

**TALMUDIC METHODOLOGY**  
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**SHIUR #05: IMMEDIATE KEREN MU'AD**

In a [previous shiur](#), we contrasted two different models to explain the half-payment reduction of a *keren-tam* (a non-violent domesticated animal that causes damage when not seeking pleasure). R. Huna refers to this as a **fine** or *kenas*, rather than compensation, indicating that this scenario does not obligate classic compensatory payments. The *gemara* (*Bava Kama* 15a) explains that domesticated animals are assumed to be harmless (*be-chezkat shimur*), and classic compensatory obligations therefore do not exist.

The simple logic would suggest that harmless animals need not be guarded to prevent their unlikely damages. If the damage **does** occur, the owner is not considered derelict and classic compensation is therefore not required. R. Soloveitchik considered a different logic: a domesticated animal is not formally considered a *mazik*; classic compensation is only demanded in wake of negligence with dangerous “*mazik-classified*” items. In this instance only a fine can be levied.

The logic that we adopt to explain the reason that *chatzi nezek* is a fine would greatly alter the dynamic of the *mu'ad* process. Assuming that a *tam* pays only a 50% fine because of lack of probability and preventability, the *mu'ad* process can be more easily understood. By repeatedly damaging, the animal has displayed violent tendencies that are now predictable; non-prevention under such circumstances is grossly negligent and warrants full compensation. Alternatively, according to R. Soloveitchik, the process of repeated damages renders the animal a formal *mazik*, which then warrants full compensatory payment. Ultimately, the two logics to explain *chatzi nezek kenas* yield different assumptions about the process of becoming a *mu'ad*.

Perhaps the dynamics of becoming a *mu'ad* can be probed by inspecting unique situations in which animals are **immediately** classified as a *keren-mu'ad*. In these cases, the animal aggressively/violently damages and

pays full compensatory value from the first event. These cases are difficult to identify, as most situations of immediate 100% compensation are more likely to be classified as *shein* and *regel*, and not *keren* damages. However, several intriguing cases present themselves. Identifying the reason that they pay immediate 100% damages may help us better understand the classic transformation of *mu'ad*, and, by extension, the nature of classic *tam* and its half-payment exemption.

Perhaps the most compelling example is cited by the *mishna* (*Bava Kama* 15b) concerning damages by wild animals that warrant immediate 100% compensation. Many commentaries (*Tosafot* 16a) defined these damages as *shein* and *regel*, rendering this case irrelevant to the *keren* discussion. However, the Rambam defines these damages as *keren* that is *mu'ad mi-techilato* – immediate *mu'ad* and immediately mandating 100% payments. Why are first time *keren*-damages by wild animals more grave than those by domesticated animals? Is it because they are more predictable, such that the owner is more negligent and thus fully responsible even for first time offenses? Alternatively, a wild animal – unlike a domesticated animal – may be immediately classified as a *mazik* even before it actually damages, since it represents a menace to society? According to the latter approach, the process of *mu'ad* is typically necessary to create a status of *mazik*, but for wild animals, this status is innate.

The *mishna* (15b) actually cites R. Eliezer, who disagrees with the view of the Rabbanan and only obligates the owner of wild animals to 50% payment. He claims that even wild animals are “*bnei tarbut*” – they can be domesticated – and therefore they too should only pay 50% for first time offenses. R. Eliezer’s language certainly implies a debate about the ***mazik status*** of wild animals. By this logic the dominant position of the Rabbanan views wild animals as possessing the immediate status of *mazik*, whereas R. Eliezer equates them to domesticated animals, who only receive that status after repeat offenses. R. Eliezer appears to be highlighting the formal status, and not the statistical likelihood, as the primary factor in determining *mu'ad* status.

A second fascinating example surrounds a boulder or knife that injures passersby. Although Shmuel (*Bava Kama* 3b) defines this type of damage as a subset of *bor*, Rav claims that since the items are still monetarily owned, they do not resemble *bor*, but instead are derivatives of *shor*. Reasoning that

a boulder does not reflect the properties of *shein* or *regel* damages, Tosafot (3b) claim that it would be categorized as a form of *keren* - presumably with immediate *mu'ad* 100% compensation requirements. This constitutes a second example of a “*keren-tam*” scenario that accelerates immediately to full *mu'ad* compensation.

Is this immediate jump a result of greater negligence on the part of the owner? Domesticated animals are not expected to create damage and the owner cannot be considered fully negligent for not anticipating and preventing these damages. By contrast, the owner of the boulder or knife should have envisioned and prevented damage from them.

Alternatively, one can argue that this *halakha* reflects the logic of R. Soloveitchik. A domesticated animal is innocent and cannot legally be defined as a *mazik*. By contrast, boulders and knives are essentially **menaces**; unlike domesticated animals, their **entire** purpose is destructive. By not properly guarding these items, an owner has been negligent with a *mazik* and must therefore pay 100%. The difference between domesticated animals (which begin at 50% payments) and boulders and knives is not merely predictability. *Avno sakino u-masa'ao* are considered immediate *mazikim* and warrant immediate 100% levels.

A third example of instant *keren mu'ad* may be discerned in an interesting suggestion (*hava amina*) that is ultimately rejected. Even Talmudic conjectures that are ultimately rebuffed must contain compelling logic. The *gemara* (*Bava Kama* 2b) suggests that payments for “animal goring” will only start at 50% if the animal gored with detached horns; if the animal were to gore with its own attached horns, 100% must be immediately rendered. Why should goring with attached horns accelerate to immediate *mu'ad* levels of payment? Is the owner more negligent in not preventing classic goring with native horns than he would have been in not preventing the irregular scenario of goring with detached horns? In other words, is this purely a question of predictability and preventability? Or does this conjecture (*hava amina*) imply that an animal is considered an immediate *mazik* for classic goring and full 100% payment would be immediately obligated? The specter of damage with non-native horns is so odd that an animal can never be considered a *mazik* for that action. It is difficult to gauge whether the suggestion of native-horn goring immediately paying 100% was based on greater negligence or an immediate status as *mazik*.

An intriguing fourth example emerges from the position of R. Tarfon, which obligates all *keren* payments to the full 100% level of compensation if they occur in a private *reshut ha-yachid*. Unlike *shein* and *regel*, *keren* payments are mandatory even if the damage occurs in a *reshut ha-rabim* (public domain). However, in a public setting, a *tam* will only pay the 50% fine. If the animal invades a private domain and damages, R. Tarfon obligates immediate 100% compensation even for *keren tam*. This may be a novel understanding of damages perpetrated in *reshut ha-yachid*: the incursion **itself** mandates full compensation, regardless of the motive of damage. However, a different logic suggests that R. Tarfon views *keren* damage in *reshut ha-yachid* as a more severe form of *keren*, whose payment immediately escalates to 100% compensation.

If this is true, a similar question emerges: Is *keren* in *reshut ha-yachid* an immediate *mu'ad* because of greater negligence? The owner can claim innocence about non-prevention of *keren* damages in a public domain, but despite the unpredictability of *keren* damages, he should have – at the very least – prevented frontal incursions into private domains. This type of *keren* is not more preventable, but the owner can still be held more accountable, and hence render 100% damages. Alternatively, this invasive *keren* may be more of a *mazik*, and thus obligate 100% payment. Aggressive and atypical damages of domesticated animals are not considered acts performed by a *mazik*. However, when these animals depart from their routine and infiltrate private property with intent to damage, the animal is considered an immediate *mazik* and must render immediate 100% payments.

The fifth and final example of immediate *keren mu'ad* is perhaps the most vague. Squatting upon and damaging items is an aggressive act of *keren* and follows the classic payment schedule. R. Eliezer claims that squatting upon small items mandates immediate 100% compensation. Most assume that squatting upon smaller items is pleasure driven and constitutes *shein*, which naturally mandates 100% compensation, but a comment of Rashi (*Bava Kama* 2b) implies that **all** squatting is *keren*-oriented. This would dictate that 100% payment for squatting upon smaller items is a final example of immediate 100% compensation obligations.

Again, the same question emerges. Is squatting upon smaller items more preventable, such that this action entails greater negligence than

squatting upon larger items? Said differently, is the difference between larger items (classic *keren*, which gradually reaches 100% payment) and smaller items (immediate *mu'ad* level of payment) marked solely by frequency and accountability? Or perhaps there a formal element: a domesticated animal is not considered a *mazik* for aggressive *keren* type damages, whereas damages that are more pedestrian and occur while the animal lies down to rest are considered part of the animal's identity. In the latter scenario, the animal is considered a *mazik*.