



OVERVIEW BAVA KAMA DAF 15

Section 1: Laws of Collecting Damages

"Free Men, Members of the Covenant"

"Free men" excludes slaves. "Members of the covenant" excludes non-Jews.

Why both?

- If it taught only slaves → One might think non-Jews (who have lineage) can be witnesses
- If it taught only non-Jews → One might think slaves (who have many Mitzvos) can be witnesses

"Women Are Included in Damages"

Question: What's the source?

Answer (Rav Yehudah): "A man or woman who will do any sin" equates men and women for all punishments.

(D'Vei R. Elazar): "These are the Mishpatim that you will put before them" equates men and women for all monetary laws.

(D'Vei Chizkiyah): "And (an ox) will kill a man or woman" equates men and women regarding death.

Why all three sources?

- Only punishments → One might think monetary laws are just for men
- Only monetary laws → One might think only men get punishments (who have more Mitzvos)
- Only these two → One might think Kofer (ransom) applies only if a MAN was killed
- Only Kofer → One might think other cases don't include women

Section 2: Is Half-Payment for a Tam's Damage a Fine?

The Dispute:

Rav Papa: A Tam that pays half-damage is Mamon (a proper obligation - not a fine).

Rav Huna brei d'Rav Yehoshua: It's a fine (Kenas).

The Logic:

Rav Papa holds: Oxen are NOT considered guarded. Really, the owner should pay FULL damage. The Torah was lenient because he wasn't yet warned.

Rav Huna holds: Oxen ARE considered guarded. Really, the owner should be EXEMPT. The Torah fined him to encourage better guarding.

From the Mishnah:

Mishnah: The damager and victim are both involved in payments.

Question: This is like the opinion that half-damage is Mamon. The victim loses half of what he deserves.

According to the opinion it's a fine, the victim RECEIVES what he doesn't deserve. Can we say he "participates"?!

Answer: The Mishnah refers to the decrease in value of the carcass, which the victim suffers.

Question: A previous Mishnah already taught this!

Answer: The Mishnah teaches this about a Tam AND a Mu'ad - both are needed.

Another Question:

Mishnah: The difference between Tam and Mu'ad is that a Tam pays half-damage up to its own value, and a Mu'ad pays full damage even above its own value.

Question: If half-damage is a fine, the Mishnah should also say a Tam doesn't pay due to the owner's admission!

Answer: The Tanna didn't list all differences.

Question: What else did he omit?

Answer: He omitted that only a Mu'ad pays Kofer.

Objection: Maybe the Mishnah is like R. Yosi ha'Glili, who says a Tam pays half-Kofer!

Attempted Proofs:

Question (Mishnah): If one said "my ox killed Ploni" or "it killed Ploni's ox," he pays due to his own admission.

Suggestion: This refers to a Tam (showing it's Mamon)!

Rejection: No, it refers to a Mu'ad.

Inference: A Tam would NOT pay due to admission.

Question: The Mishnah could have distinguished within the first case (Mu'ad pays, Tam doesn't)!

Answer: The Mishnah discusses only a Mu'ad.

Section 3: Continuation of the Debate

The General Rule:

Beraisa: Any payment MORE than the damage is not paid due to admission.

Inference: Any payment LESS than the damage IS paid due to admission.

Rejection: No, the inference is that any payment EQUAL to the damage is paid due to admission.

Question: If less than damage is NOT paid due to admission, the Mishnah should have said "any payment not equal to the damage" (to include more OR less)!

Rav Huna brei d'Rav Yehoshua is refuted.

The Halachah:

The Halachah is: Half-damage is a fine.

Question: This was refuted!

Answer: The refutation was because the Mishnah didn't say "not equal to the damage." But the Mishnah couldn't say this - it's not always true!

A tradition from Moshe from Sinai teaches that half-damage of PEBBLES is not a fine.

Practical Consequences:

Since half-damage is a fine:

- If a dog ate a sheep or a cat ate a chicken (abnormal), this is a Toldah of Keren
- We don't collect such fines in Bavel
- This applies only to LARGE sheep or chickens; small ones are normal
- If the victim seized payment, we don't make him return it
- If the victim requested to go to Israel to judge the case, we comply
- If the damager doesn't agree, we excommunicate him
- In any case, we excommunicate him until he removes the danger

Beraisa - R. Nasan: "Don't put blood in your house" forbids having a wild dog or rickety ladder in one's house.

Section 4: Tam and Mu'ad

The Mishnah:

There are five Tam damagers and five Mu'ad damagers:

Tam behaviors (not Mu'ad): Goring, pushing, biting, crouching, kicking

Mu'ad from the start:

- Shen is Mu'ad to eat food fitting for it
- Regel is Mu'ad to break things while walking
- A Mu'ad ox
- An ox that damages in the victim's premises
- Man

Wild animals (always Mu'ad): Wolf, lion, bear, leopard, Bardelus, and snake

R. Elazar says: If domesticated, they're NOT Mu'ad - except a snake, which is always Mu'ad.

Question About Consistency:

The Mishnah mentions "Shen is Mu'ad" and "a Tam pays half-damage" - this is like Chachamim.

But the Reisha calls "an ox that damages in the victim's premises" Mu'ad - this is like R. Tarfon!

Is the Reisha like Chachamim and the Seifa like R. Tarfon?!

Answer #1 (Shmuel): Yes!