Introduction 21 Bava Kamma-Intro

Seder Nezikin

- Comprises three tractates B Kamma, B Metzia, B Basra and discusses damages, torts. It is the 4th of the 6 Sidrei Mishnah.
  Torah's civil law is contained in its 10 Chapters.

B Kamma deals with damages and a person's liability for causing them.

Liability for damages:

-A person is liable for his actions and for the damage caused by his property.

- His property relates to his animal, his pit, his fire.

The damager is called the 'father of the damage', 'the AV'.

A subcategory of that AV is called a 'Toladah', a 'descendent'.

# 21 Bava Kamma-Intro

I. The person himself:

If a person damages another person's body or property, he must pay his victim for 5 distinct injuries;

1. Nezek -Permanent bodily damage, measured by his value as a slave.
2. Tzar - Pain - physical pain suffered.
3. Ripui - Healing - medical costs
4. Sheves - Loss of employment – the income he lost.
5. Boshes -Humiliation, i.e., injured in public, laying on the street, being seen on crutches, or in bandages, etc.

#2-5 applies only if a person is injured by another person, not if the injury occurred where one's property caused the injury.

# 21 Bava Kamma Ex 21: 35-36

II One's animal-

Shemos - Mishpatim Ex 21:35: If an ox pushes (with his horns)

c. Ex 21:35 -36 Horn, i.e., goring – abnormal behavior -animal has the intent to harm by, i.e. goring or kicking.

Liability for theses two damages of a 'tam' is paid for through the body of the animal.

If it is a 'muad', "an animal that did this before" and the owner was warned, he pays full damages from any and all of his assets.

Ex 22:4 and he sends out his animal.

b. Ex 22:4 'Regel', 'foot' – This is normal behavior. The damages are caused by normal walking and the animal had no intent to cause harm. This is a commonplace activity.

- Liability: Full damages for items on private property.
- Liability: No damages for items in the public domain.

a. Ex 22:4 'Shein', 'tooth' – The animal causes damage in the normal act of eating

Ex 22:4 and he consumes the field of another.

- There was no intent to harm.
- The liability is the same as Regel – full damages on private property, no liability for damages in the public domain, but he pays for the value (cost) of the food (items) eaten by the animal.

# 21 Bava Kamma Ex 21: 35-36

III. One's pit-

One must refrain from creating a public hazard. If one causes a public hazard and it causes injury to a person or an animal, he is liable.

The danger, i.e., pit, must create an immediate danger and it must be a stationary danger.

The victim must travel to it.

Case: An animal falls in your pit and is killed or injured.

You must pay full damages for the injury of the animal, but not for any utensil carried by the animal. (Dissenting opinions: The pit did not damage the animal, the ground on the bottom of the pit, that was never touched by the defendant, did the damage to the animal!)

Case: A person falls into your pit and is killed – you have no liability.

But, if he was injured - you are liable.

IV. One's fire, that he failed to guard from spreading, (Ex 22:5), was carried by a normal wind or breeze. The characteristic of fire is that it travels to that which it destroys by natural forces.

Example: A stone left on a roof, which was caused to fall by a normal wind, you are liable.

V. Other damages – up to 24. (see BK 5b-5a)

21 Bava Kamma 2a1 line 8 A1

Mishnah 2 a to 9b1

2a There are four primary damages,

אַרְבָּעָה אָבוֹת נְזִיקִין

ox/pit/maveh and fire.

Maveh may refer to damages from tooth, man, saliva, fire, foot, hoof, or water.

They share, in common, a tendency to damage.

-The obligation to watch them is on the owner.

-The owner must pay damages with his best quality land (if he chooses to pay with land).

The Gemara discusses the significance of violating a subcategory, ‘a Toladah’ , of the primary damages and compares them to the 39 AV Melachos and Tolodos of Shabbos.

21 Bava Kamma 2b3 line 26 B14

דְּמוּעָד לְאָדָם הָוֵי מוּעָד לִבְהֵמָה

2b3 - An animal, about whom it has been established that it attacks people, is automatically considered muad,
i.e., having a tendency to attack animals, but not visa versa.

If he kills a person, the ox is stoned and the owner pays ‘Kofer’ ,“atonement”.
If vice versa, the ox kills animals (and is a muad to kill animals (3x) and then the ox kills a person, the ox is a Tam regarding people. The ox is stoned, but the owner pays nothing for the dead person (N34).

21 Bava Kamma 2b1-2-3

2b1 Line 5 B7

Three Subcategories in reference to ox: ג׳ אָבוֹת נְאֶמְרוּ בְּשׁוֹר

‘Keren’ - ‘Horn’ - Damage done through goring (Exodus 21:28-Goring –The animal uses its horns with malicious intent).

This is not a common form of damage - The Toladah of this AV is squatting or crushing with its horns.

‘Shein’ - ‘Tooth’- Damage done through eating.

The damage results from the pursuit of physical gratification.

‘Regel’ - ‘Foot’- Damage done through trampling on things

(The damage is done due to an act being performed with malicious intent).

Subcategories of Keren:

-Pushing, biting, squatting, kicking: If done deliberately with the horns, pushing with the body of the animal is only a Toladah, since it is not mentioned in a verse from the Chumash.

-Biting, shouldn’t it be a subcategory of Shein? No, we speak here of biting without physical gratification (similar to Karen with malicious intent).

-Squatting and kicking - Should be subcategories of Regel? No, here we speak of activities done without gratification. Here, it is a Toladah of Keren – an uncommon form of damage.

21 Bava Kamma 2b3 line 24 B1
Daf Digest

אָדָם דְּאִית לֵיהּ מַזָּקָא כְּתִיב ,,כִּי־יִגַּח״ בְּהֵמָה דְּלֵית לָהּ מַזָּקָא

A person has intelligence and will avoid the ox's horns. But an animal does not

have the intelligence to avoid the ox's horns. The animal will be injured even by being pushed by the horns of an ox that pushes.

- Does an animal that is known to have killed children have a tendency to kill adults also?

Rashi, and Tosophos Yom Tov are of the opinion that injury to a person is a function of the person's intelligence. Adults would be more careful than children and therefore, the answer is No; An animal that hurts children could not be said to also be likely to hurt adults.

R Akiva Eiger says - We are kept from harm by our guardian angel. If the animal can overcome the watchfulness of the child's angel, it could do the same for the adult's angel. Therefore, we do need to worry that if it already hurt a child, then it also may hurt an adult.

שֵׁן יֵשׁ הֲנָאָה לְהַזִּיקָה

(Biting is not similar to Shein.) Shein produces physical gratification.

- The defining characteristic of Shein is not that the damage is caused by the tooth, but that the damage comes about as a result of the animal's pursuit of physical gratification, such as when the animal eats.
- Biting with intent to damage is a Toladah of Keren, i.e., done with malicious intent to injure.
- Biting with intent to gain gratification is a Toladah of Shein, i.e., done with intent to gain pleasure.

The defining characteristic of Regel is the commonality of the occurrence. Damage caused by walking is very common. Damage caused by crushing or kicking, though they occur with the feet, are not common and are therefore, not a Toladah of Regel. They are a Toladah of Keren, as they are performed with malicious intent.

And if you say Keren.

N #3 -The liability for Karen damage is already written. It derives from Ex 21:28-32 and 35-36, “If an ox, “gores”, ‘yigach’, a man or a woman and the person dies”. Yigach is used for Regel – It implies that the owner deliberately sent the ox out to do damage.

‘U’Vier’ is used for Shein, “It consumes.” The law that applies to one, applies, also, to the other (a Hekeish), since both terms are in the same sentence. We can learn that a person is liable if his animal totally, or even only partially damages an item.

Ex 22:4 * - “If a man sends his animal to the field or vineyard of another and causes it to be consumed … he must pay with the choicest of his field and vineyard”.

Chabad Torah download

אִצְטְרִיךְ סְלָקָא דַּעְתָּךְ אֲמִינָא

"It is necessary you would have thought to say.

Different examples are discussed:

- Where an animal went to graze in a neighbor's field on his own.
- Where an animal was sent by his owner to graze in the neighbor's field.

The liability is not different. Regel is like Shein and we continue to question which verse we use to learn their similarity.

Subcategories of Shein (3a3 line 30 A7):

-The animal rubbed against a wall for self gratification, i.e., she scratched her hide and the wall fell down.

-She soiled fruits for her own gratification, i.e., she frolicked in the fruit.

Subcategories of Regel (3a3 line 35 A38):

-Common injuries, i.e., damage caused by the animal walking and hitting things with her body, her hair, the pack on her back, the bit in her mouth or the bell on her neck.

Subcategories of Pit 93a3 line 42 B21 0:

- A pit, 10 tefachim deep can kill, it equals 35-40 inches deep. A fall of 9 tefachim merely causes injuries. A tefach is 3.5 – 4 inches. Therefore, it is considered a Toladah.

21 Bava Kamma 3b1 line 11 B20
Weinbach p483

אָדָם מוּעָד לְעוֹלָם בֵּין עֵר בֵּין יָשֵׁן

A man is always considered warned (and therefore responsible), awake or asleep.

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Man is always responsible for his actions whether awake or asleep.
A sleeping man is liable for the breakage of vessels, if he went to sleep amongst them. But if someone put them next to him after he was asleep, he is not liable.
Tosophos - If one lies down next to a sleeping man and they hurt each other in their sleep, the one who went to sleep first is blameless and the other is responsible.

וְלֹא רְאִי הַשֵּׁן שֶׁאֵין כַּוָּנָתוֹ לְהַזִּיק

The nature of Shein, where it is not the animal's intent to damage, is not similar (to Keren).

Discussion – Why is there a difference in damages produced by Shein, Regel and Keren? The objects are equally damaged.
An animal not intent on doing damage is relatively easy to watch, in regards to Shein or Regel. The fact that it was not watched, obligates the owner to pay full. Whereas, in a case of Keren, it is difficult to restrain an animal that is intent on causing destruction. Therefore, the owner only has to pay ½ of value of the damage caused.

Shein and Regel are common occurrences. They derive from the natural acts of the animals and the owner is therefore, aware of that risk and should prevent the damages. Therefore, he has to pay full.

The Gemara explains why we could not have learned the rules governing injury caused by Shein from Keren or Keren from Shein. Shein- the intention is gratification**;** Keren- the intention is to damage.

(4a & b) Discuss the word Maveh and try to decide what it is. It seems to be a living thing; Not fire, not water, perhaps man himself. Maveh is in 'Hifil', a causative form, something to be sought, an active form.

עֶבֶד וְאָמָה לַאו אַף עַל גַּב דְּכַוְּונָתָן לְהַזִּיק אֲפִילּוּ הָכִי פְּטִירֵי

Regarding a slave and a maid servant, even if they intended to cause damage they are exempt.

Is a maid who broke objects in her employer's home obligated to pay?

Shulchan Aruch -Opines that a woman who breaks something in her home, is exempt from repaying her husband. Forcing her to pay would disturb the Shalom Bayis of the home. Similarly, forcing a maid to pay, would also detract from a peaceful environment in the home.

However, a maid is like a paid watchman, who is responsible for the items under their control. Therefore, she should be liable to pay. It is recommended that we follow the local common custom; If most home owners require their maids to pay for broken objects, they should pay, otherwise, no.

* It is necessary to specifically teach liability for Keren, since it entails liability for intentional damage I might have otherwise thought there was no liability, since a slave, who intentionally damages, creates only limited liability for the master. Why? Because the slave might be angry and want to harm the master. Therefore, we protect the master by absolving him of liability, since the slaves actions could not be anticipated or prevented.

21 Bava Kamma 4b1 line 2 A12

מַתְקִיף לָהּ רַב מָרִי

Rav Mari challenged these interpretations.

The Gemara tries to explain what Maveh means from here to 5b3 line 28.
4b1 line 11 B28.

21 Bava Kamma 4b2 line 22 B23

Daf Digest

אָדָם דְּאַזִּיק אָדָם מְשַׁלֵּם אַרְבָּעָה

A person who injures a man is obligated in the 4 additional remedies.

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A man fell asleep at the wheel and injured a person.

-What is his halachic obligation, to pay the repair bills for the physical damage?

- If it is only an accident, he pays #1, only-pain.
- If it is negligence, he pays all 4 –healing, unemployment and humiliation.

Falling asleep at the wheel, is an occurrence that might happen to anyone.

Is it, therefore, considered not avoidable or is it negligence?

One needs to study the facts:

-Did the falling asleep occur early in the trip or late in the trip, when anyone would be exhausted? Did he take a nap before starting the trip, to try to prevent the, otherwise, anticipated problem?

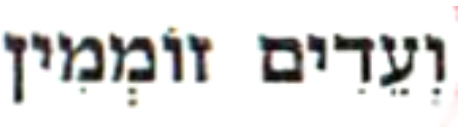
תָּנֵי רַב אוֹשַׁעְיָא אֲבוֹת נְזִיקִין

R Oshaya taught a Baraisa: There are 13 primary damages.

R Oshaya – 13 primary damagers

| A Custodian: | liable if | not liable if |
|---|---|---|
| - unpaid - shomer chinam | negligent | Lost or stolen |
| - paid - shomer sachar | negligent, loss or stolen | secondary to an unavoidable accident i.e., lightening. |
| - borrower - Shoel | negligent loss or stolen unavoidable accident | Item breaks in course of normal use. |

Renter – Socher - May be treated as a paid or an unpaid custodian.
Suggesting that the word Maveh means damages caused by a man to property.




False witnesses,

are to be punished with the punishment they attempted to inflict.
As it says (in Deut 19:19), “Then shall you do to him, as he had schemed to do to his brother.”

The Rabbi’s deduce that ‘schemed to do’ caused them to be punished.
However, what if the punishment has already been carried out upon the innocent person? Logic (a kal v’chomer) would have us say that if merely scheming would cause them to be punished, certainly if they caused an unjust punishment to be inflicted, they should be punished.

Rashi – The Torah reads “schemed to do” and does not say “he did.” Therefore, the false witnesses are exempt.

Rambam - Another reason is that we have a rule of ‘ein onshin min hadin’, ‘We do not impose punishment on the logic of a kal v’chomer.’

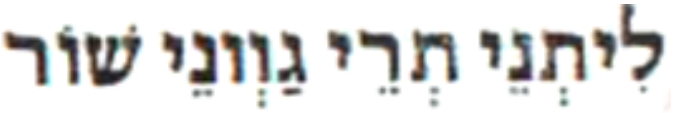
21 Bava Kamma 4b3 line 30 B6
Hughes p287

וְעֵדִים זוֹמְמִין

False witness

Rambam – A false witness is not executed if the innocent party has been executed
However, if the innocent party has already been punished with whipping, does the false witness get whipped?

R Chaim Soloveitchik explains the Rambam's view:
If a person is deserving of the punishment of being whipped ('stripes', 'Malkus'). for example, he was bound before the court and escapes. He no longer will receive the beating, but is exempt. The embarrassment of being found guilty and being bound, is considered sufficient punishment. In our situation, the innocent party is not embarrassed by being bound, since he knows he is innocent and the 'whipping' is not considered to have been done by Bais Din. The false witness, then, is still considered to be scheming and can incur the punishment for scheming to do harm. Namely, to receive the punishment he wished (and in fact did cause) the innocent party to receive.




Let him teach two types of damage caused by an ox.

Case:

1. If a Tam ox gores another ox - payment is ½ the value of the gored ox - 300/2 = 150
   The tam ox is worth 100 zuz. The injured ox is worth 300 zuz paid from the body (i.e., sell) the Tam ox.

   The 100 zuz for the Tam does not fully pay the 150 zuz owed, it is too bad for the owner of the gored ox.

2. If a Muad ox gores an ox- - Payment is 100% of the damage and paid from all assets of the owner.

   If a Tam ox kills a person- Payment is 100% but only from the body of the Tam (according to the R Akiva) and that may, therefore, not be full compensation.

There are charts with sentences in the Torah where each damager is identified (See 5a4).
5B discusses why each needs to be designated and we could not derive the distinctions between Shein, Regel, Maveh, (man), fire and pit, without these sentences. The Torah wanted to teach us special laws from each.

21 Bava Kamma 5b2 Line 8 A9

לְהַלְכוֹתֵיהֶן

In order to teach their separate laws.

Why each needs to be separate? To learn a unique principle from each one:

Keren - to distinguish between Tam and Muad.
Shein - to exclude damage in the public domain.
Regal - to exclude damage in the public domain.
Pit - to exempt it from liability for utensils damaged in it.
Pit to exempt it from liability, if a man was killed in it.
6a1 Fire - to exempt if hidden objects were destroyed by it.
or to identify liability for scorch, smoke or blackening damage.

הַצַּד הַשָּׁוֶה שֶׁבָּהֶן

They all have a common characteristic.

They each have a known propensity to cause damage and the owner is responsible for watching and preventing the damage.

- This includes an item, stone, knife or burden falling from a roof in a normal wind, that did damage. If the damage occurred while the item was moving, it is a subcategory of fire (damages by its own movement). If damage occurs after coming to rest, it is a subcategory of pit (for a pit is inherently dangerous and requires no additional force in to cause damage).
- An item left in public domain, that was safe where it was, but it got rolled around by the feet of men and animals and caused damage. It is considered like a pit, (inherently dangerous and you must watch it, so that it does not cause damage by moving to injure or have animals come to it and be injured).
- 6a3 - Garbage (i.e., septic pits) - If they cause damage while being thrown by the man, they are like Maveh. They cause damage after coming to rest, like a pit (inherently a risk) and therefore, you must watch them.

לַאֲתוּיֵי בּוֹר הַמִּתְגַּלְגֵּל בִּרְגְלֵי אָדָם וּבִרְגְלֵי בְּהֵמָה

An obstacle placed in a public place was kicked down the by the feet of people and the feet of animals.

If it caused damage where it was placed - The one who placed it there is liable.
If it caused damage while it was in motion - The one who put it into motion is liable.
If it caused damage in its new location-The one who originally placed it is liable.
A dog carries a burning ember to a different location and causes a fire who is responsible?
The one who lit the fire? The owner of the dog? No one?
The one who is the owner of the lit ember -Whoever lit the fire is liable.

# פָּטוּר מִלְּשַׁלֵּם

A privately owned wall or tree fell in a public place and caused damage.

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If there was no warning - There is no liability.
If warned – The owner of the tree is liable.

6b2 - The damager is liable to make payment. How? With the choicest of his land, using superior, then average, and then his least valuable or inferior land.

What is be done if the person sold, to another person, his property which was already obligated (mortgaged) to pay the damages?
-The damaged party may go to the second person and **set** the land, and the second person can go back to the first and demand his money back.
Can the seller say, “That is the chance you took when you brought the land. You should have made a title search?” (Bava Kamma 8a3)
No, a guarantee accompanies a land sale; and if it is not present, it is a scribal error. In the case of inheritance, there is no presumption of guarantee after they divide the land and each brother is on his own. He has no recourse if the land is repossessed by a creditor.

פָּטוּר מִלְּשַׁלֵּם

He is exempt from paying.

Re: A wall or a tree that fell.

- An electrician left a pair of pliers high on a ladder and left work for the day. Later that night, the pliers fell off and broke an expensive lamp, is the electrician liable?
- An item, blown off a roof and causes damages: The owner of the item is liable but that is because an outside force, which was predictable, blew it off.
- A wall or tree that falls because of an internal flaw, the owner is not liable.

Here, there is no internal flaw in the pliers and no obvious outside force occurred

Steipler Rav – Something was off balance. An outside force has to be postulated as a cause, but it should have been anticipated and therefore, he is liable in the same way as an item that falls off a roof.

אִי הוּזַל אַרְעָתָא דְּכוּלֵי עָלְמָא

If everyone's land had declined in price.

A person must pay his liabilities with land at the current price. He may not say it is artificially depressed in value now and will likely go up soon, so please wait.

The debtor can receive the land at its current value (enough to cover the debt), even if the land is currently depressed in value.

What occurs if the debtor refuses and forces litigation and in the interim the value of land goes up? Can he now pay with the higher value land? (Perhaps the court will assess the payment based on the value of the land, when he should have paid it, before the delay of litigation).

מַה דַּרְכּוֹ שֶׁל אָדָם לְהוֹצִיא לַחוּץ פְּחוּת שֶׁבַּכֵּלִים

What does a man offer as collateral, but the most inferior of utensils?

However, the Rabbis permit the lender to collect from average quality, so that "the door will not be closed against borrowers."

A person borrowed money and although he had the funds, decided to pay it back in small amounts, over a long period of time and in very small denominations (coins). He claimed that as long as he paid it back with money, the small denominations were still a proper way to pay his obligation.

Rav Yitzchak Zilberstein said -No. Small coins are permitted only if you have no other way to pay and small coins will not create an inconvenience to the lender. Otherwise, if you have the money, you should pay it properly.

21 Bava Kamma 9a2 line 22 B12
Daf Digest

לִשְׁנֵי אַחִים שֶׁחָלְקוּ

Two brothers divided the estate of their father

and a creditor came and took the obligation owed him from one of the brothers.

- That brother goes to the other and collects from him.

- Would it not be more fair for the creditor to collect a proportional amount from each brother? Yes, and if he was owed money, he could do that (although it places a burden on the creditor to go to each brother and negotiate). But, if he was owed land, a piece from this brother and a piece from that brother, would give the creditor small pieces of land in several different locations. This is much less useful and convenient. Therefore, he may collect from one and let the brothers re-divide their inheritance.

Problems arises when assets are divided before debts are paid.
Pay the debts first.

21 Bava Kamma 9a3 line 36 B18
Daf Digest

בְּמִצְוָה עַד שְׁלִישׁ

One has to spend up to an additional 1/3 in order to beautify a Mitzvah.

A person ran out of oil for his Chanukah menorah and prepared candles as a substitute. Just before he was to use the candles, oil again becomes available to him. May he set aside the prepared candles and use the oil which beautifies the Mitzvah or does he disgrace the candles that had been prepared for the Mitzvah?

It sometimes happens that a Sefer Torah is taken out, that is not rolled to the proper place. May we return it on the Aron Kodesh and get the correct one, thereby disgracing it or burden the congregation with the delay required to roll the first Sefer Torah to the correct place?

Both approaches are acceptable. Perhaps the congregation will not mind waiting for the Torah to be rolled, so it can be utilized and if so, that is preferable.

21 Bava Kamma 9a3 line 36 B18
Weiss #96

אִילֵּימָא שְׁלִישׁ בֵּיתוֹ

For beautifying a Mitzvah one should be willing to pay up to a third more.

"This is my God and I will adorn him" (Ex 15:2).

The cost, up to 1/3, is a person's loss in this world, but it will be repaid to him in the next world.

Above 1/3, he will be refunded by the Almighty, in the person's lifetime, here on earth. What if he encounters three Mitzvahs, must he spend his entire net worth to fulfill them? No, each time he pays, he does so from the residual, so he would still retain a portion of his estate. However, this is not what is being suggested here.

21 Bava Kamma 9b1 line 1 A1
Bleich 2:244

אִילֵימָא שְׁלִישׁ בֵּיתוֹ

If one is to say a third of his estate…

The doctors say a baby born with Hypospadias, should delay circumcision until after age 3, so that the foreskin can be used to reconstruct the missing urethra. May we postpone it?

The doctor says the baby's club foot must be casted asap and the hip spica cast will make it impossible to do the circumcision on the 8th day. May we postpone it?

The Mitzvah is the father's and we can't let the baby suffer its entire life with a deformed foot or inability to have children, in order for the father to fulfill his Mitzvah.

The injury that would be suffered is worth more than 1/3rd of a person's net worth. Therefore, the father is not required to spend it.

Rashi says - No Mitzvah needs to be fulfilled, if fulfillment creates a danger of the possible loss of an organ.

כֹּל שֶׁחַבְתִּי בִשְׁמִירָתוֹ הִכְשַׁרְתִּי אֶת נִזְקוֹ

Whatever I am obligated to guard, I have caused the damage if I don't.

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An owner is responsible for damage done by his property. He is responsible if he fails to supervise his property in a proper manner and it causes damage.

If he caused part of the damage, he is responsible as though he caused all of the damage unless:

- The damaged property is subject to the law of 'Meilah' "misuse of Temple property".
- The injury occurs on the damager's premises (because the ox had no business entering there (Rashi)
- The injury occurs on the premises belonging to both the "damaged party" (Nizak) and the "damager" (Mazik).

He must make payment in that situation where he is obligated to pay damages with the choicest of his land.

21 Bava Kamma 9b2 line 15 A8

שׁוֹר וּבוֹר שֶׁמְּסָרָן לְחֵרֵשׁ שׁוֹטֶה וְקָטָן

An ox or a pit, which he handed over to a deaf mute, an insane person or a minor.

He is liable in the following cases:

Ox – If he gives it to an incompetent person (even if tied up), he is liable, because left alone and improperly watched, the ox will get loose.

Pit– If the owner left it improperly supervised (even if it was covered), he is liable because left improperly supervised, the pit will become uncovered.

Fire- As mere coal, the owner is not liable. Left alone, the fire will eventually die out.

21 Bava Kamma 10a1 line 1 A2
Daf Digest

חוֹמֶר בְּשׁוֹר מִבְּאֵשׁ

(Discusses the relative stringencies of) Ox, Pit and Fire.
In some circumstances, Ox is more stringent than Fire:

| | |
|---|---|
| -Ox that kills | - kofer "atonement penalty" (value of the person sold as a slave) |
| -Ox that kills a Cannanite slave | - pays 30 shekels |
| -Ox's verdict for death | - no benefit can be derived from that ox |

An ox handed to a deaf mute, insane person or a minor- the owner is liable.
In some circumstances, Fire is more stringent than Ox:
-Fire is Muad (warned) from the onset and the owner must pay full damages.
In some circumstances, Pit is more stringent than Fire:
-A Pit handed to a Cheres, Sotah, V'Katan, the owner is liable.
In some circumstances, Fire is more stringent than Pit.
- Fire is Muad from the onset. It will consume items fit and those not fit for it, i.e., utensils.

In addition. there is an exemption for Fire regarding concealed items.
Fire that licked or scorched his land, is more stringent than Pit, since Pit can't damage land.

21 Bava Kamma 10a1 line 3 A10
Beleich 11 p61

אָסוּר בַּהֲנָאָה

Forbidden for benefit.

For example, it is forbidden to derive benefit from a muad ox that kills a person. What is the rule regarding deriving benefit from a corpse?

This is not acceptable, even if the person gives permission prior to his death. The prohibition is between God and man. Man can't decide differently. This prohibition cannot be waived.

Rabbi Goren argues -That the prohibition against deriving benefit from a corpse does not apply to benefit, in the form of perfecting medical skills. Anatomic dissection is mere examination, which stimulates interest and aids the development of knowledge. As such it is an indirect benefit and is not forbidden.

הִכְשַׁרְתִּי בְּמִקְצָת נִזְקוֹ

If I caused a portion of his damage.

One person digs a pit of 9 tefachim and a second person digs it deeper (to 10+ Tefachim). The second person is liable for the payment for the death of the animal. The owner may go after both persons or either for injury to the animal, short of death.
Other examples of partial injury:

1. Five persons are assigned to watch an animal. One person fails to do his job and the animal does damage.
   - R Zeira - The negligent custodian should pay all.
   - Gemara says – No, even if the first custodian chose not to participate in watching the animal, there were still 4 other custodians. It is only when they fail that damage is caused. Therefore, perhaps the first custodian should be exempt .
   - No, in this case all five custodians pay equally.
2. Bundles of dry twigs were added to a fire and the extra fuel extended the fire to cause damage to a field of grain. (Ex 10a3)

אי דבלאו איהו לא אזלא

Without this fuel, the fire would not have traveled.

We could say the owner of the fire did not do any harm. All liability should be on the person who added the dry twigs.

3. Example: Five people sat on a bench. When a 6th one sat, the bench broke.
   -The 6th is exclusively liable because, "if not for him the bench would not have broken."
   -The 6th person could say to the others, "No, you are the cause. If when I sat down, you had gotten up, the bench would not have broken." -"But for you, the bench would not have been broken." They could have remedied the situation and they did not do so.

The first digger of the pit, however, could not have remedied the situation, unless he filled in part of the pit.

4. Example: If ten men hit another and he dies, none are liable, because we don't know whose blow caused the death. If they hit him sequentially, the 10th is guilty of murder, for he hastened the victim's death. Others say to be liable for murder, he must have killed a person, about whom it is known, would have survived the nine prior blows.

21 Bava Kamma 10b1 line 5 A15
Daf Digest

וְאָמַר רַב פָּפָּא כְּגוֹן פָּפָּא בַּר אַבָּא

Rav Pappa is speaking of a case where all (bench sitters) are like Rav Pappa.

A case where all the bench sitters were obese.
A case where a person only contributed partly to the damage.
- A person digs a pit. Another digs it deeper. Another digs it deeper yet.

- Five people sit on a bench, a 6th comes along, sits, and the bench breaks.
The last person is responsible for damage done.

- Four people get into a small elevator designed to carry four people and a sign says, “Limited to four people.” A fifth person gets on, the elevator struggles to rise and breaks. The combined weight damaged the elevator. Who pays for repairs?

וְהָכָא בְּטוֹרַח נְבִילָה קָמִיפַּלְגִי

Here they argue about who incurs the trouble of transporting the carcass.

If an animal falls into a pit and dies, must the owner of the animal find a way to retrieve the carcass, or must the owner of the pit do so? The owner of the pit must make restitution and he keeps the carcass (Ex 21:34).

A man took his friend's valuable coin and threw it into a deep pit on the friend's property. The owner of the coin demanded that the one who threw it, spend his time and money to have someone retrieve it. Does the owner of the pit need to retrieve that which fell into his pit (just as was required by the owner of the animal who is in a deep pit), or must the one who threw it in, retrieve it?

Here, the object was stolen, taken without permission, and the thief has the obligation to return it (Lev 5:23).

בְּכוֹר שֶׁנִּטְרַף בְּתוֹךְ שְׁלֹשִׁים יוֹם אֵין פּוֹדִין אוֹתוֹ

A first born son, who is killed within his first 30 days, is not redeemed.

- The father of a first born son is obligated to fast. The fast of the first born.

What if the baby was born after midnight (Chatsos) on the 14th of Nissan? In that case, the father need not fast, since even Egyptian babies born after midnight, were not subject to the decree of death. So only Jewish babies born before Chatsos, were saved and fasting, in appreciation, is appropriate.

The requirement of redemption is only for a child who is viable. If he died of natural causes before 30 days, no redemption is needed. Ulla made his ruling about a child who was killed. He had been viable and healthy, but he too, needs no redemption.

21 Bava Kamma 12a1 line 1 A1
Daf Digest

אָמַר לֵהּ עוּלָּא הָכִי אָמַר רַבִּי אֶלְעָזָר

Ulla said to him, "Actually, this is what R Elazar said."
So as not to contradict the opinion of a sage, Ulla stated that another sage agreed with him.
But as soon as the first sage left, he admitted that it was not so.
R Nachman stated that one may not collect a father's debt from the slaves of the orphan.
Ulla said, "Rav Elazar agrees with you, R Nachman".
As soon as R Nachman left Ulla admitted that Rav Elazar actually does permit debts to be collected from orphan's slaves.
Ulla lied, but it is judged as a tolerable lie, since it was made in order not to embarrass another person.

People offered to drive a great Rabbi home. He always asked, "Are you passing my street anyway?" Invariably they would say, "yes", and he would go with them.

His students asked him, "Rebbi, why are you willing to tolerate what you knew to be a falsehood?" Their teacher answered, "It is not considered a lie if it is made with the motive to avoid embarrassing a person, or to make a person feel more comfortable. In fact, it is an act of Chesed. Even God lied to Abraham regarding Sarah's response".

21 Bava Kamma 12a1 line 3 A11

הֲוָה עוּבְדָא בִּנְהַרְדְּעָא

There was an incident in Nehardea.

This discusses Ulla's statement after Rav Nachman left. R Elazar said a creditor may collect slaves in payment of a debt, even from the orphans of a deceased debtor, because slaves, for this purpose, have a status similar to land. They are considered to be 'not moveable'. They are considered like "land", 'karka', not like objects that are "movable", 'metaltalin'.

R Nachman ruled that slaves are considered like land, only in Biblical matters, and slaves are considered like 'moveable objects' in Rabbinic matters. Since collection of debts from orphans is a Rabbinic (See Note #2) matter, creditors can take slaves to satisfy that obligation, so Rav Nachman disagrees.

וְאַגְּבוּ דַּיָּנֵי דִּנְהַרְדְּעָא

And the judges of Nehardia collected.

We have a dispute regarding R Elazar, Ulla against R Nachman

Those who agreed with:

| | | |
|---|---|---|
| R Elazar's opinion: | vs | R Nachman's opinion which stated, |
| Ulla | | " a Bais Din does not scrutinize |
| Judges of Nehardia | | the actions of another Bais Din." |
| Judges of Pumpedisa | | They were admonished by R Nachman to |
| Rav Chana Bin Bizna | | reverse themselves. |

Note: There is no reference to appellate procedures. They were not available in Talmudic times. A decision of a Bet Din could not be set aside by another Bet Din, even if it was "greater in wisdom and number", but could only be re-heard by the same court, and reversed or affirmed in that court.

An error in black letter law vs error in judgment: A qualified judge could be granted judicial immunity, or a judge could be held liable for judicial malpractice, and pay the injured party from his own funds.

עַד שֶׁתְּהֵא מִיתָה וְהַעֲמָדָה בְּדִין וּגְמַר דִּין שָׁוִין כְּאֶחָד

Unless the death of the victim, the beginning of the trial and the end of the trial are alike.

The Mishnah (9b) teaches that the damages done by an Ox are only paid for by a person, if he has exclusive ownership (one solitary owner).
Rashi, Vilna Gaon, R Akiva Eiger - A person only pays for the damage his animal caused, if he continuously owned the animal from the time of the goring to the time of sentencing by the court.

However:
-If he sold it, or consecrated it to the Bais HaMikdash or disowned it, or abandoned it, no payment is to be made.
-If he disrupts his continuous ownership, i.e., gifts it to someone, or sells it, and later buys it back, he and the ox are exempt.
-If the owner dies, his heirs are exempt.

Tur says – If he re-acquires it, he is again responsible. The animal must be owned at each stage, but not continuously.

פָּרָה שֶׁהִזִּיקָה טַלִּית וְטַלִּית שֶׁהִזִּיקָה פָּרָה

If a cow damaged a garment, or a garment damaged a cow.

- How is that possible?
- The cow damages the garment by trampling on it and the garment damages the cow by the cow tripping on it and being injured in the street.

Whichever suffered the greater loss, will pay the difference with money.
But, if it occurred in a public place, the animal is exempt. It is expected that animals will walk there but if this occurred in a private place, the owner of the garment would be exempt.

Therefore, this must be a case where the animal was in the street and the garment was lying partly in private property and partly in the street. The animal trampled on the part in the street but also injured the part in private property and broke its leg. The animal is liable for what was injured in private property and the owner of the garment, for the injury to the animal in public property.

21 Bava Kamma 15a2 line 29 B7
Daf Digest

סְתָם שְׁוָורִים לַאו בְּחֶזְקַת שִׁימּוּר קַיְימָן

Ordinary oxen are not in a guarded state.

When an ox causes damage, the owner only pays 50% of the damage.
Once the animal has established a pattern of such destructive behavior, the animal is no longer called a Tam, but a 'muad' – 'habitual', and the owner must now pay 100%.
An ox only graduates to the status of a muad, if testimony is given in front of the owner, that the ox has gored on three different occasions.

21 Bava Kamma 16a4 line 51 B2
Daf Digest

שִׁדְרוֹ שֶׁל אָדָם לְאַחַר שֶׁבַע שָׁנִים נַעֲשֶׂה נָחָשׁ

After seven years, a deceased person's spine turns into a snake, for not having bowed properly for the Modim prayer.

Tosophos – The proper way to bow is to bend the head and body together, but rise up with head first and have the body follow until he is fully upright, "like a snake".

When a person bows, he shows humility and submission to God. The snake in the Garden of Eden, acted with impudence. Therefore, a proper bow rejects the snake's attitude.

Improper or lack of bowing, shows impudence, like a snake. Therefore, the person is punished and his spine is made snake-like, as was his action.

אֲפִילּוּ בִּשְׁעָה שֶׁעוֹשִׂין צְדָקָה

Even at the time of giving Tzedaka.

- Better to give Tzedaka during the day, because Kabbalah teaches us that God is angry at night and not inclined to reward merciful deeds.
- Night is a time of 'din', 'strict justice', not laced with mercy. Therefore, Tzedaka, a merciful act, has less value.

The Arizal did not give Tzedaka at night. One does not, therefore, need to give Tzedaka before "Maariv", the'evening prayer'.
However:

-If the need is great you should give it.
-Never send a poor person away without Tzedaka - it is prohibited.
-One can certainly set funds aside at night, to give the next day.
-One can give the Tzedaka, not as Tzedaka, but with the mind set of giving a gift instead.

הַכְשִׁילֵם בִּבְנֵי אָדָם שֶׁאֵינָן מְהוּגָנִים

And make them stumble with unworthy recipients.

- Mishle states that the poor speak with supplication.
A story is told about the Brisker Rav, who was approached by a rude and aggressive beggar, who demanded money and was pestering the Rav repeatedly. The Brisker Rav ignored him stating that he is not authentically a beggar, if he does not request with supplication .

- Giving to an unworthy person or cause is a kind of curse.

Does one get reward for giving Tzedaka to unworthy persons or causes?
It would depend if the funds were given for one's own honor, i.e., for publicity; or if one gives for the proper reasons, i.e., to help, or to demonstrate that what we have is not ours, but belongs to God; or to acknowledge, 'that but for the Grace of God, I might be the one who needs the handout'.

21 Bava Kamma 17a1 line 15 B9
Daf Digest

גָּדוֹל לְמוּד[9] תּוֹרָה שֶׁהַלְמוּד[9] מֵבִיא לִידֵי מַעֲשֶׂה

Torah study is of great value because it leads to action.

One should study, not merely to fulfill the commandment to study, but also with a view toward changing one's actions. Practice is more important than study. However, study does lead to performance (Kiddushin 40b).

כֵּיצַד הָרֶגֶל מוּעֶדֶת

Regarding what, is the animal's foot muad?

For example, can an injury be expected?

Under what circumstances is the owner warned regarding the animal's use of his foot?

Walking - We can expect that the animal may break objects. Expectation means he is worried and if there is damage, he pays 100%.

Kicking - Resulting in broken objects. This is not expected, therefore, he is not worried and pays only 50%.

- Pebbles shooting from the animal's feet that broke objects. This is not expected, therefore, the owner pays only 50%.

- Consider the 'domino effect':
  - An animal walked, broke an object and a piece of that, broke another object. The owner pays 100% for the first object and only 50% for second.
  - Chicken - muad for walking
    -not muad for walking with something tied to its legs.

וַחֲצִי נֶזֶק צְרוּרוֹת הִלְכְתָא גְּמִירִי לָהּ

To pay only 50% for “flying pebbles” is a law derived from Moses at Sinai, as part of the oral tradition.

There is a case where the air from the wings of a person’s chickens, blew over and damaged utensils. The law states that he only pays 50% of the damages. But, if a person’s force is like his body, he should pay 100%!? If a person generated the force initially, the subsequent domino effect of damages are all ascribed to that force and he is 100% responsible.

The rabbis all agree that a person’s force is like his body, but there is a special rule, learned from Moses at Sinai, and passed down, that for ‘tseruros’, “flying pebbles”, ‘consequences that occur at some distance’ and are not in physical contact, i.e., flying pebbles, the domino effect, generated by wind or force, only 50% is his obligation.

זָרַק כְּלִי מֵרֹאשׁ הַגָּג

A person threw a pottery pot off the top of a roof.

Example #1:

Someone else came along and shattered it in midair with a stick.

Who is responsible to pay?

Answer #1: The person who started the process.

We can say since it was going to be broken inevitably, the second person merely broke a broken vessel.

Example #2:

A person threw a large rock off the top of a roof, toward pottery below and someone else came along and shattered the pottery on the ground with a stick, before the rock actually hit it.

Who is responsible to pay?

Was the person with the stick not merely breaking a pot which was inevitably to be broken? No, there is a difference.

The pot is in motion by direct force in the first case.

The rock was in motion, but the pot was damaged secondarily, i.e., flying pebbles are an indirect force.. They are, therefore, different cases.

If the pot is in motion, we consider it broken at the start of the process. Therefore, the person who pushed it broke it and the stick wielder is not liable.

The pot is not in motion and we consider the pot whole until the rock actually hits it. Therefore, the person with the stick broke it and he is responsible.

21 Bava Kamma 18a1 line 5
Daf Digest A19

וְהָא חֲבָל מְשׁוּנֶּה הוּא

Consequential damage
But (the chicken) damaging the rope is unusual.

- An animal steps on something or a vessel rolls down the path and breaks something. Must the owner of the animal pay 100%? Or since there is a consequential damage which is caused indirectly, is payment only 50%?
- A chicken was pecking at a cord, which broke, and a pail being held by the rope at also broke. There was no direct contact between the bird and the pail. Does the owner of the chicken pay for the rope or pail 100% , 50% or nothing.

If cord had food or water on it, we could expect that the fowl might peck at it. That is foreseeable and he would pay 100% for the value of the cord, but if there is no food the owner should pat 50% and the consequential damage is for the pail only, he pays only 50%.

- A rooster screamed in the air space near a glass utensil and it broke. Do we say the force of one's body is like his body? Yes, full damages should be paid.
- A man so aggravated his neighbor**,** that the neighbor died of a heart attack. Is it the man's fault?

No, with human beings, their reaction to stress causes the heart attack not the person who created the stress..

וְתָנֵי עֲלָה מְשַׁלֵּם חֲצִי נֶזֶק מִגּוּפוֹ

And we learn that he pays ½ of the damage from the "body" of the animal.

A discussion is held regarding: The damages that are paid, are they limited to coming from the value of the animal?
For example: If the damages are 50% or 100% of the object destroyed, the owner of the animal is limited in his obligation to pay, by the value of the animal.

[This does not mean that the animal is killed or sold, because then, he could never progress from a Tam to a muad. No, it merely means money related to its worth].

However, after discussion, the Rabbi's do not limit liability to the value of the animal, but assess it according to the value of the damaged items.

וּבָעֵי לָהּ הָכִי

He makes his inquiry as follows:

Four instances of questions to be answered by Eliyahu Hanavi, which show:

1. A belief in Moshiach.
2. A willingness to leave some details unanswered.
3. Perhaps a way to deal with 'klotz kashios' of a questioner.

1. If a muad animal, while walking, damages a vessel, the owner pays 100% (muad - forewarned).
2. If an animal, while walking, kicks a stone and the stone damages a vessel, the owner pays 50% (tsuroros) = consequential damage, not direct damages.
3. If the animal kicks and damages a vessel, the owner pays 50% (not a behavior that is usual. Therefore, the owner could not prevent it).
4. If the animal kicks a stone and the stone damages the vessel, does the owner pay 25%? This was consequential damages from an unusual occurrence.

There is no provision for consequential damages of 25% from an unusual occurrence.

לַאו הַתִּיזָה בִּרְשׁוּת הָרַבִּים וְהִזִּיקָה בִּרְשׁוּת הָרַבִּים

Is the owner liable if the animal propelled the stones from the public domain and damaged a utensil in the private domain?

Can we learn whether the owner is liable for damages caused by a pebble kicked from a public domain to a private domain which causes damage versus the case of his animal stepping on a beam in the public domain and the other end of the beam in the private domain causes damage? No, they are not similar cases. They seem to share in common an animal walking in a public domain and causing damage in a private domain, but they differ in a crucial detail. In the case of the beam, the part that is in the public domain, never leaves that domain when it causes damage in the private domain, but in the case of the pebble, it actually left the public domain when it caused damage. The beam is considered still in the public domain. Damage there, done by customary activities, causes no liability. The pebble did its damage in private property. Damage done there, makes the person liable.

בּוֹרוֹ הַמִּתְגַּלְגֵּל בְּרַגְלֵי אָדָם וּבְרַגְלֵי בְּהֵמָה

The wandering pit that is rolled about by the feet of humans and the feet of animals.

An item that is inherently a risk and moves from place to place.

Example: A shopkeeper mislabeled a sack of salt and labeled it as sugar. People bought it and used it for cooking and baking and thereby, in many households around town, damage was done.
Is the shopkeeper responsible for all the lost value his mistake caused?

Yes, the shopkeeper is responsible for all the resulting damage, caused by his inadvertent mix-up.

כֵּיצַד הַשֵּׁן מוּעָדֶת

Under what circumstances is the owner warned in the animal's use of it's tooth?

| | | Liability |
|---|---|---|
| In eating what is usual for it | - muad | 100% |
| -fruits and vegetables | - muad | 100% |
| -garments and utensils | - not muad | 50% |

These apply only if eaten on the damaged person's premises.
But if they were eaten in a public domain – He is not liable.
However, the owner pays for the benefit he received, i.e., he did not need to feed his animal that day.
Unless the animal ate from the sides of the street, or from inside a store, then, he pays for what was damaged.

הָדַר בַּחֲצַר חֲבֵירוֹ שֶׁלֹּא מִדַּעְתּוֹ

One lived in another's property without his knowledge.

Does a person who stayed in an empty house, without the owner's knowledge, have to pay rent?

- The occupant benefited, but the owner did not lose.
- The occupant can say, - "I caused the owner no loss".
- The owner can say, "The occupant benefited. He would have had to pay if he stayed elsewhere".

Silence is acquiescence – Can we say silence is a confession, i.e. acquiescence?

Not if the owner says:

1) "I did not know he was occupying my property until later."
2) "I knew and I expected to be paid when I confronted him."

Anytime a person can explain to the court why he was quiet and his claim is deemed reasonable, the court may accept his explanation and not consider silence as an automatic acquiescence. In such a case, the person who benefited would have to pay, even if the other party did not lose.

כַּמָּה לֹא חָלֵי וְלֹא מַרְגִּישׁ גַּבְרָא דְּמָרֵיהּ סַיְּיעֵיהּ

How many, who are not sick and who are not worried, feel that their "Master" has aided them?

When a person is sick, or in great need of success and God helps him, that's when he realizes how much HaShem helps him. Not only by curing him when he is sick, or helping him overcome serious troubles, but by keeping him well and helping him avoid troubles.

We don't appreciate God's preventive care.

הַדָּר בַּחֲצַר חֲבֵירוֹ שֶׁלֹּא מִדַּעַת

One who lives in his friend's courtyard without permission.

- One should not move into a house that was unoccupied for 7 years. There demon who moves in unless there is a mezuzah on the door. The mezuzah protects the house. When must we affix a mezuzah to the door of a new house?

One opinion is: - As soon as construction is completed. In Devarim 20:5, we are told a person who builds a house and has not yet lived in it, should not go out to war. One opinion is that if the house has no mezuzah on it, demons have the opportunity to move in and put the homeowner's life at risk. Therefore, he should not go into a dangerous environment, i.e. war, for that reason.

21 Bava Kamma 21a1 line 19 B20
Daf Digest

הַדָּר בַּחֲצַר חֲבֵירוֹ שֶׁלֹּא מִדַּעְתּוֹ

One who lives in the yard of his fellow without his knowledge,

does not have to pay rent.

Losses and benefits when a dwelling is occupied are discussed:

- Halachah – The occupant does not have to pay a rental fee to the owner even though he gets a benefit. Why?

Yes, he gets a benefit, but the owner also gets a benefit, in that an un-occupied dwelling is maintained by the fact that a person lives there.

There is no loss to the owner except wear and tear. Some loss is offset by benefit to the owner since maintenance of the premises is provided by the occupant.

His fire is like his arrow. אִשּׁוֹ מִשּׁוּם חִצָּיו

- When a person lights a fire, the damage it causes is an extension of, “man” doing damage.

Sanhedrin 77a states that the law of fire is like shooting an arrow, only if the fire travels by itself. However, if any wind drives the fire, that wind-force did the damage.

Chazon Ish says – That is only valid if no wind was blowing when he lit the fire.
But if the wind was already blowing, he, who lit the fire is responsible.

Nimukei Yosef says - Under all circumstances, he, who lights a fire is responsible for any damage it does. Lighting the fire is the entire force behind the fire and his responsibility is not ameliorated by wind, dry thistles, etc.

It is not an additional force, but completely and totally the force of the lighting of the fire. Just like an arrow, all its force occurs when shot and all consequences are his responsibility. That’s what this phrase means, “His fire is like his arrow”.

אֵשׁוֹ מְשׁוֹם חִצָּיו

His fire is like his arrow.

Once we agree that the act is completed at the time the act is done and later consequences revert back to that initial moment, we have a justification for setting timers before Shabbos. That act is permitted before Shabbos, even though it performs malachah (work) later during Shabbos, because the act that resulted in the malachah (work), was completed before Shabbos.

Others say –No, the fire began before Shabbos and continues into Shabbos. The malachah (the timer's activity), was not being done before and continuing; it is a new malachah. Therefore, there is controversy as to whether timers are permitted.

R Moshe Feinstein permits timers for lights only.

אִיכָּא בֵּינַיְיהוּ לְחַיּוֹבוֹ בְּאַרְבָּעָה דְּבָרִים

The difference between them, is whether he is obligated to pay in four areas.

Pain, medical expenses, damages, and lost wages are to be paid, if you cause damage by fire.

Rashi - You don't need to pay for embarrassment, unless you cause damage intentionally (26a).

Rambam is of the opinion that you must, also, pay for embarrassment.

Is it because Rambam is speaking about a case where the fire was set intentionally?

Not necessarily. Rambam says that whenever a person lights a fire in a place where it could extend to a location to cause damage, it is to be considered that he intended the damage to occur. Fire has predictably unpredictable dangers.

כל שהעידו בו שלשה ימים

That they have testified about what was done on three separate days.

There is a classic disagreement between Rebbe and R Shimon ben Gamliel (Yevomos 64b) regarding how a change in status becomes established.

Rebbe says - The condition must occur twice.

Rabbi Shimon ben Gamliel says – It must occur three times.

Our Gemara seems to agree with RSBG and to prove Rebbe wrong. Not so, says Tosophos. For our situation, we have a Posuk (Shemos 21:36), "If the animal was a goring ox today, yesterday and the day before, it becomes a muad after the third time and now the owner must pay full payment." Rebbe would say his status changed after two gorings, but he attains the status of a muad, which is another status change only after three gorings and then, he must pay full.

21 Bava Kamma 24a4 line 43 B1
Daf Digest

אִי אָמְרַת לְיַיעוּדֵי תּוֹרָא שַׁפִּיר

If you say that three days of goring are needed for the ox to become a muad.

What is the reason for needing the procedure of three days of goring and three days of warnings?

Is this to establish that the ox is a habitual goring ox, or are the three days needed in order to warn the owner of his impending loss and risk?

The answer is not clear.

בְּמַכִּירִין בַּעַל הַשּׁוֹר וְאֵין מַכִּירִין אֶת הַשּׁוֹר

We recognize the owner of the ox, but do not recognize the ox itself.

The mechanism of having the ox become a muad, is that the animal must gore three times, on three separate days and witnesses come each day and testify in court, before the owner, that this occurred.

-Gored three times.
-Gored on three separate days (3 x in 1 day, is not adequate).
-Three separate pairs of witnesses are needed and then he is liable
(If one set of witnesses saw all three goring incidents, that is not adequate).

If all three sets of witnesses come on the last day, to alert each of the sets on different days of goring, they are treated as one set of witnesses, not three. We need two more goring days and two more sets of witnesses. Why? Because the three sets who appear together, could compare their testimony, since they are aware of each other. Rather, says Ravina**,** it should be interpreted that they came to testify against the owner, not the ox and only realized that they each had witnessed this owner's ox gore and now they learn it was the same ox.

21 Bava Kamma 24b3 line 32 B1
Daf Digest

כִּי אִית לָךְ רְשׁוּתָא לְסַגּוּיֵי עֲלַי לְבַעוּטֵי בִּי לֵית לָךְ רְשׁוּתָא

You have permission to walk on me, but, you have no permission to kick me.

In a public thoroughfare:

1. Ox #1 steps on ox #2 while walking and injures it.
   There is no liability to #1 – The ox is doing its natural activity in a public place.
2. Ox #1 kicks #2.
   This is not normal activity. Ox #1 is liable.
3. Ox #1 kicks #2 and then #2 kicks #1.
   Even if the first animal behaves abnormally, the second animal has no right to use abnormal behavior in response. Each must pay for the damage their ox causes.

תִּכָּלֵם שִׁבְעַת יָמִים״

Humiliated for seven days.

Every sin has its elements that affect God and man.

When Miriam spoke against Moses, she received 14 days punishment. Moses forgave her, so HaShem relented (HaShem's) portion of her punishment, but kept the punishment of 7 days related to her sin against Moses. It is very important to protect the relationship between people.

Which is more important, studying Torah or improving interpersonal relations?
Loving your friend is a great principle of the Torah, so love your friend.
Or study Torah in order to love your friend – by learning what a great principle that is.

אָדָם מוּעָד לְעוֹלָם בֵּין שׁוֹגֵג בֵּין מֵזִיד

A man is always forewarned (Muad) whether unintentionally or intentionally.

If a domestic animal, for example, a cow causes injury by biting, kicking or goring, the owner is not assessed damages. This is not normal behavior and we don't expect the owner to be able to take precautions against this behavior.

If an ox gores another animal the owner is liable because it is known that oxen gore and the owner should have taken the necessary precautions to protect others. If it gores a person to death, the ox is put to death, but the owner is not punished. If the ox has been in the habit of goring, the ox and the owner are both put to death (Ex 21:28-29).

Man is considered always forewarned and is responsible for his actions, even if injury occurs to another person by accident. It tells us that we have implicit obligations to those around us in society and specific notice of injury to others is not required. Ignorance that injury could occur is not bliss, it is irresponsibility.

אָדָם מוּעָד לְעוֹלָם בֵּין שׁוֹגֵג בֵּין מֵזִיד

A person is always muad (fully responsible) whether he injures intentionally, or unintentionally.

A person is always muad - whether awake or asleep.

A drunken person who damages, is liable. He should not get so drunk that he causes damage to other people's property.

A sleeping person who causes damage, is liable. He should not fall asleep in close proximity to other people's property, such that, he could damage it if he fell asleep.

People are responsible for the damage they cause.

אָדָם מוּעָד לְעוֹלָם בֵּין שׁוֹגֵג בֵּין מֵזִיד

A person is always responsible for the damage he causes, unintentionally or intentionally.

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However, we have an example where a person was injured when he broke a vessel walking into it on the street, because it was too dark or located right around a corner. We judge the owner of the vessel liable to pay for the injuries, even though it is clear, that he injured the person unintentionally.
However, 'the one who broke the vessel' did so unintentionally and by that rule, he should be liable for damages he causes unintentionally. However, here we hold him not liable, why?
-There are two types of unintentional damage:

1. One that contains no negligence whatsoever.
2. One that does contain some negligence.

The owner of the pottery should not have placed it in a dark area or just around a corner. His negligence supercedes the involuntary damage liability of the person who broke the pottery.

21 Bava Kamma 26b1 line 6 B10
Daf Digest

הָיְתָה אֶבֶן מוּנַּחַת לוֹ בְּחֵיקוֹ וְלֹא הִכִּיר בָּהּ וְעָמַד וְנָפְלָה

A person had a stone in his lap and forgot about it. He stood up and it fell and did damage.

Rambam - If a person causes damage to something, even if the situation is completely inadvertent and uncontrollable, he is fully liable for the damages.

Nimukei Yosef - It should not be considered beyond one's control to be aware of a stone in your lap. Especially a stone large enough to cause damage. A simple caution to check your lap when you plan to rise up, is required. If he failed to do so, he is liable

21 Bava Kamma 26b2 line 14 A17
Hughes p109

הכיר בה ושכחה ועמד ונפלה

He was aware of it, but he forgot about it, and he stood up and it fell

from his lap and rolled more than four feet into a different domain.

Rashi - On Shabbos, one brings a Chatas penalty sacrifice, only as punishment for an intended act that is forbidden on Shabbos. The act needs to be intended, but the person suffered a lapse in awareness concerning what day it was, or that the act itself was forbidden. Therefore, he must bring a Chatas offering. Here, he knew the act was forbidden and he knew what day it was. His only error was that he forgot the stone was in his lap. This indicates a lack of mental awareness and lack of calculation. Therefore, he has not violated Shabbos with a 'm'leches machsheves', he was unaware that his action will lead to a forbidden result of 'Chillul Shabbos'. He has not violated Shabbos, but he is liable for any damages the falling stone causes.

Rav Chaim HaLevi Soloveitchik of Brisk.

21 Bava Kamma 27a4 line 31 A1
Weinbach 488

הַמַּנִּיחַ אֶת הַכַּד בִּרְשׁוּת הָרַבִּים

A person places a jug, pitcher or barrel in a public domain.

The pedestrian is not liable for breaking the pottery and in fact, the owner is responsible for any damage the pedestrian sustains.

Actually both parties are negligent.

-The owner of the jug should not put an item in a place where others could damage it, or hurt themselves.

-The pedestrian should not walk oblivious to his surroundings, especially if it is dark, or he is turning a corner. He should be careful, since he might come upon an item he could damage, or that could hurt him.

The burden ultimately falls on the owner. A person is required to be more careful to avoid harm to others, than is the requirement not to harm oneself.

הַמַּנִּיחַ אֶת הַכַּד בִּרְשׁוּת הָרַבִּים

If one places a ‘kad’ (‘pitcher or jug’), in a public place
and a person comes, stumbles over it and breaks it, he is not liable to pay for it.

Also, if he was hurt, the owner of the ‘chavis’ (‘barrel’) is liable to compensate him for his damage.

Why did the Mishnah change calling it first a kad and later, chavis? They are interchangeable names. It teaches that we do not follow the majority in matters of money. If it can be called by either name, the seller has the right to call what he sold, by the name that is most advantageous to him.

21 Bava Kamma 27b2 line 15 A9
Daf Digest

לְפִי שֶׁאֵין דַּרְכָּן שֶׁל בְּנֵי אָדָם לְהִתְבּוֹנֵן בַּדְּרָכִים

It is not the custom of people to watch where they walk.

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If a person puts a jug down in a public place and someone comes along, trips on it and breaks it, isn't the one who broke it liable to pay for the broken vessel? Why? Shouldn't a person watch were he walks?

-Perhaps this is a case where the entire passageway was filled with jugs.
-Perhaps the jug was around a corner and was encountered without warning?
We know that people who carry jugs in a public thoroughfare, often put them down to rest. Shouldn't others be on notice of this potential hazard?

Our Gemara answers, no. It is not the nature, nor is it expected, that people will watch where they step in the street. Therefore, if they break something in the street, they are not liable.

לְפִי שֶׁאֵין דַּרְכָּן שֶׁל בְּנֵי אָדָם לְהִתְבּוֹנֵן בַּדְּרָכִים

It is not the custom of people to watch where they walk.

Reuven asked Shimon to come to his room in the morning to wake him. Shimon did so, but stepped on Reuven's glasses that were on the floor, under the edge of Reuven's bed.

Is Shimon liable to pay for Reuven's glasses?

If he is not liable, is it because of the principle that 'people don't watch where they are walking'? Or does that principle apply only to a public thoroughfare?

Is he not liable because Reuven was negligent, knowing that Shimon would enter his room in the dark and Reuven left his glasses where they could be damaged? Or, should Shimon have been less negligent, or more careful, knowing that Reuven wears glasses?

לֹא עָבִיד אִינִישׁ דִּינָא לְנַפְשֵׁיהּ

A person may not enforce the law himself,

unless a loss would result from his lack of action. Then all agree that a person may enforce the law for himself.

R Yehudah - If waiting to go before a judge will not cause him to incur a loss, he should not enforce the law himself.

R Nachman - Since he is acting in accordance with the law, he may enforce the law himself.

The Gemara brings a series of cases trying to prove that a person is permitted to enforce the law for himself.

21 Bava Kamma 28a2 line 22 B9
Daf Digest

בְּעֶבֶד שֶׁמָּסַר לוֹ רַבּוֹ שִׁפְחָה כְּנַעֲנִית

A slave, whose master gave him a slave woman, as a wife.
Can a person enforce the law himself?
Yes- If he will lose money if he waits for the court to hear the case, or if he sees a person who is about to sin inadvertently.
No- Unless he sees a person about to sin willfully.

A slave owner, who frees his Jewish slave at Yovel, is permitted to forcefully evict him from the premises, even to the point that if he injures him, he is not liable.

This proves that he is able to take the law into his own hands. The former slave may believe he can continue to cohabit with the Canaanite maidservant (whom he was given by his former master) and the eviction is not to avoid the sin of not going free, or the sin of improper cohabitation, but it is done in order to protect his property (the maid servant). Therefore, the master may take the law into his own hands.

נִשְׁבְּרָה כַּדּוֹ בִּרְשׁוּת הָרַבִּים

If a person's pitcher of water broke in a public domain

and another person slipped on the water or was injured by a shard, the owner is liable.

Rav Yehudah - If the owner had intent, he is liable.
If he had no intent, he is not liable.

Why does the Mishna mention both circumstances? They both caused injury, but under two different situations. The person slipped on the water at the time the pitcher fell, whereas the shards injured the passerby later, since the owner left them intending to reacquire the pottery pieces at a later time.

וְאוֹנֶס רַחֲמָנָא פַּטְרֵיהּ

In case of duress the Torah prescribes exemption.

HaShem releases one from liability for unavoidable accidents.

Also, HaShem absolves a person who is unable to perform a Mitzvah.

HaShem sees into a person's heart. If a person yearns to do a Mitzvah, but truly cannot, it is as though the Torah itself, fulfills the Mitzvah for him.

Also, if that person still feels bad that he could not do the Mitzvah, ask him, "Who do you think could do that Mitzvah better, you or the Torah?"

A rape victim is not punished (Deut 22:26). A person is not held liable for actions beyond his/her control.

21 Bava Kamma 28b3 line 37 B14
Weiss #14


In case of duress, the Torah prescribes exemption.
In general, if one is under duress, he is exempt from performing a Mitzvah.

"This is only true", says Rabbi Nachman of Breslov, "if one actually desires not to be exempted and advises that if you continue to desire to accomplish the Mitzvah, but, if at the end you are not able, be assured you are exempt. Therefore, the effort to fulfill, even if it eventually fails, is beneficial."

If you can't do the Mitzvah now and you could do it later, you should do it when it's possible to do it.

21 Bava Kamma 28b3 line 37 B14
July 2, 2006 Rabbi Zucker

וְאוֹנֶס רַחֲמָנָא פַּטְרֵיהּ

In case of duress, the Merciful One releases one from liability.

If one is forced to do an 'avera', 'sin', or forced not to do a Mitzvah, the person is 'patur' and incurs no punishment.
An example: A person has to have surgery early in the AM and he couldn't say the Shema. Is he obligated, but excused, or is he entirely not obligated?
Did the Torah mean to include or exclude him?
A famous comment by the Mordecai suggests that under those circumstances, he is not obligated.
On Shabbos it is prohibited to put Tzitzis onto a garment. However, to wear a garment without Tzitzis is not a sin. It is a mitzvah to wear Tzitzis, it is not a sin not to do so.
Even though he put himself into this situation, he is still not obligated.
I have an obligation and I won't be able to do it. Even though I put myself into that position, nonetheless, I am entirely not obligated.

וְאוֹנֶס רַחֲמָנָא פַּטְרֵיהּ

In case of duress, the Merciful One releases one from liability.

The Hebrew word ‘oness’ can be translated as “duress, forced, constrained”.

‘Oness’ has been used in the discussion regarding homosexuality.
Modern people view homosexuality as a matter that is:
Not chosen voluntarily - unavoidable.
Not subject to change - irremediable.
A condition for which we all should have great compassion.
Dr. Norman Lamm writes that we can categorize homosexuality as an illness.
If it is an illness, then the category ‘oness’ applies to a constitutional homosexual.
His act is still a sin, but he is considered innocent on the grounds of ‘oness’.
The term is used to exonerate from legal culpability, but not to give any imprimatur of acceptability.
He is exempt from liability, but the act is forbidden.

,,וְלַנַּעֲרָ֖ לֹא־תַעֲשֶׂ֣ה דָבָ֑ר״

To the maiden, you shall do nothing (Deut 22:26).

We learn from this posuk, the general axiom that “One is not held liable for actions he cannot avoid”.

21 Bava Kamma 29a1 line 11 B11
Daf Digest

מַר סָבַר מַפְקִיר נְזָקָיו חַיָּיב

Is a person liable for damage done by something he does not own?

One who declares his hazardous objects ownerless, is still liable.

-A person who disowns an object that is a hazard in a public domain, is still responsible if that item causes damage.

Are you liable for damage done by something you do not own any longer ?

-You bring your ox to a public market and declare it ownerless.
-You dig a pit in a public street. You don't own the pit, but you are responsible for any damage it causes.

-You don't own your chometz after 1/3 of the day of Erev Pesach, but if it is found on your premises, you have violated the law.

21 Bava Kamma 29b2 line 19 A13
Daf Digest

שְׁנֵי דְּבָרִים אֵינָן בִּרְשׁוּתוֹ שֶׁל אָדָם

There are two things that are not in a person's possession,
but Scripture treats them as though they were in his possession. Therefore,
a person can be liable for injury caused by things he does not own.

There are two things, not actually in his possession, that the Torah considers to be in his possession:

1. A pit dug in a public place.
2. Chometz, after 6 hours before Pesach.

A person is liable, even though he does not possess these items and even though he does not own them, they can be passed on to another person.
For example: A person finds an open pit and fills it in and then empties it again.
This person is liable and owns the pit, because he dug the pit anew.
However, if he only covered it and then uncovered it, he did not dig it at all, the pit was still there from the original digger and ownership has not transferred.

הַשּׁוֹפֵךְ מַיִם בִּרְשׁוּת הָרַבִּים

One who pours water in the public domain.

The Mishnah continues to discuss damage caused by obstacles placed in the public domain.

The owner is liable – for damages caused by:

- water poured — In summer / Not liable in the rainy season
- fence of thorns — If thorns point to public domain / Not if they point only to his private domain
- a fence that falls — If it is rickety – weak / Not if it is a strong fence
- items hidden in a fence that falls — If it is a weak fence / Not if it is a strong fence

הַאי מַאן דְּבָעֵי לְמֶהֱוֵי חֲסִידָא

One who wants to be pious,
should fulfill the words of tractate Berachos.
-A Chasid is one who goes beyond the letter of the law when it comes to berachos.
For example:
If a person is not certain whether he prayed after a meal:

A Chasid will wash, eat bread and consciously make the prayer. That is, he will have another meal in order to make the blessings.

If a person is not sure if he ate a 'kezayis', 'an amount sufficient to require a blessing': A Chasid will eat more to be certain he is obligated.
A person who strives to be devout (a Chasid) should study tractates:

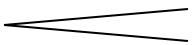
Nezikin- Bava Kamma, Bava Metzia, Bava Basra **(**damages, laws between man & man).
Avos - (governs one's own character traits – self improvement),
Berachos – (relationship between man and God, offering the appropriate thanks for each blessing you receive).

21 Bava Kamma 30a3 line 35 A9
Weiss #641

הַמּוֹצִיא אֶת תִּבְנוֹ וְקַשּׁוֹ לִרְשׁוּת הָרַבִּים לְזֻבָּלִים

A person who puts his processed straw, or whole straw, into a public domain.

All who create hazards in the public domain and damage results from those hazards, are liable.
The hazard is considered ownerless. It is taken away from the person who placed the hazard there.
The hazard can be owned by anyone who takes it away and takes away the danger to others, but only after it has caused some damage.
For example:

-manure  Liable
Not liable during the season for laying out manure

-Chanukah lamp  Liable
Not liable if court gives permission for sake of a mitzvah

Examples of scattering a person's thorns in a public domain, i.e., creating a hazard in a public domain:

- Walking with a cane under your arm.
- Bending over a lectern in a study hall.
- Allowing a nail head to protrude from a lectern in the study hall.
- Leaving the broken glass on the floor after a chupah.

שֶׁהָיָה לוֹ לַעֲמוֹד

He should have gotten up,

and didn't.

- The negligence occurs when the person who falls, does not get up promptly and another person falls over him.
- Recall that after each book of the Torah we say, 'chazak, chazak, v'nischazeik', "Be strong, be strong and we will be strengthened".

We can learn from our Gemara, that if we fail in physical or spiritual matters, we should pick ourselves up promptly.
The error would be only if we stay down at a lower level. Pick yourself up. Rise again to the proper heights and don't be guilty of the willful damage that occurs if you stay down where you fell.

לֹא כְּשֶׁעָמַד לָפוּשׁ

No, the owner stopped to rest

in the middle of the street.

- If a person tripped in the street and another person fell over him and was injured, who is liable? The first person.

It is an accident to fall in the street, but he now is an obstacle that must be removed promptly (by getting up immediately). If he can't get up promptly, at least he should warn others. 'Not warning' is his negligence.

זֶה בָּא בְּחָבִיתוֹ וְזֶה בָּא בְּקוֹרָתוֹ

A person is coming down a public street carrying a barrel and another is carrying a beam.

They collide and the barrel is broken, the beam carrier is not liable

Because:
1. Both have permission to walk there.
2. If the barrel carrier walked into the beam from behind, it means that the barrel carrier walked too fast.
3. If the beam carrier was standing still and the barrel carrier walked into him.
4. If the beam carrier yelled "halt".

In each case, the beam carrier is not liable.

- A man carrying a barrel stops suddenly and is hit by a man carrying a beam, who breaks his barrel. Who pays for the broken barrel?
- A man carrying a beam stops suddenly and is hit by a man carrying a barrel and breaks the barrel. Who pays for the broken barrel?

The person who stopped is responsible. Really? If you suddenly stop your car and another hits you from behind, the one who hits is responsible.

However, he would be liable if the beam carrier stopped short, suddenly, for no reason. That would be acting irregularly.

Principle: A man is always liable (considered a muad), unless he is acting in a regular fashion.

וְכֵן זֶה בָּא בְּנֵרוֹ וְזֶה בִּפְשָׁתָנוֹ

It is the same for a person coming with his lamp and another coming with his flax.

We know (from Deut: 19:5) that a person whose ax head falls off and kills another, is guilty and has the penalty of exile. Why is it not the same for a person who carries a beam or burning lamp? They too, should be required to be especially careful, since they are each in control of a dangerous item.

It is not the same. Here, each person is in control of a dangerous item and each contributes to the injury by beam and barrel – flame and flax.

In the first example, only the ax wielder has a dangerous item and only he contributes to the injury.

# שְׁנַיִם שֶׁהָיוּ מְהַלְּכִין בִּרְשׁוּת הָרַבִּים

1. If two people are walking in the public thoroughfare
2. One running and one walking
3. Both running

} Not liable.

1. They both were acting regularly, therefore, neither is liable.
2. Both are acting irregularly, but it is Friday evening before Shabbos. Therefore, it is a regular act to rush to do a Mitzvah. However, on a normal day the runner would be liable.
3. Both were acting irregularly and therefore, neither is liable.

שֶׁהוּא פָּטוּר מִפְּנֵי שֶׁרָץ בִּרְשׁוּת

He is not liable, since he runs with permission.

- A person runs in the public domain.
    1. On Erev Shabbos.
    2. To get to a Minyan.
    3. To get to the Bais Midrash to learn, and thereby damages property.

  Is he liable to pay? He was running to perform a Mitzvah after all!
  He is exempt on the evening before Shabbos.
  Question: An ambulance driver damages cars on his way to an emergency.
  Is he liable?
  He is exempt, or else there would be a deterrent for the ambulance driver to rush to help a person in need.

רַבִּי יַנַּאי מִתְעַטֵּף וְקָאֵי וְאָמַר בּוֹאִי כַלָּה בּוֹאִי כַלָּה

R Yanni would dress himself, stand in place and say, “Welcome bride, welcome bride.”

There are two ways to greet the Sabbath, go out to greet it, or stand in your place, dressed in nice clothing.
At the time of creation, the Sabbath came to HaShem and complained, “All the other (6) days have a partner and I do not.” God promised that the Israelites would be the partner for the Sabbath.

The Sabbath is referred to as a bride. When the bride is about to enter the bridal canopy, it is customary to go out to greet her and escort her in. Once a couple is married and the bride arrives from her father’s house to her husband’s house, it is customary for her to come to him, as he welcomes her to his (their) house.

These are the reasons for the different customs.

הַמְבַקֵּעַ בִּרְשׁוּת הָרַבִּים וְהִזִּיק בִּרְשׁוּת הַיָּחִיד

1. If one chops wood in the public domain and does damage in a private domain, he is liable.

2. If one chops wood in the private domain and does damage in a public domain, he is liable.
3. If one chops wood in the private domain and does damage in a different private domain, he is liable.

The Gemara explains: Why is each example necessary?
A person enters a private domain, without permission and is injured.
For example, a person is hit by flying wood in a carpenter's shop and he dies.
The carpenter is not liable for exile.
- If the person enters with permission, the carpenter is liable for exile.

Why shouldn't the carpenter be liable for the accidental murder, like the one who killed with an axe in the forest, was liable? There, in the forest, the person had a right to be there as much as the axe man. In the carpenter's shop, the person had no right to be there. If he was injured, the carpenter is not liable.

אֵין קוּם אַדוּכְתָּךְ מַשְׁמַע

One master is of the opinion that saying "Yes" means "come on in" and one master is of the opinion that saying "Yes", means "stay where you are".

Workers waited at the office to be paid. When the owner did not come, they went to his house and rang the bell. The owner responded, "Yes". The men entered his house and were attacked by his dog. Is the owner responsible for the damage done by his dog?

Owner -"I only said 'yes'. I did not say 'come in'".
Workers – "You owed us our day's pay and you said 'yes'".

Bava Kamma 33 has exactly such a case – A worker who enters his employer's house has permission.

Rav Yaakov Blau said- "Yes, but that was in the days when workers were paid at the owner's house. Today, they are paid at the office. The employer is not responsible to pay for damage done by his dog.

שְׁנֵי שְׁוָורִין תַּמִּין שֶׁחָבְלוּ זֶה אֶת זֶה

Two tam oxen that injured one another.

- We evaluate the damage to both oxen and if one caused more damage, that owner will pay ½ the difference.

- That case is limited to where the two oxen started to injure one another at the same time, or when one injured the other. Sometime later, the injured ox struck the attacker. If however, one ox attacked and while being attacked, the second ox responded by damaging the first; the owner of the second ox is not held liable.

וְשָׁבַח וְעָמַד עַל אַרְבַּע מֵאוֹת זוּז

The injured ox appreciated in value (from two hundred) to four hundred zuz.

- If one's animal damages an ox and subsequently it increased in value, can the owner of the damaging ox avoid paying for the damage?

No, the owner of the damaged ox could claim that his ox might have increased in value even more without the injury. The damager pays according to the loss at the time of the damage.

- A principal fired a teacher who had a contract and paid him for agreeing to leave and end his contract, as well as moving costs, etc. The teacher found a much better paying job elsewhere. The principal did not want to pay him, since the teacher actually come out financially better by being fired.
  Could he do this?

R Moshe Feinstein said – "The fact that good came out of it, is irrelevant. Losing one's job is a form of damage. The principal had agreed to pay and he must do so!"

וְהוּא שֶׁהִדְלִיק אֶת הַגָּדִישׁ בְּשַׁבָּת פָּטוּר
מִפְּנֵי שֶׁהוּא מִתְחַיֵּיב בְּנַפְשׁוֹ

A person who ignites a haystack on Shabbos is not liable because he is liable to lose his life.

What is he responsible for?

-Does he pay for the haystack he damaged?

-Does he get punished for violating the Sabbath?

We apply the rule: 'One act is only punished with the more severe of the punishments associated with that act.' Since he is to be put to death for violating Shabbos, he does not have to pay for the damaged property.

However, that rule only applies if both acts occurred simultaneously. The violation of Shabbos occurred at the beginning of the process, as did the burning of the first stalk. Then the fire spread and subsequent stalks were burnt.

Could this be viewed as a 'not simultaneous act' and he might have to pay for the damaged property also? The Gemara says, no. The death penalty absolves him of the full effect of the fire. And the spread of the fire occurs at the onset of the fire, so all the injury is considered to have started at the start of the fire.

הַמּוֹצִיא מֵחֲבֵירוֹ עָלָיו הָרְאָיָה

He who wishes to extract from his friend, has the burden of proof.
The burden of proof lies on the claimant.
R Yekutiel Teitelbaum of Sighet - "One who wishes to influence his friend must practice what he preaches".
- It seems obvious that if Shimon owns something and Levi wants it, he must bring proof as to why it should be his.
Sumchos - But, if there is a situation where there is doubt, the amount of doubt should be divided.
For example, (#1) An ox was pursued by another ox and later was found injured. It is not certain that the injury occurred from goring.
(#2) An ox was gored by another ox and a dead fetus lay beside her. It is not certain when the fetus aborted; before or after the mother was gored.

Rabbi's say: The one who wishes to extract money, must bring proof.
Others say to divide the loss between the two parties

טָעֲנוּ חִטִּין וְהוֹדָה לוֹ בִּשְׂעוֹרִין פָּטוּר

A plaintiff claimed wheat from him and the defendant admitted to owing him barley. He is exempt.

Not getting what you did not ask for.

Shimon claims that he lent wheat to Levi. Levi claims that he borrowed barley, not wheat. Levi need not pay him wheat or barley he is exempt. Why?

We understand why he does not need to pay for any wheat, since that claim is not backed by evidence. But why not pay back the barley the borrower admits to owing?

Rashi, Tosophos - Since the claimant never mentioned barley, it is as if he waived any claim to barley.

The claimant said that wheat was borrowed on a specific day and hour.

That is an admission that barley was not borrowed at that time and the statement of Levi negates the statement of Shimon.

- An admission by Levi only required him to pay if it is in response to a claim and there was no claim regarding barley.

  Ref: A man said his lost wallet had $200 in it. However, the wallet turned in by a passerby only had $100 in it (implying that the finder took $100 from the wallet before turning it in). The judge said, “Well in that case, this wallet must not be yours.” and gave it to the finder.