

TALMUDIC METHODOLOGY
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**SHIUR #03: THE PROHIBITION AGAINST POSSESSING
HAZARDOUS ITEMS**

Halakha mandates compensation for damages inflicted upon another person's property or actual body. These details are found primarily in Masekhet Bava Kama other laws govern bothersome behavior and activity, which, although not punishable monetarily, is sufficiently irritating to others to warrant restrictions. These laws, known as *harchakot shekheinim*, are outlined in the first two chapters of *Bava Batra*. Taken together, these laws govern non-criminal human interactions that inflict financial loss or significant inconvenience.

Several *gemarot* impose an additional restriction against harboring hazardous items. The Torah commands, “*lo tasim damim be-veitekha*,” literally, “do not place blood in your house,” which *Chazal* define as enabling residential hazards. R. Natan (*Bava Kama* 15b; *Ketuvot* 41b) expanded this *pasuk* to prohibit raising aggressive dogs and maintaining dangerous ladders.

Is this additional prohibition similar to the aforementioned laws governing interpersonal behavior? In addition to compensation responsibilities, a person must also eliminate items that may endanger others. R. Chaim Brisker (quoted by the *Birchat Shmuel*) suggests an alternative logic claiming that **unlike** the laws of compensation and neighbor zoning, the prohibition against maintaining hazards is unrelated to potential victims. Moral behavior codes demands not possessing items which endanger others. These guidelines can be categorized as *bein adam la-Makom*, rather than interpersonal, *bein adam la-chaveiro*. Several comments of Rishonim suggest that unlike Rav Chaim's logic, these restrictions can be framed as *bein adam la-chaveiro* or interpersonal guidelines.

The opening *mishna* of *Sanhedrin* details the types of Sanhedrin necessary to prosecute various types of crimes. R. Eliezer asserts a unique

(and minority) opinion that wild animals raised in domestic conditions can be unilaterally seized by concerned citizens. The Yad Rama (15a) writes that this ability is based upon R. Natan's restriction against maintaining hazards. If the Halakha of Rabbi Natan restricting possession of hazardous items not only restricts the owner, but also empowers potential victims with unilateral seizure, that would indicate, against R. Chaim, that the restriction is pitched within an interpersonal social dynamic. The owner of a hazardous animal has encroached upon the "rights" of potential victims, and they can defend their rights through unilateral seizure.

This interpretation of R. Eliezer's statement must be analyzed in light of a different opinion of R. Eliezer. The *mishna* in *Bava Kama* (45b) delineates levels of necessary precautions to prevent damage by domesticated animals. R. Eliezer dramatically declares that the only way to protect against these damages is by "killing" the animal. Effectively Rabbi Eliezer bans the possession of **any** potential damaging "agent." The *gemara* associates R. Eliezer's statement with R. Natan's restriction against harboring hazards. This association effectively extends R. Natan's restrictions even to domesticated animals that have not yet caused damage, and not only to wild animals raised in domesticated settings, as indicated by the aforementioned Yad Rama. This extension suggests that R. Eliezer viewed the restriction as a personal code unrelated to victim's rights and was therefore willing to extend it broadly.

A similar perspective emerges from an interesting comment of the Rosh (*Bava Kama*, ch. 20). Would a *shor mu'ad* – an animal that has already caused damage three times, be restricted in the same fashion as aggressive animals (such as violent dogs)? They are not as vicious and payment can easily be tendered. As such, victims are not vulnerable: the likelihood of injury is not overwhelming and the prospect of payment is probable. The Rosh cites an opinion that R. Natan's restriction would not apply to a *shor mu'ad*. Presumably, this opinion views the restriction as interpersonal. Thus, a scenario of probable payment in the event of possible damage is exempt from this restriction. According to R. Chaim, the prohibition is independent of potential victims and the prospect of payment should in no way influence or mitigate the prohibition. The Yam Shel Shlomo disagrees with the Rosh's opinion, and it is feasible that he adopted R. Chaim's view of the prohibition as independent of potential victim rights.

An interesting statement of the Semak (171) appears to reinforce R. Chaim's claim. Based on the Biblical prohibition of *lo tasim*, the *Rabbanan* prohibited behavior that is hazardous to oneself, even if it does not endanger others. Both the Rambam (*Hilkhot Rotzei'ach* 11) and Shulchan Arukh (*Choshen Mishpat* 427) agree that personally hazardous behavior is Rabbinically forbidden, but they appear to trace the prohibition to different sources. By stretching the *lo tasim* prohibition to include personally hazardous behavior, the *Rabbanan* (at least according to the Semak) were viewing the prohibition as intrinsic and unrelated to victims' rights. Had it been categorized as interpersonal, it would be difficult to extrapolate the prohibition to **personally** endangering behavior.