



Sumchus

The *Mishnah* (5:1) discusses a case where one ox gored and killed another, and dead calf was found beside it. It was known that the dead cow was pregnant, but is not clear whether the animal was gored when pregnant, or whether the calf was miscarried prior to the incident. In this case, the killing ox was a *tam*. The *Mishnah* explains, that consider that it was a *tam*, he would certainly need to pay for half the value of the ox that was killed. With respect to the calf, since it is unclear, he needs to pay a quarter of its value.

The *Bartenura* explains that this *Mishnah* is according to the opinion of *Sumchus*, who maintains that whenever there is a doubt in a monetary case, the parties share in cost. In other words, since there is a doubt whether the half damage for the calf needs to be paid, they divide that amount, and the owner of the ox that caused the damage only pays a quarter. The *Chachamim* however argue. They maintains that whenever there is a doubt regarding payment, then the burden of proof is placed on the party attempting to extract the funds.

The *Tosfot* cite the *Gemara* in *Bava Metzia* (100a) that appears to conclude that *Sumchus* only maintains his position if the object in question is not in the possession of either party. Consequently in this case, the ox that caused the damage, from which compensation would be collected, must be located in an open space – a location not owned by either party. It is in that case that *Sumchus* maintains that the disputed property should be divided. That *Chachamim* however argue that the property, or in this case the ox, is considered in the possession of the *mara kama* – the original owner. Consequently, as we explained above,

the person whose ox died would need to prove that the calf also died in the attack to extra any compensation for it.

The *Kuntus Sefeikot* (1:5) attempts to understand this debate considering the *Tosfot's* opinion. He first tries to understand the legal force of *mara kama*. Why does it automatically place the burden of proof on the other party if it is not currently in his possession? He suggests that it is based on the concept of *chazaka* that we find in the world of *issurim*. Just like when there is a doubt regarding *issurim* we lean on the established *chazaka* – its last known status before the *safek* was introduced – the same appears to be true in monetary law.

If the concept of *chazaka* in *issurim* is applied in monetary law, then how do we understand the position of *Sumchus*? The *Kuntrus Sefeikot* explains that according to *Sumchus* he views these cases of *safek* as if the object in dispute is in the possession of both the parties. It is as if one party is holding one half, and the other party the other. That is why it overrides the consideration of *mara kama*. The *Chachamim* however maintain that it is not in possession of either party, therefore we fall back on *mara kama*. Alternatively, the *Chachamim* argue that the *mara kama* is not learnt for *chazaka* in *issurim*, but rather it equivalent to *chezkat mamon* – it is considered as if it is the possession of the original owner. This would be much like any property that we know belonged to a person. If it is found in the public domain, the ownership does not change without any proof.

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Revision Questions

בבא קמא ג' י"א – ה' ד'

- 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' י"א)
- 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' י')
- What is the special law regarding a *shor ha'itzadin*? (ד' י')
- 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. (ה' ז')
- 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' 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? (ה' י"א)
- What other case is comparable to the previous one? (ה' י"א)
- If a person delivered a package, and it was damaged on the property by the owner's animal who is liable? (ה' י"ב)
- If *Reuven* brought his ox into *Shimon's* property and it fell in a pit dirtying the water who is liable and what are they liable? (ה' י"ג)
- Regarding the previous case, explain the debate if *Shimon* allowed *Reuven* to bring his animal onto his property. (ה' י"ג)
- How is *d'mei vladot* calculated and in which two cases mentioned in the *Mishnah* is it paid? (ה' י"ד)

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
25 August כ"א אב	26 August כ"ב אב	27 August כ"ג אב	28 August כ"ד אב	29 August כ"ה אב	30 August כ"ו אב	31 August כ"ז אב
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	Bava Kama 7:4-5

