

Fines for Damage caused by Animals

Ref: *Sefer Nezikin, Hilchot Nezikey Mamon, Chapter 2, 6, 9*

PRINCIPLE

When a person must pay full damages, this is considered *mamon* (a monetary obligation). Whenever he pays more or less (i.e. double or half), this is considered a *knas* (fine), with the one exception of *tzrorot*.

A fine is payable only when obligated by the testimony of witnesses and not by admission.

Reminder

Pack on Fines



There are 2 categories of damage relating to animals:

- *Muad*
- *Tam*

MUAD

Muad means forewarned. In the normal sense this just refers to the animals normal natural behaviour i.e. the owner would expect animal to do such an act and he should take precautions. *Muad* could also refer to the owner having been warned about the irregular behaviour of his animal on 3 separate occasions. (E.g. the animal has been goring other animals.)

DEFINITION

- The warning has to be from the court (3 judges).
- Warning has to be in the presence of the owner.
- Warning has to be given on 3 separate days. (If it gored 100 times on one day, it is not considered a *muad*.)
- An incompetent owner (e.g. a minor) is not liable, but in these cases, the court should appoint a guardian. Similarly an ox which is trained to gore for sports, are not considered *muad*.
- When an ox changes ownership its status reverts back to a *tam*.
- The *muad* status can be reverted to *tam* if animal loses that habit. The indication is if children can play with the animal and it does not repeat its bad behaviour.
- The *muad* is specified according to its precise irregular behaviour i.e. say for goring.
 - Is it one or many types of animal gored.
 - Is there a pattern of days when it gores or does not (e.g. every second day, or say only on *Shabbat*). The animal would then be say *muad* on *Shabbat* and *tam* in weekdays.
 - Is there a specific stimulus which sets off the goring (e.g. a *shofar* blast).
- The penalty for damages of a *muad* are full damage exacted from the best property of the owner. For a *tam* it is the ½ damages, and this is exacted from the body of the guilty animal.

In short the status of *muad* is relative, and has to be assessed.

Reminder

Land Quality for Expropriation. Ref: *Sefer Mishpatim, Hilchot Malveh Veloveh*, Chapter 19
Pack on Expropriation of Property



TAM

Here animal deviates from its normal pattern of behaviour and does an unusual act which causes damage.

Owner is therefore not responsible, and therefore the penalty comes from the value of the ox which did the damage ie 1/2 damages.

As mentioned, the 1/2 damages of a *tam* is a *knas* (fine) and comes from the body of the animal. The full payment is of a *muad* and comes from the possessions of the owner.

PRINCIPLE

A person who admits liabilities for a fine when there are no witnesses is not liable.

Therefore if litigant says to owner, you certainly know that your ox caused the damage. If the ox was *muad* the owner would have to take an oath that he does not know, but if the ox was a *tam* he would not have to take an oath. (Because he could just as easily admit, and not be liable.)

PRINCIPLE

Burden of proof of damages lies with the one who wants to exact payment. If there is no proof, the one who caused damage is not liable.