

Of Rats and Flats: Who Pays for Damage to a Borrowed Car?

Adapted from the writings of Dayan Yitzhak Grossman

September 21, 2023

Two very different cities, Bnei Brak and New York, are currently experiencing a rat crisis:

The city of Bnei Brak is facing a distressing predicament as rats infest its overcrowded neighborhoods, causing fear and concern among residents...The situation has escalated to the point where residents describe the presence of rats as a more significant concern than potential terrorist attacks...The light rail works in Bnei Brak are being linked to the rat infestation, as they may have displaced the rats from their underground habitats. Additionally, the city's lack of cleanliness, sewage overflow, and garbage accumulation have contributed to the situation...[1]

Recorded rat sightings in New York are at an all-time high. In December, Mayor Eric Adams posted, with great fanfare, a job announcement: The city was looking for a "highly motivated and somewhat bloodthirsty" candidate to take on the newly restored position of rat czar...Yet three months later, the position still hasn't been filled. A few weeks ago, the mayor himself had to pay a \$300 fine for failing to control rats at a rowhouse he rents out to tenants...[2]

One ancient solution to rat problems still utilized today is cats:

After rats were reported at Adams's rental property, Curtis Sliwa, the public provocateur and Adams's Republican rival in the last election, showed up outside the rowhouse, offering the services of two of his many cats. "It's time that we revert to the best measure that's ever worked. And that's cats," he told reporters.

Sheila Massey, a retiree in Washington Heights, started Hard Hat Cats several years ago with this same idea in mind. The program places spayed and neutered "cat colonies" with large businesses prone to rats. Although my colleague Sarah Zhang convincingly disputed the effectiveness of cats as a form of rodent control in this magazine, Massey begs to differ. While they may not be effective rodent murderers, they are, she says, very good deterrents.[3]

The eternal war between cats and rats (and their smaller cousins, mice) is the subject of an anecdote in the Gemara:

There was a certain man that borrowed a cat from his friend to chase away mice. The mice united against the cat and killed it. Rav Ashi sat and inquired: In such a case, what is the halacha? (Is it like the case of an animal that died as a result of its work, or not?) Rav Mordechai said to Rav Ashi: Thus said Avimi from Hagronia in the name of Rava: Regarding a man whom women overcome and kill, there is no judgment and no judge (i.e., no redress). (Just as a woman wouldn't be expected to prevail over a man, the borrower need not have anticipated that mice would overcome a cat, so he wasn't negligent,

and this is a case of an animal dying on account of its work—*meisah machamas melacha*—in which a borrower is exempt.)

There are some who had a different account of this incident, that the cat ate many mice and became overheated and died. Rav Ashi sat and pondered the incident: In such a case, what is the halacha? (Is it considered a death resulting from work?) Rav Mordechai said to Rav Ashi: Thus said Avimi from Hagronia in the name of Rava: Regarding a man whom women overcome and kill (i.e., he died of sexual overindulgence—Rashi), there is no judgment and no judge. (Just as that death is uncommon and unexpected, the borrower need not have anticipated that the cat would overindulge in mice and die, so this is a case of an animal dying on account of its work, and the borrower is exempt.)[4]

Both versions of the story are for some reason omitted by the Rambam and the Shulchan Aruch. But the second version is invoked in a dispute that is both theoretically important and of great practical significance, between R' Meir Abulafia (the Remah) and the Rosh, about the scope of a borrower's exemption from liability for a borrowed animal that died due to work. The classic case of *meisah machamas melacha* is an animal that dies as a *consequence* of its labor, but the Remah and the Rosh disagree about an animal that was borrowed for travel on a certain route,[5] and during that travel was lost to bandits or wild animals. The Remah rules that this is considered *meisah machamas melacha* by analogy to the cat that died due to its overindulgence in mice: The borrower of the cat was not liable for its death, even though it was not caused by the labor for which the cat was borrowed and was only a consequence of that labor. Here, too, the animal is considered *meisah machamas melacha* because it was lost due to the route on which it was borrowed to travel. The Rosh rejects the analogy, because the cat died in the course of the labor itself, similar to a borrowed animal that died as a consequence of the travel itself, whereas a loss to bandits or wild animals could occur even in the absence of the labor and so cannot be considered a consequence of it.”[6]

R' Yosef Karo defends the Remah from the Rosh's challenge by pointing out that bandits and wild animals are not commonly found in cities, while intercity roads are presumptively dangerous, so the animal's loss while traveling is indeed a consequence of its labor;[7] he accordingly codifies the Remah's position in his Shulchan Aruch.[8] The Rama (R' Moshe Isserles, not the Remah) in his glosses notes that the Rosh disagrees with the Remah,[9] but he does not explicitly decide between them. The Shach sides with the Rosh, based on the Rambam's rationale for the exemption of *meisah machamas melacha*: A borrower is generally liable even for losses that are not his fault (*oness*), but if the lender has been negligent, the borrower is exempt, and one who lends an item that is not fit for purpose is negligent.[10] But in the Remah's case, observes the Shach, the borrowed animal was entirely fit for purpose, and there was no negligence on the part of the lender, so the borrower remains liable.[11]

The Machanei Efraim, however, points out that other *Rishonim* explain the

rationale for the exemption of *meisah machamas melacha* differently: By lending his animal despite knowing that it could be damaged by labor, the lender implicitly waived such damage.[12] He argues that this approach supports the Remah's extension of *meisah machamas melacha* to his case. Additionally, the language of the Rosh indicates that his disagreement with the Remah is not a fundamental one, based on the rationale of the Ramban, only a technical objection, that a loss to bandits or wild animals isn't a result of the animal's labor.[13]

This dispute has significant ramifications for the case of a borrowed car that is damaged in an accident or has a flat tire, if that is not attributable to a defect in the car or tire. According to the Remah and the Shulchan Aruch, if the borrower wasn't negligent, this may be considered *meisah machamas melacha*, but according to the Ramban and the Shach, he would be liable, because the exemption of *meisah machamas melacha* hinges on a presumption of negligence by the lender.

There are, however, several considerations that may cause even the Remah and the Shulchan Aruch to agree that the borrower is liable in this case, or even the Rosh to agree that he is *not* liable:

- Some contemporary authors declare that the exemption of *meisah machamas melacha* does not apply to damage inflicted by the borrower himself (*adam hamazik*).[14] According to this view, even if he was not at fault (e.g., he drove over a nail), he would be liable even according to the Remah.
- R' Naftali Nussbaum suggests that the exemption of *meisah machamas melacha* only applies where the item is destroyed and cannot be repaired.[15] According to this approach, even the Remah would agree that the borrower is liable for repairable damage to the car.
- According to the Machanei Efraim's understanding of the dispute between the Remah and the Rosh, insofar as the damage could not have occurred without the car being driven, even the Rosh would agree that this is considered *meisah machamas melacha*. (This is the position of Rav Nussbaum as well.)[16]

[1]Bnei Brak Overrun By Rats, Possibly "Hundreds of Thousands".

Matzav.com.

<https://matzav.com/bnei-brak-overrun-by-rats-possibly-hundreds-of-thousands/>.

[2]Xochitl Gonzalez. New York's Rats Have Already Won. The Atlantic.

<https://www.theatlantic.com/ideas/archive/2023/03/new-york-city-rat-infestation-politics/673250/>.

[3]The Atlantic *ibid*.

[4]Bava Metzia 97a.

[5]The language of the Remah is "*leileich bederech yadua*." This article assumes that the Remah's position is not limited to this case and extends to where the animal was borrowed to travel anywhere the borrower wishes, but I have been unable to find explicit discussion of this point in the *poskim*.

[6]Both views are cited in Tur C.M. *siman* 340.

[7]Bais Yosef *ibid*. (Bedek Habayis).

[8]Shulchan Aruch *ibid. se'if* 3.

[9]Hagahos HaRemah *ibid.*

[10]Chidushei HaRamban *ibid.* 96b.

[11]Shach *ibid. s.k.* 5. Cf. Ketzos Hachoshen *ibid. s.k.* 3; Nesivos Hamishpat *ibid. Biurim s.k.* 5; Kava Dekashyasa, *kushya* 39, and the many comments of contemporary authorities on our topic cited in the 5752 edition of that work (volume 2 pp. 48-54).

[12]Nimukei Yosef *ibid.* p. 55b in Rif pagination.

[13]Machanei Efraim, Hilchos *She'eilah Ufikadon siman* 4. Cf. Sha'ar Hamelech, Hilchos *Chovel Umazik* at the end of 7:3; R' Naftali Nussbaum, cited in Kava Dekashyasa *ibid.* p. 52 s.v. *Amnam yesh leha'ir*.

[14]Kuntres Kava Denichusa, cited in Kava Dekashyasa *ibid.* p. 49; R' Dovid Yitzchok Man, cited in *ibid.* p. 51.

[15]Kava Dekashyasa *ibid.* pp. 52-53.

[16]For further discussion of the dispute between the Remah and the Rosh and the question of the rationale for the exemption of *meisah machamas melacha*, see Shu"t Maharashdam C.M. *siman* 435 (referenced by Shach *ibid.*); Shu"t Sho'el Umeishiv, *mahadura tinyana cheilek 2 siman* 51; Shu"t Tzitz Eliezer *cheilek* 18 *siman* 79.