

Well Meaning: Is a Property Owner Liable for an Animal's Injury?

Adapted from the writings of Dayan Yitzhak Grossman

October 30, 2025

The Associated Press reports:

A bull moose that fell into an abandoned well in Maine was pulled to safety during an elaborate five-hour rescue.

The operation happened Wednesday after Cole Brown, whose family owned the forested land in northern Maine, spotted a pair of antlers. He heard a noise and initially thought it was turkeys, but upon closer inspection realized it was something a lot bigger.

"He walks over and, through the thick alders and bushes, he saw the antlers, just the antlers peeking out," said Delaney Gardner, Brown's stepsister who videotaped the rescue. "He knew that for an animal of that size, he was going to need some backup just in case it was, you know, injured or just stuck there."

The family alerted the Maine Department of Inland Fisheries & Wildlife. They sent a biologist, who sedated the moose, and then wardens put straps on the animal. Using an excavator provided by the family, they gingerly lifted the moose out of the 9-foot-deep well.

"Once the sedation wore off, the moose took off running, no worse for wear other than perhaps his bruised ego," the agency said on its Facebook page...[1]

This is reminiscent of a classic scenario in Parshas Mishpatim:

When a man will open a pit, or when a man will dig a pit and he will not cover it, and an ox or a donkey falls into it, the owner of the pit shall make restitution; he shall return money to its owner, and the dead body shall be his.[2]

The moose in question was presumably ownerless, so its fall would not engender any liability on the part of the landowner. But even if it did have an owner, there are a number of reasons that in this case the property owner would not, or at least might not, be liable to the moose's owner:

1. If indeed the moose suffered only a "bruised ego," the only possible cause of action would be for the embarrassment (*boshess*) of the moose, but liability for *boshess* is limited to human victims.[3]
2. Similarly, liability for *boshess* is limited to injuries caused directly by a human assailant (*adam hamazik*), as opposed to those caused by someone's property (*mamon hamazik*).[4]
3. As we have previously discussed,[5] liability for *boshess* has a unique requirement of intention to humiliate, and mere negligence is insufficient to engender liability.
4. Even for causes of liability other than *boshess*, there is generally a requirement of fault and negligence (except for actual damage (*nezek*) caused directly by an *adam hamazik*, where the principle of *adam muad leolam* applies).[6] If the property owner was not aware of the well's existence, he would not be liable for any damage it caused.[7]
5. The Gemara says the owner of a pit is only liable for an ox that is deaf,

deranged, or young, or for one that was walking at night, but not for an “intelligent” ox walking by day, because such an ox should have examined the path as it walked.[8] Accordingly, if the moose was intelligent and fell into the well by day, the property owner would not be liable. (If the well was camouflaged with vegetation to the extent that it could be easily missed by an intelligent animal in the daytime, perhaps he would be liable.) The Rambam limits the exemption from liability for an intelligent victim to cases of death rather than injury;[9] according to him, this exemption is irrelevant to our case. But the Ra’avad and other *Rishonim* do not make this distinction.[10]

6. The Mishnah says a property owner is liable for damage “that happened anywhere except a place that belongs only to the *mazik*.”[11] The Gemara explains: “For the *mazik* can say to him, ‘What was your ox doing on my premises?’” One does not have to guard his ox from causing damage within his own property, because another person’s animal shouldn’t be there.”[12] Accordingly, if the moose wasn’t allowed to enter the property, the property owner isn’t liable.

Had a person fallen into the well, the first consideration above would obviously not apply. Most of the others would, with the possible exception of the fifth, as many *Rishonim* limit the principle that an intelligent victim by day has only itself to blame to oxen. This is either because an ox’s eyes are “below,” so it should watch where it is going, while a walking human’s eyes are above, “and he does not constantly look before his feet,”[13] or because a human being has many thoughts and preoccupations that distract him from watching where he is going.[14] The Rambam, however, seemingly does not distinguish between ox and human in this context.[15] Regarding the duty to rescue the moose from its predicament, see our earlier discussion of the horse that fell through the ice into a pond in upstate New York.[16]

[1]Maine wardens rescue moose trapped for hours in abandoned well. AP News.

<https://apnews.com/article/moose-rescue-video-trapped-well-maine-wildlife-a2dfd2ed74c8db13a6551a7b7164ad81>.

[2]Shmos 21:33-34.

[3]Bava Kama 4b: “*Bishlama adam de’azik shor, nezek hu demeshaleim; adam de’azik adam, meshaleim arba’ah dvarim.*” Cf. Tosfos Gittin 42b s.v. *Veshor*; Piskei HaRosh Bava Metzia perek 8 siman 4; Tur C.M. siman 307 and Shulchan Aruch ibid. *se’if* 6; Tur ibid. siman 340 and Shulchan Aruch ibid. *se’if* 2.

[4]See Gittin 42b: “*Veshor aino meshaleim ella nezek,*” and Rashi there s.v. *Hei shor hu*: “*dehei dvarim gabei adam ksiv velo gabei shor, dichsiv ‘Ish ki yitein mum ba’amiso’ velo shor ba’amiso.*” Although the specific context there is damage caused by an ox, the general rule that only a human assailant is liable for *hei dvarim* would seem to extend to mamon *hamazik* in general.

[5]For All Intents: Does Mind Matter? Jun. 10, 2022.

[6]See Bava Kama Mishnah 2:6 and Gemara 26a-b.

[7]With respect to *bor* in particular, see Hagahos HaRama to Shulchan Aruch C.M. 410:4 “*Vechein im karah acheir birshuso venoda leva’al hechatzeir...*”

[8]Bava Kama 54b, codified in Shulchan Aruch C.M. 410:19.

[9]Hilchos *Nizkei Mamon* 12:16.

[10]Hasagos HaRa’avad *ibid.* Cf. Magid Mishneh *ibid.*; Aruch Hashulchan C.M. 410:24.

[11]Mishnah Bava Kama 1:2.

[12]*Ibid.* 13b. Cf. *ibid.* 50a and Rashi there.

[13]Tosfos Bava Kama 27b s.v. *Lefi she’ein darkan shel bnei adam*; Piskei HaRosh *ibid.* *perek 3 siman 1*; Tur C.M. *siman 412*.

[14]Me’iri *ibid.* beginning of *perek 3*, cited in Shitah Mekubetzess *ibid.* 27b, and cf. Nimukei Yosef *ibid.* (12a in Rif pagination) s.v. *Ein darkan shel bnei adam*, cited in Tosfos Yom Tov *ibid.* 3:1 s.v. *Veniskal bah*.

Remah (cited by Tur *ibid.* *siman 410*) also rules that the owner of a pit is liable for an “intelligent” man, as opposed to an ox, that falls into a pit even during the day, but the Tur’s citation of the Remah does not include an explanation for the distinction.

[15]See the sources cited in footnotes 9-10.

The Shulchan Aruch seems to contradict itself on this question: In 412:3, in the context of a jug that was left in a public place, the Shulchan Aruch rules that while the owner of the jug is liable for damage incurred by a person who stumbles on the jug, he is not liable for damage incurred by an intelligent ox that stumbles on it, because (as explained by Tosfos, the Rosh, and the Tur) a person’s eyes are above, while an ox’s are below. But in 410:19-20, in the context of a pit, the Shulchan Aruch codifies the distinction of the Rambam between an intelligent animal that falls in and is killed and one that is merely injured, and rules that the owner of the pit is not liable for the former but is liable for the latter.

These rulings are difficult to reconcile for two reasons: First, it is difficult to understand the difference between an intelligent animal that injures itself by falling into a pit, for which the owner of the pit is liable, and one that injures itself by stumbling on a jug, for which the owner of the jug is *not* liable. Moreover, the entire basis for the distinction between animal and human in this context is the apparent contradiction between the case of the pit, where the Gemara concludes that the owner of the pit is *not* liable for an intelligent ox that falls into it, because it “should have examined the path as it walked,” and the case of the jug, where the Gemara concludes that the owner of the jug *is* liable for someone who stumbles upon it, because “it is not the way of people to study the roads.” If the Rambam resolves the difficulty by distinguishing between death and injury (see Magid Mishneh and Aruch Hashulchan *ibid.*), there would seem to be no basis for distinguishing between animal and human (and the Rambam himself indeed makes no such distinction).

Cf. Aruch Hashulchan *ibid.* *se’if 25*.

[16]Horse Raising: Must One Relieve an Animal’s Pain? Mar. 6, 2025.