that case, where the type of injury intended, and the injury inflicted differ. Even if the type of injury intended was not embarrassing, yet it ended up being so, one would still be liable to *boshet*.

Revision Questions

בבא קמא ב' ג' – ג' – י'

- What liability is placed on the owner of a dog that jumped from a rooftop and broke an object upon landing? (ב' ג')
- When does an animal make a transition from being a *tam* to a *mu'ad*? (Include both opinions) (ב' ד')
- In which domain do the *Chacham* and *R' Tarfon* disagree regarding the liability placed on the owner of a animal that gores another? Explain the debate. (ב' ה')
- Can a human being ever be defined as a *tam*? (ב' ו')
- What liability is place on a person that damages in his sleep? (ב' ז')
- If *Reuven* leaves a bottle in the middle of the street and *Shimon* drives over it, is *Shimon* liable for the damage cause? (ג' א')
- What if the bottle caused damage to *Shimon's* car, is *Reuven* liable for the damage? (ג' ב')
- If *Reuven* dropped his bottle of juice and it smashed, and then *Shimon* slipped on the juice, is *Reuven* liable? (Explain both opinions) (ג' ג')
- If *Reuven* poured his waste water into the street and *Shimon* slipped on it, is *Reuven* liable? (ג' ד')
- What is the *takanah* instituted regarding those that leave their compost bins in the street? Who broadens this *takana* to apply to anything that can potentially cause damage? (ג' ה')
- What is the law regarding two potters, *Reuven* and *Shimon*, both carrying their wares, with *Reuven* walking in front of *Shimon*, and *Reuven* drops one of his pots and *Shimon* subsequently trips on it causing damage? (ג' ו')
- 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? (ג' ז')
- If two people run into each other who is liable? (ג' ח')
- Is one liable if they were chopping wood in their property and a chip flew out into the street and caused damage? (ג' ט')
- How is compensation calculated if two oxen cause damage to one another if: (ג' י')
- 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? (ג' יא')
- How is compensation calculated if: (ג' יב')
- 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' יג')
- (ב' יד')

Shiurim

ONLINE SHIURIM

Yisrael Bankier
mishnahyomit.com/shiurim

Rabbi Reuven Spolter
mishnah.co

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rabbi E. Kornfeld
Rabbi C. Brown
<http://www.dafyomi.co.il/calendar/myomi/myomi-thisweek.htm>

APPS

Mishnah Yomit
mishnahyomit.com

All Mishnah
Orthodox Union

Mishna Yomi
Our Somayach, South Africa

Kehati

SHIUR ON KOL HALOSHON

Rabbi Moshe Meir Weiss
In US dial: 718 906 6400
Then select: 1 – 2 – 4

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
18 August י"ד אב	19 August ט"ו אב	20 August ט"ז אב	21 August י"ז אב	22 August י"ח אב	23 August י"ט אב	24 August כ" אב
Bava Kama 3:11-4:1	Bava Kama 4:2-3	Bava Kama 4:4-5	Bava Kama 4:6-7	Bava Kama 4:8-9	Bava Kama 5:1-2	Bava Kama 5:3-4

