

YESHIVAT HAR ETZION  
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**TALMUDIC METHODOLOGY**  
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**SHIUR #17: IS THE MU'AD PROCESS PURELY EMPIRICAL?**  
**(PART II)**

In the previous *shiur*, we introduced the notion that the *mu'ad* process may be more than just indicating or even generating an aggressive nature in the animal. Perhaps such indications are insufficient; rather, the only manner of graduating a *tam* to full payment is by formally designating a new status to the animal through the Torah-delineated process of *mu'ad*. The most striking reflection of this approach is R. Yehuda's insistence that the process must develop over a three-day period. His view of this process as "time-based" may indicate its formality.

The *gemara* notes two *halakhot* that may further solidify this sense that the *mu'ad* process is a formal and not merely empirical one. The *gemara* (*Bava Kama* 24a) demands that the *mu'ad* process occur in the presence of *Beit Din*. Tosafot assume that the *Beit Din* requirement is similar to the requirement in ALL cases of monetary litigation – the court is needed to process the testimony about the damages. If this were true, why, then, did the *gemara* explicitly assert this requirement? EVERY testimony requires *Beit Din*, and the testimony about *tam* damages should certainly not be different. The Rambam thus maintains that the role of *Beit Din* in the situation of *mu'ad* extends beyond merely processing testimony. In his comments (*Hilkhot Sanhedrin* 5:12), he describes *Beit Din* as CREATING the *mu'ad* status. Based on this position, he explains the need for “*semuchkin*,” judges who received direct ordination “*ish mipi ish*” from Moshe Rabbenu. As this tradition was lost after the second *churban*, he claims, we can no longer process *mu'ad* situations. The Rambam's requirement of a *Beit Din* of *semuchkin* to CREATE *mu'ad* status may indicate that he agreed that the transition is a formal DESIGNATION and not simply an indication of changed tendencies. We therefore require a formal *Beit Din* capable of installing a new status upon the animal.

A second *halakha* which may indicate the formality of the *mu'ad* process is the requirement that the owner of the animal attend the *mu'ad* transition. This requirement stems from the language of the *pasuk* in describing *mu'ad*, “*Ve-hu'ad bi-valav*” – “the animal will become a *mu'ad* with/through its owner.” Why is the owner’s presence demanded? As in the first case, many explain this requirement based on “general” guidelines that testimony must be offered in the presence of the accused.

The *Nimukei Yosef* however, remarks that this general rule may be suspended if the accused cannot legitimately arrive at *Beit Din* to receive the accusatory testimony (for example, if he is ill). Yet in this situation, - the *mu'ad* process - the *gemara* (based on the *pasuk*) appears to UNCONDITIONALLY demand the presence of the owner. Again, if this is a “general” requirement, why would the *gemara* (and the Torah itself) lodge a specific demand? It appears as if the presence of the owner is UNIQUELY required in this situation (as the *Nimukei Yosef* himself concludes). Perhaps if the *mu'ad* process were merely empirical, determining the tendency of the animal, we might not have required the owner's presence. However, as we are re-defining the legal status of the animal, we may require the owner’s presence to allow for that redefinition.

(This question is clearly founded upon a secondary question that the *gemara* itself raises: Are we converting the animal into a *mu'ad* (*yiudei tura*) or are we converting the owner into a *mu'ad* (*yiudei gavra*) as well? However, this subsidiary question lies beyond the confines of our discussion.)

Finally, *Tosafot* (24b) state a remarkable *halakha* that CLEARLY proves that the *mu'ad* process is NOT merely indicative of the animal's tendencies. *Tosafot* cite the R”I, who claims that only damages that obligate halakhic payment can aggregate to yield a *mu'ad* status. For example, if an animal were to gore another animal belonging to *hekdesh*, *hefker*, or a gentile, no graduation to *mu'ad* would occur. In all these instances, no payments are offered and no *mu'ad* process can commence. If the *mu'ad* process were merely indicative of the animal's nature, we would be unconcerned with the payment consequences of the damages. As long as the animal gores three times it has been established as an aggressive animal, which should be liable for full restitution! Evidently, the R”i

maintains that the process is FORMAL and that only payment-based damages can yield a *mu'ad* status. (It is unclear from the R"i whether the actual payment is a necessary ingredient of *mu'ad* or whether the absence of payment INDICATES that these situations are simply not halakhically recognized and cannot factor in *mu'ad* graduation.)

It should be noted that we can easily acknowledge the formal nature of the *mu'ad* process without conceding the R"i's demand for three payment-based damages. However the R"i's insistence on payment-based damages is a dramatic statement proving the formal nature of *mu'ad*. Accepting formality of the process doesn't mandate the R"i's position. However, adopting the R"i's position does presume a formal nature to the process.