

**TALMUDIC METHODOLOGY**  
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**SHIUR #18: IS THE *MU'AD* PROCESS PURELY EMPIRICAL?  
(PART III)**

In our previous two *shiurim* about *mu'ad*, we addressed the nature of a *mu'ad* and whether it is purely a character transformation or something more legal and formal. Can an animal graduate from *tam* half payments to full *mu'ad* payments simply by demonstrating aggressive tendencies, or must a legal process of designating the animal's status unfold?

**Part I: The Variety of the Damages**

An interesting offshoot of this question involves a debate between R. Zevid and R. Pappa (*Bava Kama* 37a) regarding an animal that gored three of the same type of animal. Would it be considered a *mu'ad* for ALL animals or merely for the type of victim it had repeatedly gored?

R. Pappa logically assumes that the *mu'ad* status applies only to the particular type of victim. After all, the aggressive tendency has only been directed at a certain type of victim, and we have no certainty that other victims are likely to be effected. The damaging animal thus REMAINS a *tam* for animals it has not yet imperiled.

R. Zevid, on the other hand, asserts that the animal is considered a *mu'ad* for all victims, even those that had not previously been endangered. It seems that according to R. Zevid, the *nezek shalem* rule is not based on “aggressive tendencies” as much as the formal designation of *mu'ad*; once that designation occurs, full payments are obligated in all scenarios. By goring three times, the animal has been designated as a “hazard,” and this status obligates full payments even if no aggressive tendencies exists vis-à-vis other victims.

This approach to understanding R. Zevid would compel him to universalize *mu'ad* – any *mu'ad* situation would obligate full payments across the board. There are, however, two instances in which it appears that *mu'ad* status is LIMITED to the type of *nezek* that occurred; this would clearly contradict R. Zevid's approach. The *gemara* (*Bava Kama* 45) claims that if an animal repeatedly gores with its right horn, it is not necessarily considered a *mu'ad* regarding damage with its left horn. If R. Zevid maintains that *mu'ad* is a formal designation and universalizes *mu'ad*, he should presumably disagree with this limitation – just as goring one animal type establishes universal *mu'ad* status, damaging with one horn should establish *mu'ad* status for all forms of damage with either or both horns. Yet Rabbenu Tam claims that R. Zevid would agree with the *gemara*'s principle, and the absence of any response from R. Zevid to the *gemara*'s assertion of right-horned *mu'ad*, in fact suggests as much.

Perhaps R. Zevid differentiates between NORMAL gorings that are limited to one TYPE OF VICTIM and atypical gorings, which were performed with only one horn. In the former case, since conventional gorings occurred, we can designate the status of *mu'ad* and subsequently apply that designation to universal *nezek shalem* effect. However, if the goring was deviant – performed with only one horn – we cannot apply the typical *mu'ad* status and cannot universally apply *mu'ad* to gorings performed with the other horn. Of course, R. Zevid would concur that the tendency-based rules of *mu'ad* would still obtain and any subsequent gorings with the right horn would obligate full payment.

Another situation to consider according to Rav Zevid would be one in which an animal gored only other animals rather than humans. The *gemara* (*Bava Kama* 2b) establishes that if an animal gored three humans, the animal is considered a *mu'ad* equally for human and animal victims. Tosafot (37a) debate R. Zevid's opinion about the reverse case in which an animal gores three animals. Logically, R. Zevid should extend the *mu'ad* status to humans as well, since he extends *mu'ad* across different species of animals. Indeed, Tosafot initially submit that R. Zevid would extend *mu'ad* status to humans, but they subsequently rescind that opinion in light of an "explicit *gemara*" (2b) that suggests that NO ONE extends *mu'ad* status from animal gorings to human victims. Thus, R. Zevid – the extender of *mu'ad* status – is once again forced to

explain the limitation of this *mu'ad* status. Are the damages against humans so different from damages toward animals that a designation of *mu'ad* in the latter case does not carry over in the case of the former?

## **Part II: The Time Factor of *Mu'ad***

A separate discussion that may also reflect the formal nature of *mu'ad* concerns the *mishna's* discussion of "time-framed" *mu'ad* status. The *mishna* claims that if the three damages occurred on Shabbat, the animal is only a *mu'ad* for Shabbat and not for weekdays (and vice versa). Rashi explains that we assume that the Shabbat rest incited the damages, while the Meiri asserts that the colorful clothing worn on Shabbat may have agitated the animal. Both Rashi and the Meiri are searching for a RATIONAL reason to explain the *mu'ad* limitation. Why should aggressive tendencies demonstrated by three attacks on Shabbat not establish *mu'ad* for weekday activity if there is essentially no difference between the animal's behavior on these days? Evidently, there must be some hidden factor that provokes the animal specifically on Shabbat and not on weekdays.

A simpler approach would be to suggest that this rule is based upon the formal nature of *mu'ad*. If *mu'ad* is merely based on aggressive tendencies, there would indeed be little room to differentiate between Shabbat and weekdays. However, if the *mu'ad* rules are based on assigning *mu'ad* status to the animal, status can be applied to specific types of days and not to others. Even if there are no rational reasons to differentiate between the atmosphere of Shabbat and that of weekday, the legal title of *mu'ad* has been designated for one type of day and not for the other.

An interesting *nafka mina* between the two methods of understanding this "time limitation" would revolve around an animal that gored on three subsequent Sundays. Would that animal's *mu'ad* status be limited to Sundays or extend to every weekday? Rashi and the Meiri explained the Shabbat clause based on unique Shabbat environmental factors. Since Sunday does not have unique factors that might instigate damaging behavior, the animal's *mu'ad* status should extend to every weekday. However, if the time limitation suggested by the *mishna* is a product of the legal nature of *mu'ad* status, perhaps the same

limitation would apply if the damages were particular to ANY one day. Legal status is limited to the time-frame in which the damages occurred. If the damages were dispersed over different days, time does not influence the status and full payment is obligated regardless of when the subsequent damages occur. However, if all damages are pinned to one day –either Shabbat or any weekday –the *mu'ad* status does not extend beyond that time-frame.

The Shita Mekubezet quotes an interesting position that in fact claims that gorings and *mu'ad* can be limited to Sundays just as they are limited to Shabbat. This would clearly contest Rashi and the Meiri's views and perhaps affirm that *mu'ad* is a legal designation.