

## If Someone Puts His Fish in Someone Else's Fish Tank and It Kills The Owner's Fish, Is He Culpable?

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**Question:** I had a family of guests staying in my house. While they were staying by me, they went to a pet store and bought a fish. They asked if they could put their fish in my fish tank and I agreed. The next morning, I saw that their fish had a fight with mine and both were now dead. Is he liable to pay for my fish?

**Answer:** The Mishnah in Bava Kama says that if someone brings his ox into someone else's field without permission and the resident ox gores it, the field owner is not liable. Conversely, if the ox that was brought into the field gores the ox of the field's owner, the intruder is liable.

If permission was given to bring an ox into a field, the Mishnah says that the field's owner is liable if his ox damages it. Rebbi says that this is only true if he explicitly said that he accepts to watch the ox that was brought into his field. Otherwise, he is not liable. The practical halacha follows the opinion of Rebbi.

In the case in question, if the homeowner did not explicitly say that he accepts responsibility for the guest's fish, he is not liable to pay if that fish is killed by his fish. Regarding the homeowner's fish, the Gemara says that if the ox was brought into the field with permission, its owner is not liable if his ox gores the field owner's ox. Accordingly, since the guest had permission to put his fish in the tank, he would not be liable to pay for the homeowner's dead fish.

Had the guest put his fish into the tank without permission, he would be liable like the case in the Mishnah where someone brings his ox into a field without permission. However, the *hezek* in such a case appears to be *keren*, and - unless the fish has already done this three times, which is highly unlikely - the owner only has to be *chatzi nezek* (half of the value of the damages). *Chatzi nezek* is a *k'nas*, and today's batei din do not impose *k'nasim*, which would mean that they cannot force the guest to pay.

It also needs to be noted that the *pasuk* about *keren* is speaking about an ox. Although the Mishnah adds that all other animals and birds are also included in the parshah of *keren*, it does not mention fish. Tosafos writes that any animal which cannot be worked on Shabbos is included in the halachos of damages. Tosafos elsewhere says that there is a *machlokes* if one is restricted from working his fish on Shabbos. This means that there is one opinion in Tosafos that one is not liable for any damage done by his fish.