



Leaving Property in Another's Domain

The *Mishnah* (5:2-3) discusses a number of cases where one leaves his items in another's property. They include the potter leaving his wares, a person leaving his produce and another that leaves his ox. In each of the cases the *Mishnah* rules that if the *ba'al habayit* (the owner of the property) did not allow the items to be left there, then the owner of the items is responsible for any damage these items caused, while the *ba'al habayit* is exempt from any damage caused to those items. If however they are left with the permission of the *ba'al habayit* then he takes responsibility for any damage caused to these items, while the owner of the items is exempt if they caused any damage. In the second *Mishnah* however, *Rebbi* argues that even if the *ba'al habayit* allowed the items to be placed there, he is not liable for any damage caused to these items unless he explicitly accepts responsibility for guarding them.

What would *Rebbi* maintain if the *ba'al habayit* allowed the ox to be in his property, did not accept responsibility for watching the animal and the animal caused damage? The *Tosfot Yom Tov* explains that since he was given permission for the animal to be in the premises, the owner would be exempt for paying damages. He continues citing the *Magid Mishnah*, that once the *ba'al habayit* granted permission for the ox to enter, but did not take responsibility for any damage caused to the animal, it is as if they stipulated that neither the *ba'al habayit* or the owner would be responsible for any damage. The *Magid Mishnah* cites the *Tosfot* (47b, *eima*) as the source of the logic.

The *Tosfot R' Akiva Eiger* however notes that the *Tosfot* concludes that in this case the owner of the ox would be liable to pay for any damage caused. The *Tosfot R' Akiva Eiger* explains that if this ox gored another he would still be liable to half the damages. This is because once given permission to bring his ox inside, the area would be considered like a *chatzer ha'shutafim* – a courtyard owned by both parties – in which the owner would still be required

to pay half the damage caused. Considering the earlier cases where the item left there was either pottery or produce, if those items where the cause of damage (e.g. the *ba'al habayit's* animal tripped on them), then *Rebbi* would maintain the owner would be exempt. This is because the owner was given permission to place his items there, the damage was passive and the owner did not take responsibility to look after the *ba'al habayit's* property.

The *Chazon Ish* (*Bava Kama* 4:1) explains in a similar manner, that once permission is granted it is considered like a shared domain. Consequently, if the *ba'al habayit's* ox stumbled and injured itself on the foreign ox, then the owner would be exempt (much like if it stumbled on the pottery). Nevertheless, if the *ba'al habayit's* ox gored and injured the foreign ox, then the *ba'al habayit* would not be liable. It is not considered a shared domain in this respect, because since the *ba'al habayit* did not agree to look after the ox, his granting of permission of entry does not include granting the owner of the ox the right to claim any damage done to his ox.

The *Tosfot R' Akiva Eiger* however cites the *Rosh* that disagrees. The *Rosh* explains that in this case where the *ba'al habayit* only granted permission for the items to be placed there, *Rebbi* would maintain that the owner is responsible for all damage caused, whether dealing with the case of the ox or pottery. The reason is that when granting permission and agreeing to watch the items, it is considered as if the *ba'al habayit* stipulating that "you can place the items there, but you must look after them, and you are responsible for any damaged they cause or bear. The *Tosfot R' Akiva Eiger* explains that according to this understanding it is considered as if the owner is stating that the owner's placing his items there is considered as if he is placing them there without permission.¹

Yisrael Bankier

¹ The *Tosfot R' Akiva* notes that this is indeed how the *Maharsha* explains the *Tosfot*. He nevertheless maintains his explanation of the *Tosfot*.

Revision Questions

בבא קמא ד' ר' - ר' ג'

- What is the law regarding a case where an ox rubs against a wall causing it to fall and kill a person? (ד' ר')
- Explain the debate regarding a case where a *shor ha' midbar* kills someone. (ה' ר')
- 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' ר')
- Do the same distinctions between a *tam* and a *mu'ad* apply if the animal was entrusted to a guardian? (ט' ד')
- 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' א')
- What other case is comparable to the previous one? (ה' א')
- If a person delivered a package, and it was damaged on the property by the owner's animal who is liable? (ה' 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' ג')
- Regarding the previous case, explain the debate if *Shimon* allowed *Reuven* to bring his animal onto his property. (ה' ג')
- How is *d'mei vladot* calculated and in which two cases mentioned in the *Mishnah* is it paid? (ה' ד')
- Is the owner liable for any damage caused by his hole, if he dug a hole in his own property, but the opening of the hole was in the public domain? (ה' ה')
- Why does the *Torah* use the language of "*bor*" when referring to this class of damage? (ה' ה')
- How is liability determined if a pit has joint ownership? (ה' ו')
- Is one liable if an animal injured itself as a result of the echo that resonated from the digging of a pit? (ה' ו')
- List the eight halachic categories where the *Torah* referred to an ox, but implied all *behemot*? (ה' ז')
- Is the owner liable if he locked his animal up properly yet it escaped and caused damage? (ה' ח')
- What is the law regarding the previous case if thieves removed the animal? (ה' ט')
- If a person left his animal outside in the sun, and contained him in that area properly, yet the animal broke out and caused damage (*shen* or *regel*) is the owner liable? (ה' י')
- In what situation, where an animal ate from the neighbour's garden, is the owner of the animal only liable to pay for what the animal benefited? (ה' י')
- In the case of *shen*, how is full damage calculated? (ה' י')
- When do we say that if one's neighbour piled produce in his field and his animals ate from that pile that he is liable? (ה' י')

Melbourne, Australia

Sunday -Thursday
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Efrat, Israel
Shiur in English

Sunday -Thursday
Rabbi Mordechai Scharf
9:00am
Kollel Magen Avraham
Reemon Neighbourhood

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Rabbi Chaim Brown
www.shemayisrael.com/mishna/

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http://www.dafyomi.co.il/calend
ars/myomi/myomi-thisweek.htm

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
2 December כ"ד כסלו	3 December כ"ה כסלו	4 December כ"ו כסלו	5 December כ"ז כסלו	6 December כ"ח כסלו	7 December כ"ט כסלו	8 December ל' כסלו
Bava Kama 6:4-5	Bava Kama 6:6-7:1	Bava Kama 7:2-3	Bava Kama 7:4-5	Bava Kama 7:6-7	Bava Kama 8:1-2	Bava Kama 8:3-4

