

Damage by a Pit – Bor

Ref: *Sefer Nezikin, Hilchot Nezikey Mamon, Chapters 12–13*

Damage by a pit³

Animal or human falls into pit.

If a person digs a pit in the public domain (similarly if he built a mound) and an animal dies or is injured, he is liable.

If the animal dies, he is liable for the **full amount** of damage.

The person has to be the owner of the pit.

The owner is not only liable for digging, but also for not filling in a pit that he is responsible for. Each case has to be assessed individually to see if owner was negligent.

Measure of pit which will cause death of animal is **10 tefach**.

1 tefach filled with water is equal to **2 tefach** (because water may make air foul).

Death could come about through the blow or suffocation.

If the width of the pit is the same as its depth, the animal is not prone to dying of suffocation. Owner would therefore only be responsible if the animal died from the blow.

If animal does not die but is injured, full cost of damages need to be paid even if pit is less than **10 tefach**.

	Liabile	Not liable
Person declared his pit made in his property ownerless		✓
Person covered pit but cover could not withstand the expected pressures	✓	
Greater than normal pressure broke cover of pit		✓
Partners where one was irresponsible	✓ only the irresponsible one	
Person transfers responsibility of pit to watchman	✓ watchman liable	
Pit was less than 10 tefach and animal died		✓
Pit was less than 10 tefach and animal gets injured	✓ Full damages	
Mentally competent animal fell into pit in the daytime. Animal normally will avoid a pit.		✓
Human being fell into pit and died (even at night)		✓ (Torah only refers to an animal)

Human being got injured from a pit or mound	✓ Full damages	
<i>Muad</i> ox pushes another ox into pit and it dies	Owner of pit ½ damage Owner of ox ½ damages (<i>Muad</i> normally pays full damages)	
<i>Tam</i> ox pushes another ox into pit and it dies	Owner of pit ¾ damages Owner of ox ¼ damages from body (<i>Tam</i> normally pays ½ damages)	
Person places stone at edge of pit and ox falls in and dies	Owner of pit ½ damages Other person ½ damages	

TOLDOT OF BOR (DERIVATIVE DAMAGES)

Obstacles left in the way, where people can become damaged are considered as derivatives of *bor* and regarded as *muad*. If people or animals get damaged owner is liable for **full damages** but not for damage to utensils. Owner of a pit is never liable for damages to vessels whether *av* or *toldot*.

Examples

- Object left in public domain
- Object falls and breaks in public domain
- A person who falls and could get up but remained and became an obstacle.
- Pouring water into public domain which causes someone to slip.
- Mortar and bricks may be used in public domain but owner is liable if they cause damage.
- Trees and walls which are sturdy are not considered as '*bor*' but flimsy ones are. **30 days** are allowed for owner to replace these. Thereafter his is liable.
- Thorns or glass in walls facing public domain
- Projections and balconies which protrude into public domain (if they interfere with passers-by).

Pious men would make sure that other people should not get damaged by dangerous items.

E.g. pieces of glass or thorns would be disposed of as follows

- buried deep in ground
- burnt
- thrown into the sea or rivers

I.e. they went beyond the letter of the law.